

Model Rules of Procedure for Works Councils





Model Rules of Procedure for Works Councils

JUNE 2015

Social and Economic Council of the Netherlands

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Preface

Preface

One of the statutory duties of the Social and Economic Council of the Netherlands [*Sociaal-Economische Raad*] (SER) is to promote employee participation [*medezeggenschap*] within enterprises. To that end, the Council has produced a number of informative publications in this field. Among them are the present Model Rules of Procedure for Works Councils [*Voorbeeldreglement ondernemingsraden*], with explanatory notes and appendices, which include an explanation of the provisions of the Works Councils Act [*Wet op de Ondernemingsraden*] (WOR).

The present edition of the Model Rules is a revised and updated version of that of 2010. The text can be downloaded from the SER's website (www.ser.nl). The various model rules of procedure can also be downloaded for adaptation into rules for a company's own particular situation.

Each Works Council is required to draw up Rules of Procedure covering the proper procedure for its election and its way of working. The Model Rules of Procedure and the explanation provide recommendations that can serve as a model for Works Councils in drafting their rules of procedure.

A properly functioning Works Council is in the interest of the whole enterprise. I trust that the new Model Rules of Procedure for Works Councils can play a useful role for both Works Councils and enterprises.

The Model Rules of Procedure for Works Councils have been drawn up under the auspices of the SER's Committee to Promote Employee Participation [*Commissie Bevordering Medezeggenschap*] (CBM).

June 2015

Véronique Timmerhuis
Secretary-General
SER



Introduction

1 Introduction

1.1 General

Pursuant to the Works Councils Act ([WOR](#)), each Works Council is required to draw up Rules of Procedure covering those matters that it has been entrusted to regulate for itself, such as its preferred way of working. The Model Rules of Procedure for Works Councils are intended primarily as an aid to drawing up such rules.

It should be noted that these Model Rules comprise more than the title indicates, namely Model Rules of Procedure for the Works Council ([Section 2](#)), model provisions for election of the Works Council according to the electoral groups system [*kiesgroepenstelsel*] ([Section 3](#)), and Model Rules of Procedure for the Central Works Council (COR) and the Group Works Council (GOR) ([Section 4](#)). [Section 5](#) comprises model resolutions for the appointment of committees. A number of general suggestions for how the Model Rules of Procedure and the model resolutions should be used can be found in [Section 1.3](#) and [Section 1.4](#).

The Model Rules of Procedure for Works Councils also include a number of appendices with specific information. [Appendix A](#) deals with a number of tasks and powers of the Works Council, COR, or GOR pursuant to legislation other than the WOR and regulations. [Appendix B](#) discusses agreements between entrepreneurs and their Works Council, while [Appendix C](#) considers those regarding consultations between Works Council members and their electorate. [Appendix D](#) deals with employee participation and corporate social responsibility. [Appendix E](#) examines the legal position of Works Council members. More information about the Joint Sectoral Committees is given in [Appendix F](#). [Appendix G](#) and [Appendix H](#) comprise information about the Committee to Promote Employee Participation [*Commissie Bevordering Medezeggenschap*] (CBM) and the SCOOR Foundation. These appendices also include references to relevant documents published by the CBM and SCOOR.

More information about Works Councils and drafting Rules of Procedure and resolutions for them may be obtained from employers' or employees' organisations or the relevant Joint Sectoral Committee.

1.2 The system of employee participation defined in the WOR

1.2.1 Types of employee participation

The WOR regulates for the following types of employee participation:

The Works Council

A Works Council is mandatory for enterprises that normally employ 50 or more people ([WOR Article 2](#)); it is optional for enterprises that normally employ fewer than 50 people. A Works Council, in which all parts of an enterprise are represented, is designed to advance the proper functioning of the enterprise in achieving its various objectives and to facilitate consultation between the entrepreneur and representatives of the employees working in the enterprise.

An enterprise that established a Works Council when it had 50 or more employees but whose workforce later shrinks to fewer than 50 may retain its Works Council on a voluntary basis. Setting up a Works Council may be required by a collective labour agreement (CAO), even if the enterprise normally employs fewer than 50 people.

The employee representative body

Enterprises with fewer than 50 employees may establish an employee representative body (PVT) ([WOR Article 35c \(1\)](#)). This will consist of at least three people chosen directly by and from among the employees. If a majority of the employees of an enterprise with more than 10 but fewer than 50 employees are in favour of establishing an employee representative body ([WOR Article 35c \(2\)](#)), or if it is required under the terms of a collective labour agreement, the enterprise is obliged to establish an employee representative body (see also the Guidelines for Employee Representative Bodies [[Leidraadpersoneels-vertegenwoordiging](#)]). An enterprise with fewer than 10 employees may establish an employee representative body if it so wishes ([WOR Article 35d](#)).

Meetings with employees

Under the terms of [WOR Article 35b](#), entrepreneurs operating an enterprise which normally employs 10 to 50 persons and for which no Works Council or employee representative body has been established are obliged to hold meetings with employees at least twice a year. This obligation lapses as soon as a Works Council or employee representative body has been established.

1.2.2 'Employees' as defined in the WOR

The WOR defines 'employees' as 'persons working in the enterprise'. In [WOR Article 1 \(2\)](#), 'persons working in the enterprise' are further specified as: 'those persons working in the enterprise on the basis of either a public-law employment contract or an employment contract with the entrepreneur operating the enterprise'. Persons working in more than one enterprise operated by the same entrepreneur are deemed to be working in the enterprise from which their work is managed.

[WOR Article 1 \(3\)](#) stipulates that 'persons working in the enterprise' also includes:

- those persons who have worked in the enterprise for at least 24 months on the basis of a contract with a temporary employment agency [*uitzendovereenkomst*] as referred to in [Article 7:690 of the Civil Code \(BW\)](#) ([WOR Article 1 \(3a\)](#));
- those persons working, on the basis of an employment contract or public-law employment contract with the entrepreneur, in the enterprise of another entrepreneur ([WOR Article 1 \(3b\)](#)).

Both groups mentioned in [WOR Article 1 \(3\)](#) comprise employees who are made available by their employer to another employer. [WOR Article 1 \(3\)](#) therefore comprises all employees who are 'lent out' or placed by their employer at the disposal of another employer in order to carry out work under the supervision and management of the latter. This includes both employees who are seconded and employment agency workers. The first group (specified in [WOR Article 1 \(3a\)](#)) not only have the right to participate in the enterprise of their own 'lending' entrepreneur, but also in the enterprise of the 'borrowing' entrepreneur. A condition for this is that there must be a contract between the temporary worker and the temporary employment agency, as defined in [Article 7:690 of the Civil Code](#), where *uitzendovereenkomst* is used in the broad sense of any employment contract whereby the employee is 'lent out' by the employer. The second group (specified in [WOR Article 1 \(3b\)](#)) have a right to participate in the enterprise that 'lends them out'.

[WOR Article 6 \(2\) or \(3\)](#) provides that persons working in the enterprise are entitled to vote after they have done so for 6 months, and are entitled to stand for election after 12 months. Formally speaking, this would mean that an employment agency worker could only vote after 30 months and only be elected after 36 (i.e. the term of 24 months plus six or twelve months). However, by applying [WOR Article 6 \(4\)](#), the 'borrowing' entrepreneur and the Works Council may jointly recognise these temporary workers as 'persons working in the enterprise' before the term of 24 months has passed, if this is conducive to the proper implementation of the Act. Pursuant to [WOR Article 6 \(5\)](#), the Works Council can also deviate from the six and twelve month requirements in [WOR Article 6 \(2\) and 3](#) relating to length of service, if doing so is conducive to the proper implementation of the Act.

The need to apply [WOR Article 6 \(4\)](#) and perhaps also [WOR Article 6 \(5\)](#) may arise with regard to persons for whom it is not entirely clear whether they carry

out their work activities in or for the enterprise on the basis of either a public-law employment contract or an employment contract with the entrepreneur, or on any other legal basis, e.g. persons who work from home or stand-by workers and voluntary workers. If there is doubt about whether any such person falls under the WOR's definition of 'persons working in the enterprise', or if the entrepreneur and the Works Council find it desirable for other reasons, they can recognise that person as such.

Conversely, if it is conducive to the proper implementation of the Act in the enterprise, the entrepreneur and the Works Council may jointly decide that groups of persons who have been recognised as 'persons working in the enterprise' on the basis of [WOR Article 6 \(4\)](#) are no longer recognised as such. The prior joint decision to extend the group of 'persons working in the enterprise' is then nullified.

Decisions to extend the group of 'persons working in the enterprise', or the nullification of such a decision, respectively, do not belong in the Rules of Procedure. Agreements as referred to in [WOR Article 6 \(4\)](#) may be included in a separate document that may be added as an appendix to the Works Council's Rules of Procedure. If the entrepreneur and the Works Council fail to agree on the extension of the group of 'persons working in the enterprise', or the nullification of such an extension, either party may petition the subdistrict court judge [*kantonrechter*] to decide on the matter. Before or instead of having recourse to the courts, they can also separately or jointly request the Joint Sectoral Committee [*bedrijfscommissie*] to mediate.

The importance of these matters should not be underestimated. Employees who have been recognised as 'persons working in the enterprise' are included in the headcount to determine whether an enterprise has 50 employees and is therefore obliged to establish a Works Council. This headcount is also used to determine the number of Works Council members. These employees are also included in the headcount for the requirement of 50 employees to justify the establishment of a Works Council for a part of the enterprise ([WOR Article 4](#); see also [note 2](#) to Article 1 of the Model Rules of Procedure).

The other relevant terms applied in the WOR or the Model Rules of Procedure are defined in Article 1 of the Model Rules of Procedure.

1.3 Provisional and definitive Rules of Procedure

[WOR Article 8](#) stipulates that the Works Council 'shall draw up Rules of Procedure covering matters which, in or pursuant to this Act, are entrusted to it or left to it for regulation'.

[WOR Article 48](#) provides that an entrepreneur who is required to establish a Works Council is obliged to draw up 'provisional Rules of Procedure' for it. These provisional rules lapse as soon as the newly established Works Council has established its own definitive Rules of Procedure.

The entrepreneur establishes the provisional Rules of Procedure after having solicited the views of the relevant employees' organisations that are entitled to nominate candidates in the enterprise. The election of the first Works Council takes place on the basis of these provisional Rules of Procedure. The newly elected Works Council then uses the provisional Rules of Procedure established by the entrepreneur to carry out its activities until such time as it has established its own definitive Rules of Procedure. The responsibility for organising these initial elections lies with the entrepreneur rather than with the employees, although the entrepreneur can ask them to assist him.

Section 2 includes Model Rules of Procedure for the Works Council and Section 4 for the COR and the GOR. These Model Rules of Procedure for Works Councils have been drawn up to serve as a basis for both the provisional and the definitive rules.

The WOR does not specify the period within which the Works Council has to establish its own Rules of Procedure, but clearly the Council should aim to replace the entrepreneur's provisional Rules of Procedure with its own definitive Rules of Procedure as soon as possible. The Works Council is obliged to give the entrepreneur an opportunity to offer comments before finalising its Rules of Procedure.

The entrepreneur should be provided with a copy of the definitive Rules of Procedure as soon as they have been established, and also after they have been amended or added to.

Neither the provisional nor the definitive Rules of Procedure may contain provisions that conflict with the WOR or hinder its proper implementation. In the event of any dispute about the provisional or definitive Rules of Procedure relating to their content or their adoption, any interested party can submit the matter to the subdistrict court judge. Pursuant to WOR Article 36, any interested party may take legal action against any provisions that are in violation of the WOR or that prevent its proper implementation. Before or instead of having recourse to the courts, any interested party can request the Joint Sectoral Committee to mediate in the dispute (see also Appendix F). This is free of charge.

To minimise the chance of disputes, it is therefore advisable, when drawing up either provisional or definitive Rules of Procedure, to follow the wording given in the Model Rules of Procedure as closely as possible, and to consult the explanatory notes. The Model Rules can often be adopted verbatim; in other cases, options are provided from which a choice can or must be made. The explanatory notes indicate why and how this should be done.

The entrepreneur is obliged to give the employees of the enterprise an opportunity to peruse the provisional Rules of Procedure. For example, they may be made available for inspection at a central location, posted on a notice board or internal computer network, or distributed by intranet (or e-mail).

[WOR Article 8 \(1\)](#) assigns to the Works Council the task of drawing up Rules of Procedure ‘covering matters which in or pursuant to this Act are entrusted to it or left to it for regulation’. Those matters which the WOR entrusts to the Works Council for regulation must be covered in its Rules of Procedure, while those matters which the WOR leaves to the Works Council to regulate may be covered in its Rules of Procedure, but this is not obligatory.

WOR Articles [10](#) and [14](#) specify the matters that the Works Council is required to regulate in more detail in its Rules of Procedure. For example, [WOR Article 10](#) prescribes that, in addition to any legal provisions, the Rules of Procedure must at least contain specific rules relating to candidature, elections and the determination of election results, and to the filling of interim vacancies. [WOR Article 14](#) prescribes that the Works Council must lay down its way of working in its Rules of Procedure. The Rules of Procedure must contain rules regulating at least the following: when the Works Council shall meet; how its meetings are to be convened; the quorum required for a meeting; the voting procedure at meetings; the secretariat of the Works Council; how the agenda and the minutes of Works Council meetings are to be distributed; and how the Council’s annual report is to be published. In addition, [WOR Article 9 \(4\)](#) states that, if this is conducive to the proper implementation of the WOR in the enterprise, the Works Council shall include provisions in its Rules of Procedure to ensure that it is as representative as possible of the various groups of persons working in the enterprise.

A well-functioning Works Council is in the interest of the whole enterprise. Key factors include not only how the Works Council is made up, but also how it relates to its electorate, and how this is reflected in practice. To a large extent, this depends on the situation within the enterprise, and is mainly driven by current issues. The Model Rules of Procedure do not contain separate provisions governing consultations between Works Council members and their electorate. However, this matter is covered in more detail in a separate appendix ([Appendix C](#)) to the Model Rules of Procedure. That appendix gives useful advice and pointers for setting up appropriate structures for the consultation between employees and their representatives.

Deviations from the standard provisions of the WOR may be incorporated into the Rules of Procedure as follows:

- [WOR Article 6 \(1\)](#): Different number of Works Council members – requires the consent of the entrepreneur;
- [WOR Article 6 \(5\)](#): Different requirements relating to length of service in respect of active/passive voting rights – permitted, providing this is conducive to the proper implementation of the WOR;
- [WOR Article 9 \(3\)](#): Possibility of setting up separate electoral groups;
- [WOR Article 12 \(2\)](#): Different term of membership for Works Council members.

The Rules of Procedure shall therefore only deal with the regulation of those matters that the WOR specifies may or must be covered in them. These matters (and consequently the Rules of Procedure themselves) are limited to the routine business of the Works Council. The Rules of Procedure are, in other words, precisely what their name suggests – rules governing the procedural affairs of the Works Council. Accordingly, they should not deal with the legal duties and

powers of the Works Council. Nor should they include any ‘additional’ powers that, in agreement with the entrepreneur, have been granted to the Works Council, or any agreements made between the entrepreneur and the Works Council about the use of facilities and services (such agreements may be included in an appendix to the Rules of Procedure: see Appendix B for more information). The Rules of Procedure should also not contain any provisions that impose obligations on other parties (e.g., the entrepreneur, the employees, the employees’ organisations or the Joint Sectoral Committee), since the Rules of Procedure are binding only on the Works Council itself.


1.4 The appointment of committees

If it considers such to be necessary to fulfil its duties, the Works Council can appoint one or more committees ([WOR Article 15 \(1\)](#)).

Committees are appointed pursuant to a resolution setting out their task, composition, powers, and way of working. These resolutions are not included in the Works Council’s Rules of Procedure themselves and therefore do not form part of them. The resolution inaugurating a committee generally takes the form of an appendix to the Rules of Procedure. The Works Council does not have the authority to set up a committee entirely independently; consultation with the entrepreneur is required. The Works Council must therefore first present a draft of the inaugurating resolution to the entrepreneur. [WOR Article 15](#) distinguishes between various kinds of committees:

- standing committees ([WOR Article 15 \(2\)](#));
- divisional committees ([WOR Article 15 \(3\)](#)); and
- preparatory committees ([WOR Article 15 \(4\)](#)).

[Section 5](#) of the Model Rules of Procedure for Works Councils provides a model resolution for setting up each committee. Like the Model Rules of Procedure themselves, the inaugurating resolutions in Section 5 are intended as models. As far as possible, it is advisable to adopt all the provisions of the relevant model resolution; doing so can prevent disputes arising.



Model Rules
of Procedure
for Works
Councils

2 Model Rules of Procedure for Works Councils

This section contains the full Model Rules of Procedure for Works Councils. Explanatory notes are provided to each article where necessary.

The continuous text of the Model Rules of Procedure (without the explanatory notes) can be downloaded as a Word document from the [SER website](#), and can be used as a basis for a Works Council's own Rules of Procedure.

2.1 Definitions

Article 1

The following definitions apply to these Rules of Procedure:

- a. The entrepreneur: name;
See notes 1 and 3
- b. The enterprise: name;
See notes 2 and 3
- c. The Act: the Works Councils Act (WOR);
- d. The [Joint Sectoral Committee](#): name of authorised Joint Sectoral Committee;
See note 4
- e. Employees' associations: the associations of employees as meant in [Article 9 \(2a\) of the Act](#).
See note 5

Explanatory notes

Note 1 The entrepreneur

Under the heading 'The entrepreneur', both the official name and the legal form of the entrepreneur are to be filled in. The entrepreneur is the person who carries on the enterprise for which the Works Council has been established. 'Legal form' refers to the legal status of the entrepreneur. The entrepreneur may be a natural person, and as such may be the owner of the enterprise; he or she then runs the enterprise as a 'one-man business'. Alternatively, the entrepreneur may have the legal form of a company (partnership, commercial partnership [*vennootschap onder firma (v.o.f.)*] or limited partnership [*commanditaire vennootschap (c.v.)*]), or that of a private-law legal form such as a public limited company [*naamloze vennootschap (N.V.)*], private limited company [*besloten vennootschap met beperkte aansprakelijkheid (B.V.)*], non-profit organisation [*stichting*], association [*vereniging*], cooperative [*coöperatie*], mutual insurance company [*onderlinge waarborgmaatschappij*] or religious association. The entrepreneur may also be a body under public law: the Works Councils Act also applies to enterprises operated by bodies under public law, such as the central government, provinces and municipalities. The entrepreneur may also have a European legal form (SE or SCE) or a foreign legal form, as the Act also applies to enterprises in the Netherlands that are carried on by a foreign entrepreneur.

The following are examples of how the entrepreneur's name should be filled in: 'P. Pietersen' (one-man business); 'Handelsonderneming Jansen B.V.'; 'Stichting Ouderenzorg Apeldoorn-West'; 'vof Karelsen & Co'; 'Vereniging Nederlandse Kinderdagverblijven'; 'Coöperatie Tuinbouw Groningen'.

The entrepreneur is the person responsible for complying with the WOR with regard to the Works Council. The entrepreneur is also liable in law if he or she fails to meet the obligations with regard to the Works Councils Act. Equally, the entrepreneur may expect the Works Council to also comply with the Works Councils Act.

The entrepreneur [*ondernemer*] is to be distinguished from the director [*bestuurder*]. The entrepreneur is the natural person or the legal entity or company that carries on the enterprise.

The director acts on behalf of the entrepreneur. Under the terms of [WOR Article 1 \(1e\)](#), the director is the person who 'alone or jointly with others, exercises the highest direct authority in managing work within an enterprise'. The Act assumes that every enterprise has at least one officer who acts as director. If the entrepreneur is a natural person as in the case of a one-man business, this person may also be the director. If the entrepreneur is a legal entity, the managing director or manager of the company is usually the director. If there is more than one director, as a rule, one of the directors will be designated to consult with the Works Council.

The director represents the entrepreneur before the Works Council. In this regard, the WOR contains a number of provisions concerning the director, including Rules of Procedure regarding the consultations between the director and the Works Council, as well as a number of obligations with which the director must comply. It is therefore important that the Works Council knows exactly who the director is. However, the identity of the director is not stipulated in the Rules of Procedure. It is for the entrepreneur and not the Works Council to decide, within the legal possibilities, who the director should be.

The entrepreneur is usually also the employer of the persons working in the enterprise, but this may not always be the case. This has to do with the definition of employee used by the WOR. The Act does not use 'employees' but instead 'persons working in the enterprise': this definition is explained in [WOR Article 1 \(2\) and \(3\)](#). For further information, see [Section 1.2.2](#), ('Employees' as defined in the WOR).

There may be one other reason why the entrepreneur may not be the employer of the persons working in the enterprise. This relates to [WOR Article 6 \(4\)](#). Under the terms of this provision, if it is conducive to the proper implementation of the Act in the enterprise, the entrepreneur and the Works Council may jointly recognise as 'persons working in the enterprise' one or more groups of persons who regularly perform work in the enterprise but not on the basis of any public-law employment contract or employment contract with the entrepreneur.

Note 2 The enterprise

Under Article 1 (b), the name and address (including the municipality) of the enterprise's place of business are to be filled in. The definition of 'The enterprise'

must be distinguished from that of ‘The entrepreneur’. [WOR Article 1 \(1c\)](#) defines an ‘enterprise’ as ‘an[y] organisation operating in the community as an independent entity in which work is performed on the basis of a private-law or public-law employment contract’. In other words, an ‘enterprise’ may be a factory or workshop, a shop, an office, a local office or a branch, or a public service office – in short, any organisation involving labour that presents itself as an independent unit in society. An enterprise does not necessarily have to have a legal form. The name of the enterprise may correspond in whole or in part to the name of the entrepreneur, e.g., Mr P. Pietersen may operate a shoe shop called ‘Pietersen’s shoe shop’, and the Stichting Ouderenzorg Apeldoorn-west may operate a community centre called ‘Wijkcentrum Apeldoorn-west’.

The Works Council’s Rules of Procedure must indicate the enterprise for which the Works Council has been established, and where that enterprise is located. The exact indication of the enterprise and its place of business are particularly important if the entrepreneur carries on more than one enterprise (with or without its own Works Council). The place of business should be the location of the enterprise. The enterprise’s place of business does not have to be the same as that of the entrepreneur.

An enterprise may consist of more than one part. The ‘parts’ are all connected to the organisation and do not act as independent units outside the enterprise. Under the terms of [WOR Article 4](#), if ‘at least 50 persons’ are working in a part of the enterprise, the entrepreneur must establish a separate Works Council for that part of the enterprise, if this is conducive to the proper implementation of the WOR in the enterprise. If a separate Works Council is established for a part of the enterprise, the Rules of Procedure of that Works Council must indicate exactly the part of the enterprise concerned. Under the terms of the WOR, a part of the enterprise for which a separate Works Council has been established is considered an enterprise.

Note 3 The enterprise and the Joint Works Council

Under the terms of [WOR Article 2 \(1\)](#), a Works Council must be established for any enterprise in which normally at least 50 persons are working. [WOR Article 3 \(1\)](#) contains a provision for entrepreneurs who carry on two or more enterprises in which a total of at least 50 persons normally work. In such a case, the entrepreneur must set up a Joint Works Council for all or for a number of those enterprises, if this is conducive to the proper implementation of the WOR within the enterprises concerned. The Works Council established for these enterprises together is called the Joint Works Council [*gemeenschappelijke OR*]. If a Joint Works Council is to be established, this affects the definition of ‘The enterprise’ in the Rules of Procedure. All the enterprises for which the Joint Works Council has been established, including their names and locations, must be listed in the definition.

[WOR Article 3 \(3\)](#) provides for the establishment of a Joint Works Council for two or more enterprises that are carried on not by the same entrepreneur, but by different entrepreneurs, if these entrepreneurs are ‘joined together in one group’. ‘Group’ is used here to mean ‘group of companies’ [*concern*].

Entrepreneurs joined together as a group of companies made up of two or more enterprises in which a total of at least 50 persons are normally working must establish a Joint Works Council for all or for a number of those enterprises, if this is conducive to the proper implementation of the WOR in the enterprises concerned. If it is decided that a Joint Works Council is to be established for a group of companies, the entrepreneurs concerned must appoint one of the entrepreneurs in their group to act on their behalf as ‘the entrepreneur’ with regard to the Joint Works Council. The name and legal form of this entrepreneur will be indicated in the Rules of Procedure for the Joint Works Council under the heading ‘The entrepreneur’. The entrepreneurs represented by this entrepreneur must also be listed. The definition of ‘the entrepreneur’ may then be as follows: ‘B.V., also on behalf of B.V. and B.V.’ All of the companies in the group for which the Joint Works Council has been established, including their names and locations, must be listed in the definition of ‘the enterprise’.

The Joint Works Council must not be confused with the Central Works Council (COR) or Group Works Council (GOR), as defined in [WOR Articles 33 to 35](#). [Section 4](#) contains separate Model Rules of Procedure and notes for the COR and GOR.

Note 4: The Joint Sectoral Committee

The name of the authorised Joint Sectoral Committee is to be filled in under Article 1d of the Works Council’s Rules of Procedure. A list of Joint Sectoral Committees is given in [Appendix F](#) to these Model Rules of Procedure for Works Councils.

The main task of the Joint Sectoral Committee is to mediate between the parties (if requested in writing to do so) in the event of a dispute arising from the Act. If the Committee’s mediation efforts fail, it will offer the parties advice on how to resolve the dispute. Since 2013, it has no longer been a legal requirement to first submit a dispute to the Joint Sectoral Committee before taking it to court. Given that the process of mediation and advice by the Committee is accessible, efficient and free of charge, it is advisable to take that route before perhaps having recourse to the subdistrict court ([WOR Article 36](#)).

Another important task of the Joint Sectoral Committee is to promote employee participation within the sector. It does this by, amongst other things, providing information and advice, and encouraging employers and employees in their implementation of employee participation. In addition, the Joint Sectoral Committee acts as a source of knowledge and information for, among others, the Works Council and the entrepreneur.

Note 5: Employees’ organisations

In a number of places, the Rules of Procedure refer to ‘employees’ organisations’. This term refers to employees’ associations that meet the criteria specified in [WOR Article 9 \(2a\)](#) for the submission of lists of candidates for the election of members of the Works Council. Employees’ associations are not to be mentioned by name in the Rules of Procedure. This is because at the time that the Works Council’s Rules of Procedure are drawn up, an employees’ association may not yet meet the criteria set by the Act, but will meet these criteria at a later date. Since the authority of employees’ associations depends exclusively on the question of whether they can, at any time, meet the criteria set by the WOR, and listing

them in the Rules of Procedure would not affect the issue either way, employees' associations should not be included in the Rules of Procedure.

2.2 Composition and term of office

Article 2

1. The Works Council shall comprise members.
See notes 1, 2 and 3.
2. The Works Council shall elect a chairman and a deputy chairman from its number.
See note 4
3. The chairman or in the chairman's absence, the deputy chairman shall be the legal representative of the Works Council.
See note 5

Explanatory notes

Note 1 Number of Works Council members

WOR Article 6 (1) contains a provision for the number of Works Council members that is related to the number of 'persons working in the enterprise'. In principle, the (odd) number of members should be listed in the Rules of Procedure. When determining the number of persons working in the enterprise, the remarks in the Introduction (see Section 1.2.2) should be taken into account.

With the permission of the entrepreneur, the Works Council may appoint a different number of members. In practice, this means that the Works Council and the entrepreneur together must examine whether there is a reason for deviating from the legal number of members, and together reach agreement on the matter. This number of Works Council members must then be stated in the Rules of Procedure, instead of the number mentioned in the WOR. To avoid tied votes, an odd number is preferable.

WOR Article 6 (1) stipulates the following number of Works Council members in enterprises, as follows:

No. of persons working in the enterprise	No. of members in Works Council
Fewer than 50 (Works Council set up voluntarily or on basis of collective labour agreement)	3 members
50 to 100	5 members
100 to 200	7 members
200 to 400	9 members
400 to 600	11 members
600 to 1000	13 members
1000 to 2000	15 members

Under the terms of the WOR, for every other 1,000 persons working in the enterprise, the number of Works Council members must be increased by 2, up to a maximum of 25 members.

Note 2 Deputy Works Council members

WOR Article 6 (1) gives the Works Council the opportunity – based on agreements between the entrepreneur and the Works Council – to stipulate the appointment of a deputy member for one or more members of the Works Council. Deputy Works Council members have the same rights and obligations as the member for whom they deputise. This option can be utilised, for example, when one or more Works Council members are frequently absent due to their position in the enterprise. It can also be a way of promoting diversity in the Works Council, of filling vacancies in the Works Council, and of making effective use of the expertise of deputy Works Council members.

The Act allows for various forms of deputising. For instance, the Works Council may decide that every Works Council member is entitled to his or her own deputy (i.e., a deputy bound to that person), or it may prefer to entitle just one member or a limited number of members in view of their position within the Works Council to their own deputy. The Works Council may also decide to appoint one or a few deputy members to represent any Works Council member as required. In this last instance, it is no longer a question of deputies bound to individual members. In such a case, it is advisable to use a system of rotation. The chosen form of deputising must be clearly laid down in the relevant provision in the Rules of Procedure.

Note 3: Different contents for group electoral system

Paragraph 1 of Article 2 needs to read differently if the group electoral system is applied (see Section 3 below).

Note 4 The appointment of a chairman and deputy chairman

WOR Article 7 stipulates that the Works Council must elect a chairman and ‘one or more deputy chairmen’ from its number. At least one deputy chairman must therefore be entered at (2). If the Works Council opts for two or more, the number of deputy chairmen to be appointed must be stated in the Rules of Procedure.

Note 5 The chairman or deputy chairman representing the Works Council

There are a number of ways in which a Works Council may become involved in legal proceedings. Consider, for example, the proceedings referred to in WOR Articles 26, 27 and 36 and interlocutory proceedings. The Works Council itself is then the official party to the proceedings. The chairman (or deputy chairman) of the Works Council may represent the Works Council in legal proceedings without requiring any additional authorisation. If two or more deputy Works Council chairmen are elected, in Article 2 (3), ‘the deputy chairman’ must be replaced by ‘a deputy chairman to be designated by the chairman’. The Works Council may allow itself to be assisted in legal proceedings by a third party, e.g., a trade union representative or a lawyer.

Article 3

1. The members of the Works Council shall all resign simultaneously after years.
See note 1
2. The members resigning shall be immediately eligible for re-election.
See note 2

Explanatory notes

Note 1 The resignation of Works Council members

WOR Article 12 states as a general rule that the members of the Works Council must all resign simultaneously every three years. In its second paragraph, however, it allows the Works Council to deviate from this rule by stipulating in its Rules of Procedure that the members must all resign simultaneously every two or every four years. If the Works Council wishes to implement this option, Article 3 (1) can then read *'shall all resign simultaneously after two years'*; *'shall all resign simultaneously after three years'*; or *'shall all resign simultaneously after four years'*.

Under the terms of WOR Article 12 (2), in the case of a four-year term of office, half of the members of the Works Council may also resign simultaneously every two years. The Act refers to the resignation of 'half' of the members. Normally, however, the total number of members will be an odd number, of which, strictly speaking, there is no half. In practice, the Works Council will resolve this in its schedule of outgoing members by letting the greater and lesser 'halves' stand down by turns.

If the Works Council wishes to implement this option, Article 3 (1) must then read as follows: *'The term of office of the members of the Works Council is four years. After two years of each term of office, half their number shall resign, as indicated in a schedule drawn up by the Works Council beforehand.'*

The introduction of a schedule of outgoing members pursuant to that provision therefore implies that, although the term of office of the Works Council members is set at four years, half of the members will have to stand down two years after the election of the first Works Council to which the schedule applies. In effect, their term of office is therefore only two years. A transitional provision can regulate this as follows:

Model transitional provision

'Contrary to Article 3 (1) of these Rules of Procedure, half of the members of the first Works Council elected under the terms of these Rules shall resign after a two-year term of office. The Works Council will designate the members to be included in this half beforehand.'

This transitional provision can be included at the end of the Rules of Procedure (according to these Model Rules of Procedure, Article 24), and can be referred to in the alternative clause for Article 3 (1) as formulated above if necessary.

The Works Council must balance the advantages and disadvantages of having a retirement rota. One of the advantages is that such a rota may promote the continuity of the Works Council's activities. One of the disadvantages is that at each election, the voters may only give their opinion about some of the seats to be filled on the Works Council. Another disadvantage is that the implementation of a retirement rota brings with it the need for more elections. This may impose an extra burden on the Works Council and the entrepreneur.

Note 2 Eligibility of Works Council members for re-election

Under the terms of [WOR Article 12 \(1\)](#), resigning Works Council members are, in principle, immediately eligible for re-election, but the Works Council may impose restrictions on the eligibility or immediate re-election of members in its Rules of Procedure ([WOR Article 12 \(2\)](#)). The Act does not dictate which restrictions may or may not be applied. The Works Council is therefore unrestricted in this regard, but must clearly state any limitations in a provision in its Rules of Procedure (Article 3 (3)).

Model provision for Article 3 (3)

'Contrary to Article 3 (2), members who have been continuous members of the Works Council for years shall not be eligible for re-election, with the proviso that they shall be eligible for re-election years after their resignation.'

2.3 Organisation of elections**Article 4**

1. The Works Council is responsible for organising the election of members of the Works Council.
See note 1
2. The Works Council may delegate the organisation of the elections to an electoral committee.
See note 2

Explanatory notes**Note 1 The organisation of the first Works Council election**

The Works Council is responsible for organising the elections, but this does not, of course, apply to the election of members of the first Works Council, the organisation of which is the responsibility of the entrepreneur. Prior to establishing the first Works Council, the entrepreneur must draw up 'provisional Rules of Procedure', after consultation on the matter with the employees' organisations involved. The entrepreneur can base his provisional Rules on the present Model Rules of Procedure, which also include provisions for organising elections to the Works Council in accordance with the Act. See also [Section 1.3](#) of the Introduction.

Note 2 The electoral committee

The Works Council may delegate the organisation of the elections to an electoral committee. This option does not have to be laid down in the Rules of Procedure: the powers of the Works Council to set up committees by resolution are based on and described in [WOR Article 15](#). The Works Council must comply with this legal provision when setting up an electoral committee. See also [Section 5](#).

Article 5

1. Persons who have been working in the enterprise for at least 6 months shall be eligible to vote.

See note 1

2. Persons who have been working in the enterprise for at least 12 months shall be eligible to stand for election.

See note 2

Explanatory notes**Note 1 The right to vote**

In principle, anyone who has been working in the enterprise for six months is entitled to vote ([WOR Article 6 \(2\)](#)). [WOR Article 6 \(5\)](#) allows the Works Council to deviate from this, if this is conducive to the proper implementation of this Act within the enterprise. The minimum term of six months may be extended or reduced in the Rules of Procedure, or even removed altogether. In the latter case, Article 5 (1) must then read as follows: *'Persons working in the enterprise at the time that the elections are held shall be entitled to vote.'*

The WOR defines exactly who is meant by 'persons working in the enterprise'. [WOR Article 6 \(4\)](#) allows the entrepreneur and the Works Council to jointly recognise other persons as 'persons working in the enterprise'. See also [Section 1.2.2](#) of the Introduction ('Employees' as defined in the WOR).

To prevent any misunderstanding, it is pointed out that Article 5 as well as the legal provisions on which this provision in the Rules of Procedure is based concerns the length of service [*diensttijd*], i.e., the period during which the

employee is 'employed under the terms of an employment contract'. This means that during periods of illness or incapacity for work, the length of service continues to accrue.

Note 2 The right to stand for election

In principle, employees will need to have worked in the enterprise for at least a year before they are entitled to stand for election ([WOR Article 6 \(3\)](#)). Under the terms of [WOR Article 6 \(5\)](#), the Works Council may deviate from this in its Rules of Procedure, if this is conducive to the proper implementation of this Act within the enterprise. The minimum term of one year may be extended or reduced in the Rules of Procedure, or even removed altogether. In the latter case, Article 5 (2) must then read as follows: *'Persons working in the enterprise at the time that the elections are held shall be eligible to stand for election.'* See also note 1 to Article 5.

Article 6

1. In consultation with the entrepreneur, the Works Council shall determine the election date and the times at which the election will begin and end.
The secretary of the Works Council shall notify the entrepreneur, the persons working in the enterprise, and the employees' organisations. There shall be a period of at least 13 weeks between this notification and the election date.
See note 1
2. The election date shall not be earlier than four weeks before and no later than two weeks before the end of the term of office of the resigning Works Council members.
3. During the elections, the Works Council, or the electoral committee set up by the Works Council, may call on the assistance of one or more polling stations, each consisting of no more than three persons working in the enterprise.
See note 1

Explanatory notes**Note 1 Polling station(s)**

If various parts of an enterprise are situated in different locations, it may be desirable to set up one or more separate polling stations for each part. Obviously, clear instructions must be given to those staffing each polling station. For reasons of accuracy, it is advisable that each polling station is staffed by more than one person.

Article 7

1. No later than nine weeks before the election date, the Works Council shall draw up a list of persons working in the enterprise who are entitled to vote on the election day and who are entitled to stand for election, and it shall make this list known within the enterprise.
See note 1
2. Nominations shall take place by submitting a list of one or more candidates to the secretary of the Works Council. The secretary shall issue a duly dated acknowledgment of receipt to the person who submitted the list.
See note 2
3. Employees' organisations may submit their lists of candidates up to six weeks before the election date.
4. Within one week of the expiry of the period stated in paragraph 3, the Works Council shall announce which employees' organisations have submitted a list of candidates.
5. After the announcement referred to in the previous paragraph has been made, one or more employees who are entitled to vote and who are not a member of an employees' organisation that has put up candidates may submit a list of candidates.
See note 3
6. The lists of candidates as referred to in paragraph 5 may be submitted to the secretary of the Works Council up to no later than three weeks before the election date.
7. Together with each list of candidates, a written statement from each candidate appearing on the list shall be submitted clearly stating that he or she accepts the nomination.
8. A candidate's name may appear on one list of candidates only.

Explanatory notes

General

Article 7 of these Model Rules of Procedure lays down the procedure for and phases of the nomination of candidates and is based on [WOR Article 9 \(2\)](#). This provision concerns two types of candidate lists, i.e., those submitted by employees' organisations and those submitted by persons or groups of person working in the enterprise and who are entitled to vote. The latter type of list is also known as a free list [*vrije lijst*].

Regarding the electoral procedure, the WOR simply states that the Works Council should include specific rules in its Rules of Procedure relating to candidature, elections, the determination of election results, and the filling of interim vacancies ([WOR Article 10](#)). In order to facilitate the elections, it is advisable for there to be a schedule so that all those concerned know where stage the process has reached and thus where they stand.

According to these Model Rules of Procedure, the various stages in the election process are as follows:

- The election date will be announced at least 13 weeks prior to the elections (Article 6 (1) Model Rules of Procedure).
- In the period up to 9 weeks before the election date, the entrepreneur will provide the information that the Works Council needs to draw up the list of eligible voters and eligible candidates.
- The Works Council will announce the list of eligible voters and eligible candidates at least 9 weeks before the election date.
- After that announcement, employees' organisations may submit their lists of candidates up to 6 weeks before the election date.
- The employees' organisations that have submitted lists of candidates will be announced in the week between 6 and 5 weeks before the election date.
- The 'free lists' can be submitted after this notification i.e. from at least 5 weeks before the election up to no later than 3 weeks before the elections (NB: a 'list' can also contain the name of a single person).
- The lists of candidates will be announced to the persons working in the enterprise no later than two weeks before the election date (Article 8 (3) Model Rules of Procedure).

The deadlines specified in Article 6 (1), Article 7 (1), (3), (4) and (6) and Article 8 (3) of the Model Rules of Procedure are to ensure that the electoral process runs smoothly. It is of course possible to set different deadlines. This may be particularly desirable for larger enterprises or enterprises with parts in various locations.

Note 1: Electoral register

Who can participate in the election is determined by the list of eligible voters and eligible candidates. Employment agency workers and seconded staff who meet the legal requirements must not be forgotten.

Note 2 The lists of candidates

These rules regarding nomination apply to both the individual candidate system and the list system. These systems are covered below in the general explanatory notes in [Section 2.5.1](#) and the notes to [Article 11](#), [Article 12](#) and [Article 13](#).

Note 3 The free lists

Up to 19 July 2013, [WOR Article 9 \(2b\)](#) provided that free lists needed to be supported by the signatures of a certain number of persons working in the enterprise who were entitled to vote. The amendment to the Act that came into force on that date abolished that requirement. The way the new legal provision is formulated means – probably unintentionally – that there is still one situation in which support is necessary for a free list. If an employee who is eligible for election is a member of an employees' organisation that has submitted a list of candidates but does not wish to run for office through his union but by means of a free list, he cannot submit a list of candidates himself. He requires the support of at least one other employee eligible to vote who is not a member of an employees' organisation that has submitted a list of candidates.

The Model Rules of Procedure for Works Councils provide that lists drawn up by the employees' organisations should be submitted first and only then any free lists. This means that when they stand in the election, members of employees' organisations who wish to be a 'free candidate' know whether 'their' employees' organisation has submitted a list of candidates and therefore whether or not they need a supporting signature.

Eligible employees who are not members of an employees' organisation and those who are members of an organisation that has not put up candidates can stand for election by means of a free list of candidates.

Article 8

1. The Works Council shall examine whether the submitted lists of candidates and the candidates on those lists meet the requirements of the Act and of these Rules of Procedure.
2. The Works Council shall invalidate any list of candidates that does not meet the requirements referred to in the preceding paragraph and shall immediately notify in writing the person or persons who submitted the list of candidates. Following this notification, there shall be a period of one week in which the list may be adapted to meet the requirements stipulated.
3. The Works Council shall make the valid lists of candidates known to the persons working in the enterprise no later than two weeks before the election date.

Article 9

If the number of candidates is not greater than the number of seats to be filled on the Works Council, no election shall be held and the nominees shall be deemed to have been elected.

See note 1

Explanatory notes

Note 1 Number of candidates equal to or fewer than the number of seats on the Works Council

This provision is for when the total number of nominees is equal to or fewer than the number of seats on the Works Council as stipulated in Article 2 of these Rules of Procedure. When the number of seats available exceeds the number of candidates nominated, it is advisable to hold by-elections after, say, six months to fill the vacancies. For more information on interim vacancies, see the [notes](#) to Article 15.

2.4 Voting procedure in elections

Article 10

1. The elections shall take place by secret written ballot.
See notes 1 and 4
2. On the election day, each eligible voter shall be given a certified ballot paper by or on behalf of the Works Council at the locations designated by the Works Council. The ballot paper shall state the candidates' names. Immediately after completing the ballot paper, each voter shall put the paper in the designated ballot box, except when the ballot is sent by post.
See notes 2 and 3
3. Each eligible voter may vote by proxy for no more than two other eligible voters, provided that a written proxy has been obtained.
See note 5

Explanatory notes

Note 1 Secret ballot

The requirement for the elections to take place by secret written ballot as laid down in [WOR Article 9 \(1\)](#) is intended to ensure that each vote cast is registered in a verifiable way. Oral voting is not permitted because the confidentiality of the voting must be guaranteed.

Note 2 Voting by post

A 'certified ballot paper' is a ballot paper stamped or signed by or on behalf of the Works Council or the electoral committee, respectively. If votes must be cast by post (e.g., by employees who cannot attend because they are carrying out their job elsewhere), a careful procedure must be followed and the confidentiality of the voting must be guaranteed. The ballot papers must be sent to the employees concerned some time before the day of the election, and the employees must be

informed that the completed ballot papers must be returned in good time, and at the latest on the day of the elections. For persons who cannot attend on the official election day, it may be necessary to allow them to vote beforehand. When drawing up Article 10, it is recommended that the Works Council bear this in mind and make arrangements accordingly. In such cases, it is advisable to include a provision in the Rules of Procedure, for example by adding a new paragraph 3.

**Model provision for new Article 3
(renumbering paragraph 3 as paragraph 4)**

If an eligible voter cannot be present on the day of the elections, he or she may cast his or her vote before the day of the election.

Note 3 Ballot papers

The names of the candidates from whom a choice may be made are stated on the ballot papers. Voting shall take place by ticking the name or names of the candidate or candidates.

Note 4 Electronic voting

Although, strictly speaking, electronic voting is not allowed under the terms of the WOR ('written votes' are specified), in practice it is being increasingly used. However, this is only on condition that the hardware and software used can guarantee the voter's confidentiality. Individual votes should not be traceable to individual employees. Furthermore, it is important that the vote is registered, making it impossible for anyone to vote a second time. If electronic voting is to be used, the Works Council may wish to include in its Rules of Procedure the following alternative to Article 10.

Alternative Article 10 in the case of electronic voting

1. The elections shall take place by secret electronic voting.
2. On the day / in the period of the election, the person entitled to vote will cast his or her vote via the network of the enterprise on the website featuring the electronic Works Council election.

Note 5 Voting by proxy

In practice, in spite of the above-mentioned provisions, there may be a need to vote by proxy; for instance, if on the day of the election an employee is unable to cast his or her vote. Voting by proxy means that someone who is entitled to vote authorises another eligible voter, by means of a written proxy, to cast the vote on their behalf.

2.5 Electoral systems

2.5.1 General explanatory notes

Two electoral systems

There are two electoral systems for voting and for the allocation of seats on the Works Council: the individual candidate system [*personenstelsel*] and the list system [*lijststelsel*]. The Works Council must choose one of these systems and state its choice in its Rules of Procedure.

Individual candidate system

If the individual candidate system is used, the lists submitted are combined into a single list of all the candidates, and voters then vote for the candidate of their choice from this list. In principle, the voter must vote for as many candidates as there are seats available on the Works Council. The total number of votes cast for a particular candidate by all the voters determines whether or not that candidate is elected to the Works Council. In this system, persons are elected directly. In order for the system to function properly, it is therefore advisable for the voters to be able to know the candidates in person, as is usually the case in smaller enterprises.

List system

The list system is not unlike elections for the city council or parliament, where the elector does not usually vote for a specific person but, rather, for a 'platform' or particular interests. In the list system, each voter casts one vote for one of the lists of candidates, on the understanding that he or she is thereby voting for the preferred candidate on that list (this is the 'preference vote' that in practice is often given to the candidate at the top of the list [*lijsttrekker*]). The total number of votes cast for each list is the primary factor determining the number of seats that are allocated to a list, according to quotas; the system of surplus votes is the secondary determining factor. Subsequently, on the basis of the order of the names on the lists, it is determined which candidates from each list are selected, also taking the preference votes into account. Any preference votes cast may change the order of candidates on the list. The Rules of Procedure must contain a provision regarding preference votes; for example, that a candidate who achieves the quota individually shall definitely be allocated a seat, regardless of his or her position on the list of candidates. Article 13 of these Model Rules of Procedure contains such a provision.

It is advisable for each list of candidates to contain at least as many names of persons as the party or parties submitting the list expect to be elected from that list. If a list in this system bears fewer names than the number of persons ultimately elected from that list, vacancies will immediately arise. The Model Rules of Procedure for Works Councils therefore opt for a system whereby the remaining seat or seats are transferred to one or more of the other lists containing candidates to whom no seat has been allocated. If those lists too are 'exhausted' without all the seats being occupied, vacancies will arise. In that case, the vacancies arrangement in Article 15 of the Rules of Procedure will apply. In the list system, interim vacancies are filled by a candidate from the same list, assuming that that list has not been 'exhausted'.

It makes sense to compile the list in such a way that it represents as many different categories among the enterprise's employees as possible (e.g., both men and women, older and younger people, both managerial and support staff, and so on).

The list system is most suitable for large enterprises in which voters and candidates often do not know one another personally.

Differences between the individual candidate system and the list system

The key difference between the two systems is that in the individual candidate system, voters primarily vote for the candidate in whom they have particular trust personally, whilst in the list system, their vote is primarily based on a particular 'platform', and less attention is paid to the individuals on the list. The list system

can be used whenever ‘parties’ are formed (the lists of candidates are drawn up by ‘parties’). In other words, employees’ associations or a group (‘party’) of employees not belonging to an employees’ association generally represent a (more or less developed) platform. Unlike in the individual candidate system, the voter may not vote for a range of candidates from different groups, but may only cast a single vote for a list of candidates submitted by one party. This is the type of system used in the elections to the Lower House of the Dutch parliament, for example.

Another difference between the two systems comes to the fore in relation to vacancies. In implementing Article 15 (1) of the Rules of Procedure (concerning the provision for interim vacancies; see also the notes to Article 15), in the list system, voters can be certain that the successor supports the same platform as his or her predecessor, whereas in the individual candidate system voters have no guarantee that that is the case.

The Model Rules of Procedure for Works Councils therefore provide (see above and [Article 13](#) of the Model Rules of Procedure) that if, in the list system, a list has fewer names than the number of seats to which that list is entitled after the election, the remaining seats will be transferred to one or more of the other lists that include candidates to whom no seat has been allocated.

These examples are by way of clarification.

Example of seat allocation:

Three lists have been submitted (lists A, B and C). List A receives 250 votes, list B 390 votes, and list C 110 votes. The Works Council consists of thirteen members, and 750 valid votes have been cast. The quota in this example is $750 \div 13 = 57.7$.

- List A has gained four times the quota, as well as 19.2 surplus votes;
- List B has gained six times the quota, as well as 53.8 surplus votes;
- List C has gained the quota once, as well as 52.3 surplus votes.

The allocation of seats is then as follows: list A receives four seats, list B six seats, and list C one seat. Two seats still remain to be allocated, and are allocated to the lists with the most surplus votes. List B (with 53.8 surplus votes) and list C (with 52.3 surplus votes) qualify for these seats.

Example of seat allocation if one of the lists does not contain enough candidates:

Three lists have been submitted lists (A, B and C). List A receives 400 votes, list B 150 votes, and list C 350 votes. The Works Council consists of fifteen members, and 900 valid votes have been cast. The quota in this example is $900 \div 15 = 60$.

- List A has gained six times the quota, as well as 40 surplus votes;
- list B has gained twice the quota, as well as 30 surplus votes;
- List C has gained five times the quota, as well as 50 surplus votes.

The allocation of seats is then as follows: list A receives six seats, list B two seats, and list C five seats. Two seats still remain to be allocated, and are allocated to the lists with the most surplus votes. List C (50 surplus votes) qualifies first for the remaining seat. List A (40 surplus votes) receives the last seat.

List A therefore receives seven seats, but that list comprises only five candidates. The two remaining seats are allocated to the other lists as follows: The total number of votes for lists B and C is 500 and the number of seats to be filled is two (the two seats that could not be filled by List A). The quota is $500 \div 2 = 250$.

- List B has failed to gain the quota, as well as 150 surplus votes;
 - List C has gained the quota once, as well as 100 surplus votes;
- List C receives the first of the two seats because it has gained the quota; list B receives the second seat because it has the largest number of surplus votes.

Articles 11 to 13 give an explanation of the individual candidate system and the list system. Section 3 includes model provisions regarding the group electoral system.

2.5.2 Articles 11 to 13 in the individual candidate system and the list system

The table below shows two versions of articles 11 to 13 of the Model Rules of Procedure. That in the left-hand column applies to the individual candidate system and that in the right-hand column to the list system. The Works Council must select one of these systems and must state this choice in its Rules of Procedure.

Individual candidate system	List system
<p>Article 11 Each voter shall cast votes, on the understanding that he or she may cast only one vote per candidate. <i>See note 1</i></p>	<p>Article 11 Each voter shall cast one vote only.</p>
<p>Explanatory notes</p> <p>Note 1 Number of votes on the ballot paper In the individual candidate system, each voter must cast the same number of votes on each ballot paper. This is why the Rules of Procedure must state how many votes each voter must cast.</p> <p>Normally, each voter casts as many votes for candidates on the ballot paper as there are vacant seats on the Works Council. Voters may also be allowed to cast fewer votes than there are vacant seats, provided that the rule that each voter must cast the same number of votes is upheld. The reason for this rule is that the election results will be distorted if voters knowingly or unknowingly cast fewer than the prescribed number of votes. If the voter selects fewer names, he or she will not have cast 'the required number of votes', and the ballot paper will therefore be deemed invalid under the terms of Article 12 (2c).</p>	<p>Article 12</p> <ol style="list-style-type: none"> 1. After the conclusion of the election, the Works Council shall count the valid votes cast for each list of candidates and for each candidate. 2. A ballot paper shall be deemed invalid if: <ol style="list-style-type: none"> a. it is not certified by or on behalf of the Works Council; b. it is unclear which candidate an eligible voter has voted for; c. more than one vote has been cast; d. any marks are made other than an indication of the selected candidate list. <p>Article 13</p> <ol style="list-style-type: none"> 1. In order to determine the results of the election, the Works Council shall first calculate the quota by dividing the number of votes cast by the number of seats to be filled on the Works Council. Subsequently, each list of candidates shall be allocated seats on the basis of the number of valid votes cast for that list divided by the quota. Seats that cannot be filled accordingly shall be allocated to the lists with the largest number of surplus votes consecutively.

Individual candidate system	List system
<p>Article 12</p> <ol style="list-style-type: none"> 1. After the conclusion of the election, the Works Council shall count the valid votes cast for each candidate. 2. A ballot paper shall be deemed invalid if: <ol style="list-style-type: none"> a. it is not certified by or on behalf of the Works Council; b. it is unclear which candidate an eligible voter has voted for; c. the required number of votes have not been cast; d. any marks are made other than an indication of the selected candidate. <p>Article 13</p> <ol style="list-style-type: none"> 1. The candidates who, consecutively, have received the most votes shall be elected. If there are several candidates with an equal number of votes for the last remaining seat or seats, the outcome shall be decided by lot. 2. The Works Council shall determine the results of the election and shall make these fully known to the entrepreneur, the persons working in the enterprise and the employees' organisations that submitted candidates. <i>See note 1</i> 	<p>Votes cast for a list that has not reached the quota shall also be treated as surplus votes, provided that they amount to at least three-quarters of the quota. In the event that two or more lists have an equal number of surplus votes, it shall be decided by lot which list will receive one of the remaining seats first.</p> <p>The seats allocated to a list shall be given to the candidates in the order in which they were listed, with the proviso that any candidate who met the quota individually shall definitely be elected.</p> <p>If the application of these provisions to a list results in more seats being allocated to a list than there are candidates, the seat or seats that cannot be filled shall be transferred to one or more of the other lists containing candidates to whom no seat has been assigned. <i>See note 1</i></p> <ol style="list-style-type: none"> 2. The Works Council shall determine the results of the election and shall make these fully known to the entrepreneur, the persons working in the enterprise and the employees' organisations that submitted lists of candidates. <i>See note 2</i>

Individual candidate system	List system
<p>Explanatory notes</p> <p>Note 1 Publication and distribution 'Shall make these fully known' means that the number of votes cast for each of the candidates shall be made known, irrespective of whether those candidates were elected.</p>	<p>Explanatory notes</p> <p>Note 1 Allocation of seats The system for allocating seats in the list system shall consist of the following stages:</p> <ol style="list-style-type: none"> 1. Determination of the quota [<i>kiesdeler</i>] (total number of votes cast divided by the number of available seats). 2. Allocation of seats to lists based on the quota. 4. Allocation of surplus seat or seats to a list or lists with most surplus votes. 5. Allocation of the seats gained by the lists to the candidates on each list. 6. If a list is allocated more seats than it has candidates, the seats shall be allocated instead to another list or lists. <p>See Section 2.5.1 and the examples given there.</p> <p>For the allocation of remaining seats, a different proportion of the quota may be used in Article 13 (1), for instance, 'half' instead of 'three-quarters'.</p> <p>Note 2 Publication and distribution 'Shall make these fully known' means that the number of votes cast for each of the candidates shall be made known, irrespective of whether those candidates were elected.</p>

Article 14

The secretary of the Works Council shall retain the used ballot papers in a sealed envelope for at least three months after the election.

See note 1

Explanatory notes**Note 1**

This article must be amended if electronic voting is used, for example as follows: *‘The secretary of the Works Council shall retain the digital votes for at least three months after the election.’*

2.6 Procedure for interim vacancies**2.6.1 General explanatory notes**

An interim vacancy in a Works Council occurs when a Works Council member:

- terminates his or her Works Council membership (i.e., leaves the Works Council); or
- ceases to work in the enterprise.

In order to determine whether someone has ‘ceased to work in the enterprise’, it is important to be aware of what is meant in the WOR by ‘working in the enterprise’.

See the Introduction, [Section 1.2.2](#).

A person who works in more than one enterprise of the same entrepreneur is deemed to be working only in the enterprise from which his or her work is managed. It is therefore crucial to determine whether the person in question has ceased to work in that specific enterprise. In the case of someone working in an enterprise carried on by another entrepreneur, termination of work for that other entrepreneur does not mean that he/she ceases to work in ‘the’ enterprise.

An interim vacancy does not occur in the event of the temporary absence (even long-term) of a Works Council member (due to illness, for example), although under those circumstances, the Works Council may ask the member concerned to terminate his or her membership. The application of [WOR Article 13](#) (barring a member from participating in the activities of the Works Council, or suspension) likewise does not result in a vacancy.

Exclusion of a member

The Model Rules of Procedure do not contain a provision for excluding a Works Council member from participating in the activities of the Works Council. However, the following is a brief account of the possibilities offered by the WOR in this matter.

At the request of the entrepreneur or the Works Council, a subdistrict court judge may bar a member of the Works Council from taking part in any or all of the Works Council's activities ([WOR Article 13](#)). The subdistrict court judge determines the duration of this exclusion. The entrepreneur may submit a request for exclusion only on the grounds that the Works Council member concerned is seriously obstructing consultations with the Works Council. The Works Council may submit a request for exclusion only on the grounds that the Works Council member concerned is seriously obstructing the work of the Works Council ([WOR Article 13 \(1\)](#)). Before recourse is had to the courts, the Works Council member concerned should be given an opportunity to be heard, and a written request for mediation to resolve the dispute may be submitted (at no cost) to the Joint Sectoral Committee ([WOR Article 36](#)). The Act also stipulates that the entrepreneur and the Works Council must notify each other whenever they submit such a request ([WOR Article 13 \(2\)](#)).

Article 15

1. In the event of an interim vacancy on the Works Council, the Works Council shall appoint as the successor of the member concerned the first eligible candidate according to the results of the most recent election.
See notes 1 and 2
2. The appointment shall take place within one month after the vacancy has arisen, in accordance with Article 13 (2) of these Rules of Procedure.
3. If no successor as referred to in paragraph 1 of this article is available, the vacancy shall be filled by holding a by-election, unless a general election is to be held within six months.

See note 3

Explanatory notes

Note 1 Succession in the individual candidate system

In the individual candidate system, the successor is the candidate with the most votes after the last candidate chosen at the last general election. If more than one candidate qualifies, the outcome shall be decided by lot in accordance with Article 13 (1) of the Model Rules (for the individual candidate system). A candidate who refuses to fill the vacancy in question does not forgo the right to fill any vacancies that may arise in the future.

Note 2 Succession in the list system

In the list system, the successor is the candidate who would have qualified for a seat if there had been one more seat to be allocated to the list from which the outgoing Works

Council member was appointed. If that list is ‘exhausted’, the seat will be allocated to one of the other lists in accordance with the provisions of Article 13 (1). If all the lists are ‘exhausted’, a by-election will be necessary.

Note 3 Term of office

The period of six months may be replaced by a shorter period deemed to be reasonable.

2.7 Objections procedure

Article 16

1. Any party with a legitimate interest may submit a written objection to the Works Council about a Works Council decision, within a week of its publication, with regard to:
 - a. Setting the election date and the times at which the election will begin and end, as outlined in Article 6 (1);
 - b. The way in which the list of eligible voters and eligible candidates is drawn up, as outlined in Article 7 (1);
 - c. The validity of a list of candidates, as outlined in Article 8;
 - d. Determining the election results, as outlined in Article 13 (2);
 - e. Filling an interim vacancy, as outlined in Article 15.

See notes 1 and 3
2. The Works Council shall come to a decision regarding the objection as quickly as possible, and shall make any necessary arrangements.

See notes 2 and 3

Explanatory notes

Note 1 Difference between the arrangements for objections and disputes

This arrangement for objecting to the Works Council must be distinguished from the arrangement for disputes in [WOR Article 36](#). Article 16 of the Model Rules of Procedure aims to provide the opportunity to point out mistakes to the Works Council. One such objection might be that a person has wrongly been included in or excluded from the list of voters. In the majority of cases, the Works Council can and will rectify such mistakes. However, if problems cannot be solved in this way, the arrangement for disputes set out in [WOR Article 36](#) may always be followed, whereby the dispute may first be submitted to the Joint Sectoral Committee for mediation before it is submitted to the subdistrict court judge. If the Committee’s mediation efforts fail, it will offer the parties advice on how to resolve the dispute. This procedure is not required by law but it is recommended and free of charge.

Note 2 Deciding and acting promptly

In these types of situations, deciding and acting promptly are usually imperative: the Works Council must rapidly come to a decision about the objection. If the objection is justified, the Works Council must also rapidly make the necessary arrangements. ‘Necessary arrangements’ may be arrangements of all kinds, for example changing deadlines or making them less stringent, and publicly announcing the rectification of errors. If the provision by the Works Council in

response to an objection amends a previously disclosed provision, the Works Council must make this amendment known not only to the person who lodged the objection, but also to all other persons working the enterprise.

Note 3 Submitting an objection to the electoral committee

In the event that the organisation of the elections is assigned by the Works Council to an electoral committee, the objection may also be submitted to this committee, which will subsequently present it to the Works Council with its comments.

2.8 Procedure and secretariat of the Works Council

Article 17

1. The Works Council shall meet:
 - a. at the chairman's request;
 - b. at the reasoned request of at least two members.

See notes 1 and 2
2. The chairman shall determine the time and location of the meeting.
A meeting held at the request of Works Council members shall be convened within fourteen days of the chairman's receipt of the request.
3. The meeting shall be convened by the secretary, by means of written or electronic notification to the members. Except in the case of urgent matters, the members shall be notified at least seven days before the meeting.
See note 3
4. A meeting can only be held if the majority of the Works Council members as referred to in Article 2 (1) of the Rules of Procedure are present.
See note 4
5. In the absence of both the chairman and the deputy chairman, the Works Council shall select a chairman from among the members present to chair the meeting.

Explanatory notes

Note 1 Organising a Works Council meeting

Article 17 (1) provides a formal arrangement for Works Council meetings. However, it does not cover 'consultation meetings', i.e. the meetings of the Works Council with the entrepreneur, as referred to and regulated in [WOR Article 23](#). That article and WOR Articles [25](#), [27](#) and [30](#) list separate arrangements with regard to when such consultation meetings are to be convened.

In this connection, attention is drawn to the stipulation in [WOR Article 23a \(1\)](#) that a consultation meeting may only be held if the provisions that apply to convening a Works Council meeting pursuant to the Rules of Procedure for the Works Council in question are complied with. The requirements for holding a Works Council meeting, as stipulated in the Works Council's Rules of Procedure, are therefore also relevant for the consultation meeting of the Works Council with the entrepreneur (insofar as the Works Council is concerned).

If the Works Council does not comply with the relevant provisions in the Rules of Procedure, it thereby also fails to meet the requirements stipulated in [WOR Article 23a](#). The entrepreneur may demand from the Works Council that in the case of consultation meetings it complies with the provisions in the Rules of Procedure for convening a Works Council meeting (e.g., the stipulation regarding the quorum in Article 17 (4)).

Note 2 Place and time, and request for a Works Council meeting

Paragraphs 1a and 1b of Article 17 stipulate two instances in which a Works Council meeting must be convened. Other cases in which the Works Council considers it desirable to convene a meeting may be added to the Rules of Procedure under Article 17 as the Works Council sees fit. This makes it possible, for instance, to stipulate that the Works Council is to meet before all or certain consultation meetings. The Rules of Procedure of an enterprise to which the ‘Structure Regime’ [*structuurregeling*] (see Appendix A [\(2\) \(A\) \(h\)](#)) applies might, for example, contain a provision stating that a meeting must also be convened with regard to the filling of a vacancy on the Supervisory Board and the rights and powers of the Works Council in this context. See also [Appendix A](#) and [Appendix B](#).

The number of ‘at least two’ members in paragraph 1b is merely an example. The greater the number of Works Council members, the more appropriate it is to stipulate a greater number of members or a certain proportion of the total number of Works Council members under b, e.g., ‘at least a quarter of the members’. A ‘reasoned request’ refers to a request that indicates at least which matter the members requesting the Works Council meeting wish to discuss at that meeting.

Note 3 Convening a meeting

The period of one week referred to in the second sentence of paragraph 3 ties in with [WOR Article 14 \(2g\)](#), which states that, except in the case of urgent matters, the members of the Works Council should be notified of the agenda no later than one week before the meeting.

As a rule, the agenda must be included with the summons to the meeting, so that the members of the Works Council have time to become acquainted with it and prepare for the meeting. For more information about the Works Council secretary, see the notes to [Article 18](#) of these Model Rules of Procedure.

Note 4 Quorum

Paragraph 4 stipulates the quorum for the meeting, i.e., the minimum number of members that must be present for a legally valid meeting to be convened. At least the majority of the members must be present for the meeting to be valid. ‘The majority of the Works Council members’ means the majority of the total number of Works Council members under the terms of Article 2 (1) of the Rules of Procedure. That means that it is actually the number of seats on the Works Council that is concerned, with vacant seats also being counted.

The required quorum may also be specified as a certain number instead of as ‘the majority’. Paragraph 4 must then stipulate the actual number of members constituting a majority.

The Rules of Procedure can also specify what is to be understood by ‘present’. It is possible for this to be given a broader interpretation, taking into account the possibilities nowadays for remote working, conference calls, video connections, electronic discussion platforms, etc.

The rule stipulated in Article 17 for the quorum must be distinguished from the provision regarding the ‘majority of votes’ required for decisions to be made by the Works Council. See Article 20 below and [note 1](#) to that article.

Article 18

1. The Works Council shall appoint a secretary.

See note 1

2. The secretary shall be responsible for convening the Works Council meetings, drawing up the agenda and the minutes of the meetings, and managing the Works Council’s correspondence.

See note 2

Explanatory notes

Note 1 The secretary of the Works Council

[WOR Article 14](#) stipulates that the Rules of Procedure must contain provisions for the secretariat of the Works Council. Such provisions concern, amongst other things, the appointment and tasks of the secretary.

Generally, the Works Council shall appoint one of its members as secretary. The term ‘the Works Council secretary’ [*bestuurlijk secretaris*] usually refers to this person appointed from among the members of the Works Council. Quite often, the entrepreneur also selects as another secretary a person working in or for the enterprise who is not a Works Council member. This person is usually referred to as the ‘administrative secretary’ [*ambtelijk secretaris*]. The Works Council may appoint this person as Works Council secretary instead of one of its members (e.g., when no member of the Works Council is available to become secretary). Wherever the terms ‘Works Council secretary’ or ‘the secretary’ are mentioned elsewhere in these Model Rules of Procedure, the person who actively serves as secretary to the Works Council is intended. In practice, however, the administrative secretary appointed by the entrepreneur usually works alongside the Works Council secretary. The administrative secretary then carries out tasks on behalf of the Works Council secretariat or the Works Council itself, under the responsibility of the Works Council secretary. In this context, it is important that the entrepreneur makes the facilities stipulated in [WOR Article 17](#) available to the administrative secretary, as well as to the Works Council and its committees.

The administrative secretary also enjoys protection against victimisation and dismissal ([WOR Article 21](#) and [Article 7:670 of the Civil Code](#)). See [Appendix B](#) for information about agreements between the entrepreneur and the Works Council on providing facilities for the secretariat.

Note 2 The secretary of the consultation meetings

The Works Council secretary also serves as secretary to the consultation meetings, unless the entrepreneur and the Works Council jointly appoint a different person as secretary to the consultation meetings [WOR Article 23a \(3\)](#).

Article 19

1. In consultation with the chairman, the secretary shall draw up an agenda for each meeting. Members of the Works Council may request the secretary to include an item in the agenda.
2. The secretary shall make the agenda known to the members of the Works Council and the entrepreneur, and shall, insofar as possible, ensure that persons working in the enterprise can peruse the agenda. Except in the event of urgent matters, notification of the agenda will take place no later than seven days before the Works Council meeting.

See notes 1 and 2

Explanatory notes**Note 1 Agenda**

See also the notes to [Article 18](#) regarding the Works Council secretary.

Note 2 Publication and distribution of the agenda

The period of seven days is based on [WOR Article 14 \(2g\)](#). See also [Article 17 \(3\)](#) of these [Model Rules of Procedure](#) and [note 3](#).

Article 20

1. The Works Council shall reach its decisions based on a common majority of votes. Abstentions are not included in the calculation of the number of the votes cast.
See note 1
2. Votes on business matters shall be cast by show of hands, and votes for persons by ballot.
3. If, in a vote on an appointment, none of the candidates gains a common majority after a first ballot, a second ballot shall be held between the two candidates who received the most votes in the first ballot. After the second ballot, the person with the most votes shall be elected. In the event of a tied vote, the outcome shall be decided by lot.
See notes 1, 2 and 3.
4. In the event of a tied vote for a decision to be taken by the Works Council that does not concern the appointment of a person, the proposal shall be discussed again during the next meeting. If, on that occasion, the votes are again equal, the proposal shall be deemed to have been rejected.

Explanatory notes

Note 1 Decisions based on a majority of votes

‘Common majority’ means that more than half the votes cast have been in favour of the proposal. The Rules of Procedure may stipulate that certain important issues (to be listed in the Rules of Procedure) are not to be decided by ‘common’ majority vote, but by ‘qualified’ majority vote (e.g., two-thirds of the votes cast). However, if the Works Council is not voting on a single proposal but voting on several alternative proposals, it may decide that a majority vote is not required. The Rules of Procedure must then state that the proposal that receives the most votes shall be accepted. This applies both to voting on appointments and with regard to other issues.

Note 2 Decisions about individuals

Works Council decisions regarding appointments may concern appointing an individual to a Works Council committee or to a position within the Works Council itself (e.g., chairman, secretary). In those cases, the Works Council appoints the person. Works Council decisions regarding appointments may also concern the appointment of an individual to a position within the enterprise or a related organisation or legal entity. This may be an appointment made by the Works Council (see, for example, [WOR Article 29](#)) or a situation in which another organisation is authorised to appoint, but in which the Works Council may nominate someone, as is the case in the appointment of Supervisory Board members on the basis of the Structure Regime. See also [Appendix A](#).

Note 3 Decisions based on a different majority of votes

Paragraph 3 assumes that Article 20 (1) stipulates that the Works Council shall make its decision based on a common majority of votes. If, in accordance with the options mentioned above in note 1, paragraph (1) stipulates a different majority of votes for certain decisions, this will also need to be stipulated in paragraph (3).

Article 21

1. As soon as possible after every Works Council meeting, the secretary shall draw up the minutes and send a draft to the members, who shall have the opportunity to lodge a (preferably reasoned) objection to the contents of the minutes. The Works Council shall decide on the content of the minutes and shall approve them at its next meeting.

See note 1

2. The secretary shall make the minutes known to the persons working in the enterprise and to the entrepreneur. The minutes to be made public to the persons working in the enterprise shall not contain any details that must remain confidential in accordance with [WOR Article 20](#).

See note 2

Explanatory notes

Note 1 Minutes of the Works Council meeting

The secretary's minutes of the Works Council meeting must contain an account of the discussions at that meeting and a description of the decisions reached. The members of the Works Council may object to the contents of the draft minutes, in principle until the next Works Council meeting, at which, if necessary, the contents of the minutes will be decided upon and accepted. Objections may only concern the way in which the matters discussed have been recorded, and may not lead to changes to the record of what was actually said at the meeting. In practice, the secretary will make public a version of the minutes that has already been adjusted on the basis of the objections expressed by the members. The matters discussed during a Works Council meeting may also be made known in various other ways. See also note 2 below.

Note 2 Publication and distribution

There are several conceivable methods of making the minutes known within the enterprise. These vary from depositing a copy for inspection somewhere or placing one or more copies of the minutes on notice boards, to sending each person working in the enterprise an individual copy through the intranet, or e-mail or some other digital method. The secretary shall choose a method that enables the persons working in the enterprise to access the contents of the minutes easily and efficiently.

The version of the minutes made available to the persons working in the enterprise may not contain any information about matters which, under the terms of [WOR Article 20](#), the Works Council members are obliged to keep confidential. Excerpts that must remain confidential must be excluded from this version of the minutes. Of course, this does not apply to the copy of the minutes intended for the entrepreneur.

Because drawing up the minutes first as a draft and then as a definitive version usually takes some time, it is advisable that shortly after the Works Council meeting, the secretary issues a short message about the key points that were discussed and/or decided upon (obviously, in accordance with the confidentiality requirement).

Article 22

1. Every year, before, the secretary shall draw up a report of the activities of the Works Council and its committees over the previous year. This annual report must be approved by the Works Council.
See note 1
2. After approval from the Works Council, the secretary shall make the final annual report known to the entrepreneur and the persons working in the enterprise.

Explanatory notes

Note 1 The annual report of the Works Council

The article in the Rules of Procedure about the compilation and publication of the Works Council's annual report is based on [WOR Article 14 \(2h\)](#). It is desirable for the annual report to appear within a reasonable period after the completion of the Works Council's year in office (which does not need to coincide with the calendar year). The Rules of Procedure may stipulate a deadline by which the annual report must be ready, taking into account, on the one hand, that the report should be issued within a reasonable time after the end of the year in question and, on the other hand, that drawing up and publishing an annual report takes time. These matters are for the discretion of the Works Council.

2.9 Final provisions

Article 23

1. These Rules of Procedure may be amended or supplemented by order of the Works Council.
See note 1
2. Before any amendment or addition is laid down in the Rules of Procedure, the Works Council shall give the entrepreneur the opportunity to express his views.
See note 2
3. Any meeting at which a decision is taken to amend or supplement the Rules of Procedure must be attended by at least two-thirds of the members of the Works Council as referred to in Article 2 (1) of the Rules of Procedure.
See notes 3 and 5
4. Any such decision shall require a majority of at least two-thirds of the votes cast. Where this provision is concerned, abstentions are not included in the calculation of the number of the votes cast.
See notes 4 and 5
5. The Works Council shall make any amendments or new provisions known to the persons working in the enterprise and shall provide the entrepreneur with a copy of any such amendments or provisions.
See note 2

Explanatory notes

Note 1 Amendments and additions to the definitive Rules of Procedure

Article 23 is not to be included in the provisional Rules of Procedure for the Works Council. Given that they are drawn up by the entrepreneur, the provisional rules cannot be amended by the Works Council, but must, as soon as possible after the first Works Council has been elected on the basis of those rules, be replaced by the definitive Rules of Procedure. In practice, the provisional rules will be used as the basis for the definitive ones. The Works Council must ensure that Article 23, not included in the provisional Rules, is added to the definitive Rules, which must always contain a provision such as the

one above. It will not be possible for all the changes made to the Rules of Procedure to take effect immediately. The incumbent Works Council, for example, cannot alter the current term of office or change the number of Works Council seats during the term of office.

Note 2 The entrepreneur's views

These provisions are based on [WOR Article 8 \(1\)](#). See also [Introduction \(1.3\)](#).

Note 3 Qualified quorum


Paragraph (3) concerns the quorum, i.e., the number of members that must be present to convene a legally valid Works Council meeting. It is recommended that amendments to the Rules of Procedure require that a qualified majority and not a common majority of Works Council members must be present at the meeting, as such amendments may have significant consequences (e.g., with regard to the Works Council's term of office). The majority of two-thirds of the total number of Works Council members as referred to in paragraph (3) is a typical qualified majority, but the Works Council is free to opt for a different qualified majority (e.g., three-quarters). See also Article 17, [note 4](#).

Note 4 Qualified majority

It stands to reason that amendments to the Rules of Procedure require not merely a common majority vote but rather a qualified majority of the votes cast. Here, too, the majority of two-thirds of the votes cast is a typical qualified majority, but the Works Council is free to opt for a different qualified majority e.g., three-quarters. See also Article 20, [note 1](#).

Note 5 Cumulative

The Works Council should be aware that paragraphs (3) and (4) are cumulative: a qualified quorum must be present for a meeting to be convened, and any amendment to the Rules of Procedure requires a qualified majority of the votes cast by the members present.



Model Rules
of Procedure
regarding
electoral
groups

3 Model Rules of Procedure regarding electoral groups

3.1 General explanatory notes

This section of the Model Rules of Procedure for Works Councils is relevant if the Rules of Procedure for the Works Council include the group electoral system.

The Model Rules of Procedure for the Works Council included in [Section 2](#) above assume that the whole Works Council is elected by the employees of the whole enterprise.

[WOR Article 9 \(3\)](#) gives the Works Council the option of applying the group electoral system for electing members. This system means that separate lists of candidates are submitted for particular groups of persons working in the enterprise or for particular parts of the enterprise – whether or not located in different places – such as an office, warehouse, production or sales unit, or a branch. A certain number of Works Council members, to be specified in the Rules of Procedure, are then chosen by ‘electoral groups’, i.e. each of those groups of persons or the employees of the parts of the enterprise. The Works Council then consists of representatives of the various electoral groups. The Works Council must therefore decide whether the whole Works Council will be elected by all the persons working in the enterprise or that those persons will be divided up into electoral groups.

If the group electoral system is introduced, the Rules of Procedure must name and clearly specify the electoral groups. The Rules of Procedure must also indicate how many Works Council members will be chosen by, and from, the various electoral groups. The group electoral system must be structured in such a way that each person working in the enterprise belongs to an electoral group (but to no more than a single one).

3.2 Model Rules of Procedure regarding electoral groups

The Model Rules of Procedure regarding electoral groups are set out below, with one provision (i.e. one article) being accompanied by an explanatory note. For an explanation of the provisions that are not explained below, reference is made to the explanatory notes to the relevant articles in Section 2. Special attention should be paid to the general explanatory notes in [Section 2.5.1](#) and to the notes to articles 11 to 13 in the [individual candidate system](#) or the [list system](#) (Section 2.5.2).

The continuous text of the Model Rules of Procedure regarding electoral groups (without the explanatory notes) can be downloaded as a Word document from the SER’s website, and can be used as a basis for a Works Council’s own Rules of Procedure.

Definitions

Article 1

The following definitions apply to these Rules of Procedure:

- a. The entrepreneur: name;
- b. The enterprise: name;
- c. The Act: the Works Councils Act (WOR);
- d. The Joint Sectoral Committee: name of authorised Joint Sectoral Committee;
- e. Employees' associations: the associations of employees as meant in Article 9 (2a) of the Act.

Composition

Article 2

1. The Works Council shall consist of members chosen by and from among the following electoral groups: members shall be chosen by and from among the group / the part of the enterprise; members shall be chosen by and from among the..... group/the part of the enterprise etc.

See notes 1 and 2

2. The Works Council shall elect a chairman and a deputy chairman from its number.
3. The chairman or in the chairman's absence, the deputy chairman shall be the legal representative of the Works Council.

Explanatory notes

Note 1 Allocation of seats to electoral groups

The allocation of seats to the electoral groups must take maximum account of the size of the various electoral groups. The greater the number of employees an electoral group includes, the more members it can have on the Works Council.

Note 2 Clear specification

The group of persons or the part of the enterprise concerned must be specified, if possible by name, and in any case with a description clearly indicating for which group or for which part of the enterprise the electoral group has been established.

Term of office

Article 3

1. The members of the Works Council shall all resign simultaneously after years.
2. The members resigning shall be immediately eligible for re-election.

Organisation of elections

Article 4

1. The Works Council is responsible for organising the election of members of the Works Council.
2. The Works Council may delegate the organisation of the elections to an electoral committee.

Right to vote and to stand for election

Article 5

1. Persons who have been working in the enterprise for at least 6 months shall be eligible to vote.
2. Persons who have been working in the enterprise for at least 12 months shall be eligible to stand for election.

Election date

Article 6

1. In consultation with the entrepreneur, the Works Council shall determine the election date and the times at which the election will begin and end. The secretary of the Works Council shall notify the entrepreneur, the persons working in the enterprise, and the employees' organisations. There shall be a period of at least 13 weeks between this notification and the election date.
2. The election date shall not be earlier than four weeks before and no later than two weeks before the end of the term of office of the resigning Works Council members.
3. During the elections, the Works Council, or the electoral committee that is has set up, may call on the assistance of one or more polling stations, each consisting of no more than three persons working in the enterprise.

Candidacy

Article 7

1. No later than nine weeks before the election date, the Works Council shall draw up, for each electoral group, a list of persons working as part of that group who are entitled to vote on the election day and who are entitled to stand for election, and it shall make this list known within the enterprise.
2. Nominations for each electoral group shall take place by the submission of a list of one or more candidates to the secretary of the Works Council. The secretary shall issue a duly dated acknowledgment of receipt to the person who submitted the list.
3. Employees' organisations that include persons among their members who are entitled to vote and who belong to an electoral group may submit their lists of candidates for that particular electoral group up to six weeks before the election date.

4. Within one week of the expiry of the period stated in paragraph 3, the Works Council shall announce which employees' organisations have submitted a list of candidates and for which electoral groups.
5. After the announcement referred to in the previous paragraph has been made, one or more employees who are entitled to vote and who are not a member of an employees' organisation that has put up candidates may submit a list of candidates for their electoral group.
6. The lists of candidates as referred to in paragraph 5 may be submitted to the secretary of the Works Council up to no later than three weeks before the election date.
7. Together with each list of candidates, a written statement from each candidate appearing on the list shall be submitted clearly stating that he or she accepts the nomination.
8. A candidate's name may appear on one list of candidates only.

Article 8

1. The Works Council shall examine whether the submitted lists of candidates and the candidates on those lists meet the requirements of the Act and of these Rules of Procedure.
2. The Works Council shall invalidate any list of candidates that does not meet the requirements referred to in the preceding paragraph and shall immediately notify in writing the person(s) who submitted the list of candidates. Following this notification, there shall be a period of one week in which the list may be adapted to meet the requirements stipulated.
3. The Works Council shall make the valid lists of candidates known to the persons working in the enterprise no later than two weeks before the election date.

Article 9

If the number of candidates in an electoral group is not greater than the number of seats to be filled for that group on the Works Council, no election shall be held in that electoral group and the nominees shall be deemed to have been elected.

Voting procedure in elections

Article 10

1. The elections shall take place by secret written ballot.
2. On the election day, each eligible voter shall be given a certified ballot paper by or on behalf of the Works Council at the locations designated by the Works Council. The ballot paper shall list the candidates for each electoral group. Immediately after completing the ballot paper, each eligible voter shall put the paper in the designated ballot box, except when the ballot is sent by post.
3. Each eligible voter may vote by proxy for no more than two other eligible voters, provided that a written proxy has been obtained.

3.2.1 Articles 11 to 13 in the electoral group system for the individual candidate system and the list system

See also the general explanatory notes in [Section 2.5.1](#) of and the notes in [Section 2.5.2](#).

Individual candidate system	List system
<p>Article 11 Each eligible voter shall indicate as many candidates on the ballot paper as there are seats available for that electoral group on the Works Council.</p> <p>Article 12</p> <ol style="list-style-type: none"> 1. After the conclusion of the election, the Works Council shall count the valid votes cast for each candidate. 2. A ballot paper shall be deemed invalid if: <ol style="list-style-type: none"> a. it is not certified by or on behalf of the Works Council; b. it is unclear which candidate an eligible voter has voted for; c. the required number of votes have not been cast; d. any marks are made other than an indication of the selected candidate. <p>Article 13</p> <ol style="list-style-type: none"> 1. The candidates who, consecutively, have received the most votes for each electoral group shall be elected. If there are several candidates with an equal number of votes for the last remaining seat or seats, the outcome shall be decided by lot. 2. The Works Council shall determine the results of the election and shall make these fully known to the entrepreneur, the persons working in the enterprise and the employees' organisations that submitted lists of candidates. 	<p>Article 11 Each voter shall cast one vote only.</p> <p>Article 12</p> <ol style="list-style-type: none"> 1. After the conclusion of the election, the Works Council shall count the valid votes cast for each list of candidates and for each candidate. 2. A ballot paper shall be deemed invalid if: <ol style="list-style-type: none"> a. it is not certified by or on behalf of the Works Council; b. it is unclear which candidate an eligible voter has voted for; c. more than one vote has been cast; d. any marks are made other than an indication of the selected candidate list. <p>Article 13</p> <ol style="list-style-type: none"> 1. In order to determine the results of the election, the Works Council shall first calculate the quota, for each electoral group, by dividing the number of valid votes cast in each electoral group by the number of seats to be filled on the Works Council by that electoral group. Subsequently, each list of candidates, for each electoral group, shall be allocated seats on the basis of the number of valid votes cast for that list divided by the quota. Seats that cannot be filled accordingly shall be allocated to the lists with the largest number of surplus votes consecutively. Votes cast for a list that has not reached the quota shall also be treated as surplus votes, provided that they amount to at least three-quarters of the quota. In the event that two or more lists have an equal number of surplus votes, it shall be decided by lot which list will receive one of the remaining seats first. The seats allocated to a list shall be given to the candidates in the order in which they were listed, with the proviso that any candidate who met the quota individually shall definitely be elected. If the application of these provisions to a list results in more seats being allocated to a list than there are candidates, the seat or seats that cannot be filled shall be transferred to one or more of the other lists containing candidates to whom no seat has been assigned. 2. The Works Council shall determine the results of the election and shall make these fully known to the entrepreneur, the persons working in the enterprise and the employees' organisations that submitted lists of candidates

3.2.2 Other Provisions

Retention period for ballot papers

Article 14

The secretary of the Works Council shall retain the used ballot papers in a sealed envelope for at least three months after the election.

Interim vacancies

Article 15

1. In the event of an interim vacancy on the Works Council, the Works Council shall appoint as the successor of the member concerned the first eligible candidate for the electoral group concerned according to the results of the most recent election.
2. The appointment shall take place within one month after the vacancy has arisen, in accordance with Article 13 (2) of these Rules of Procedure.
3. If no successor as referred to in paragraph 1 of this article is available, the vacancy shall be filled by holding a by-election in the electoral group concerned, unless a general election is to be held within six months.

Objections procedure

Article 16

The secretary of the Works Council shall retain the used ballot papers in a sealed envelope for at least three months after the election.

1. Any party with a legitimate interest may submit a written objection to the Works Council about a Works Council decision, within a week of its publication, with regard to:
 - a. Setting the election date and the times at which the election will begin and end, as outlined in Article 6 (1);
 - b. The way in which the list of eligible voters and eligible candidates is drawn up, as outlined in Article 7 (1);
 - c. The validity of a list of candidates, as outlined in Article 8;
 - d. Determining the election results, as outlined in Article 13 (2);
 - e. Filling an interim vacancy, as outlined in Article 15.
2. The Works Council shall come to a decision regarding the objection as quickly as possible, and shall make any necessary arrangements.

Organising a Works Council meeting

Article 17

1. The Works Council shall meet:
 - a. at the chairman's request;
 - b. at the reasoned request of at least two members.
2. The chairman shall determine the time and location of the meeting.

A meeting held at the request of Works Council members shall be convened within fourteen days of the chairman's receipt of the request.
3. The meeting shall be convened by the secretary, by means of written or electronic notification to the members. Except in the case of urgent matters, the members shall be notified at least seven days before the meeting.
4. A meeting can only be held if the majority of the Works Council members as referred to in Article 2 (1) of the Rules of Procedure are present.
5. In the absence of both the chairman and the deputy chairman, the Works Council shall select a chairman from among the members present to chair the meeting.

The secretary of the Works Council

Article 18

1. The Works Council shall appoint a secretary.
2. The secretary shall be responsible for convening the Works Council meetings, drawing up the agenda and the minutes of the meetings, and managing the Works Council's correspondence.

Agenda

Article 19

1. In consultation with the chairman, the secretary shall draw up an agenda for each meeting. Members of the Works Council may request the secretary to include an item in the agenda.
2. The secretary shall make the agenda known to the members of the Works Council and the entrepreneur, and shall, insofar as possible, ensure that persons working in the enterprise can peruse the agenda. Except in the event of urgent matters, notification of the agenda will take place no later than seven days before the Works Council meeting.

Decisions in the Works Council

Article 20

1. The Works Council shall reach its decisions based on a common majority of votes. Abstentions are not included in the calculation of the number of the votes cast.
2. Votes on business matters shall be cast by show of hands, and votes for persons by ballot.
3. If, in a vote on an appointment, none of the candidates gains a common majority after a first ballot, a second ballot shall be held between the two candidates who received the most votes in the first ballot. After the second ballot, the person with the most votes shall be elected. In the event of a tied vote, the outcome shall be decided by lot.
4. In the event of a tied vote for a decision to be taken by the Works Council that does not concern the appointment of a person, the proposal shall be discussed again during the next meeting. If, on that occasion, the votes are again equal, the proposal shall be deemed to have been rejected.

Minutes of the Works Council meeting

Article 21

1. As soon as possible after every Works Council meeting, the secretary shall draw up the minutes and send a draft to the members, who shall have the opportunity to lodge a (preferably reasoned) objection to the contents of the minutes. The Works Council shall decide on the content of the minutes and shall approve them at its next meeting.
2. The secretary shall make the minutes known to the persons working in the enterprise and to the entrepreneur. The minutes to be made public to the persons working in the enterprise shall not contain any details that must remain confidential in accordance with [Article 20 of the Act](#).


The annual report of the Works Council

Article 22

1. Every year, before, the secretary shall draw up a report of the activities of the Works Council and its committees over the previous year. This annual report must be approved by the Works Council.
2. After approval from the Works Council, the secretary shall make the final annual report known to the entrepreneur and the persons working in the enterprise.

Amendments and additions to the Rules of Procedure**Article 23**

1. These Rules of Procedure may be amended or supplemented by order of the Works Council.
2. Before any amendment or addition is laid down in the Rules of Procedure, the Works Council shall give the entrepreneur the opportunity to express his views.
3. Any meeting at which a decision is taken to amend or supplement the Rules of Procedure must be attended by at least two-thirds of the members of the Works Council as referred to in Article 2 (1) of the Rules of Procedure.
4. Any such decision shall require a majority of at least two-thirds of the votes cast. Where this provision is concerned, abstentions are not included in the calculation of the number of the votes cast.
5. The Works Council shall make any amendments or new provisions known to the persons working in the enterprise and shall provide the entrepreneur with a copy of any such amendments or provisions.



Model Rules of
Procedure for
the Central
Works Council
and Group
Works Council

4 Model Rules of Procedure for the Central Works Council and Group Works Council

4.1 General explanatory notes

Central Works Council and Group Works Council

In the event of a partnership of enterprises (managed by single entrepreneur or forming part of a group of enterprises [*concern*]), the entrepreneur may, if it is conducive to the proper implementation of the Act, establish a Central Works Council (COR), with which the management of the partnership may discuss common policy with regard to all the enterprises involved. A COR is an overarching body covering all enterprises managed by the entrepreneur or that form part of a group of enterprises ([WOR Article 33 \(1\)](#)). It is also possible to establish an overarching body covering only some of the enterprises in the partnership, in which case it is deemed a Group Works Council (GOR) ([WOR Article 33 \(2\)](#)).

WOR Articles [34](#) and [35](#) state that many articles in the Act apply *mutatis mutandis* to CORs and GORs, including Articles [8](#) (Rules of Procedure) and [48](#) (provisional Rules of Procedure; see below).

In principle, members of a COR or GOR are chosen by members of the Works Councils covered by the COR or GOR. The number of members to be chosen from each Works Council is specified in the Rules of Procedure for the COR/GOR. See Section 4.2.2 below, [note 2](#) to Article 2.

The COR and GOR are only authorised to deal with matters common to the enterprises covered: they may therefore consider only matters that are of interest to all or most of the enterprises covered by the COR or GOR in question. In respect of such matters, the powers of the Works Councils are automatically transferred to the relevant COR or the GOR. The COR and the GOR also have their own powers regarding the policy of the group of enterprises (for example entering into a merger).

Separate rules of procedure

Separate Rules of Procedure must be drawn up for each COR or GOR. The model provisions below can be used for the Rules of Procedure of either a COR or a GOR.

Provisional Rules of Procedure

As in the case of the Works Council, the entrepreneur must draw up provisional Rules of Procedure for the COR and the GOR before they are established ([WOR Article 48 \(3\)](#)). After they have been established, the COR and the GOR must agree on definitive Rules of Procedure themselves ([WOR Article 34 \(6\)](#), which states that [Article 8](#) applies *mutatis mutandis*).

Although [WOR Article 48](#) does not make it mandatory, it is an obvious step for the entrepreneur, before drawing up the provisional Rules of Procedure for the COR or GOR, to consult the existing Works Councils/GORs that will fall under the COR or the GOR. [Article 48 WOR](#) stipulates that the entrepreneur must consult the relevant employees' organisations about the draft of any proposed provisional Rules of Procedure.

Model Rules of Procedure for Works Councils can be used

To a large extent, the Model Rules of Procedure for Works Councils set out in [Section 2](#) can also be used for the COR or the GOR. In places, however, the texts will need to be adapted.

Joint Works Council

The COR and the GOR should not be confused with the Joint Works Council as defined in [WOR Article 3](#). See Section 2.1, [note 3](#) to Article 1.

4.2 Model Rules of Procedure for Central Works Councils and Group Works Councils

This section contains the full Model Rules of Procedure for Central Works Councils (CORs) and Group Works Councils (GORs). Explanatory notes are provided to each article, subdivided for each article into one or more notes. For an explanation of the provisions that are not explained below, reference is made to the explanatory notes to the relevant articles in Section 2.

The continuous text of the Model Rules of Procedure for the COR or GOR (without the explanatory notes) can be downloaded as a Word document from the [SER's website](#) and can be used as a basis for a COR's or a GOR's own Rules of Procedure.

4.2.1 Definitions

Article 1

The following definitions apply to these Rules of Procedure:

- a. The entrepreneur: name;
See note 1
- b. The enterprises: names;
See note 2
- c. The Works Councils: the Works Councils established for the enterprises referred to above;
- d. The Central Works Council (COR): the Central Works Council established for the enterprises referred to above; *or, if applicable:* +
The Group Works Council (GOR): the Group Works Council for the enterprises referred to above;
- e. The Act: the Works Councils Act (WOR);
- f. The [Joint Sectoral Committee](#): name of authorised Joint Sectoral Committee.
See note 3

Explanatory notes

Note 1 The entrepreneur

For the definition of 'the entrepreneur' and the information to be filled in under (a), attention is drawn to the notes to Article 1 of the Model Rules of Procedure for Works Councils. See Section 2, Article 1 ([notes 1](#) and [3](#)).

A COR is established for all Works Councils under an entrepreneur ([WOR Article 33 \(1\)](#)); while a GOR is established for a number of enterprises under an entrepreneur ([WOR Article 33 \(2\)](#)). Under the terms of [WOR Article 33 \(3\)](#), it is also possible to set up a COR or a GOR for all or a number of Works Councils falling under ‘a group of entrepreneurs’ [*concern*]; these entrepreneurs appoint one of their number to act as the responsible entrepreneur on their behalf in relation to the COR or GOR for the purposes of the WOR. This entrepreneur’s name should be filled in under (a). The names of the entrepreneurs he represents must also be given. The definition of ‘the entrepreneur’ might then read as follows: ‘B.V., also acting on behalf of B.V. and B.V.’

Note 2 The enterprise

For the definition of ‘the enterprise’ and the information to be filled in under (b), attention is drawn to the notes to Article 1 of the Model Rules of Procedure for Works Councils in Section 2 ([note 2](#)). Under (b), the names of all the enterprises that have a Works Council and that fall under the COR or GOR should be listed. Furthermore, the names of any enterprises which, although they may not have or need to have a Works Council, are nevertheless involved with the COR or GOR under the terms of [WOR Article 34 \(4\)](#), should also be given. See also Article 2, [note 2](#) below.

In the case of CORs or GORs of major enterprises or groups of enterprises [*concerns*] consisting of many enterprises and/or group companies, it may be inconvenient to have to amend Article 1 of the Rules of Procedure every time there is a change in the composition or number of enterprises which fall under the COR or GOR. Instead, a list of the enterprises involved may be included as an appendix to the Rules of Procedure.

Note 3: The Joint Sectoral Committee

The name of the authorised Joint Sectoral Committee is to be filled in under (f). A list of Joint Sectoral Committees is given in [Appendix F](#) to these Model Rules of Procedure for Works Councils.

4.2.2 Composition and term of office

Paragraphs 1 to 6 of [WOR Article 34](#) specify how a COR should be set up; in [WOR Article 34 \(7\)](#), these provisions (with the exception of [paragraph 2](#)) are declared to apply *mutatis mutandis* to the GOR. Below are two versions of Article 2 of the Rules of Procedure: the first is for the COR, the second for the GOR.

Article 2 for the COR

1. The COR shall comprise members.

The COR shall elect a chairman and one or more deputy chairmen from its number.
See note 1

NB: Depending on the composition of the COR, one or more of the provisions under 2a, 2b, 2c and 3 will be included. The provision under 3 can also be included.

2. a. The Works Council of [name of enterprise] shall elect from its number members of the COR.
The Works Council of [name of enterprise] shall elect from its number members of the COR.
The Works Council of [name of enterprise] etc.
See notes 2 and 4
- b. The GOR of [name of enterprise] shall elect from its number members of the COR.
The GOR of [name of enterprise] etc.
See notes 2 and 4
- c. The Works Council of [name of enterprise] shall elect from its number members of the COR.
The GOR of [name of enterprise] shall elect from its number members of the COR.
The Works Council of [name of enterprise] shall elect from its number members of the COR.
The GOR of [name of enterprise] etc.
See notes 2 and 4
3. The persons working in [name of enterprise] shall elect from their number..... members of the COR.
With regard to the system of nominating and electing these members, the Rules of Procedure for the Works Council of [name of enterprise] shall apply *mutatis mutandis*, provided that, for the enterprise concerned, the duties of the Works Council as set out in these Rules of Procedure for electing the COR are implemented by the COR.
See note 3

Article 2 for the GOR

1. The GOR shall comprise members.
The GOR shall elect a chairman and one or more deputy chairmen from its number.
See note 1
2. The Works Council of [name of enterprise] shall elect from its number members of the GOR.
The Works Council of [name of enterprise] shall elect from its number members of the GOR.
The Works Council of [name of enterprise] etc.
See notes 2 and 4
NB: *Depending on the composition of the GOR, the provision in paragraph 3 will be included, if relevant.*
3. The persons working in [name of enterprise] shall elect from their number..... members of the GOR. With regard to the system of nominating and electing these members, the Rules of Procedure for the Works Council of [name of enterprise] shall apply *mutatis mutandis*, provided that, for the enterprise concerned, the duties of the Works Council as set out in these Rules of Procedure for electing the GOR are implemented by the GOR.
See note 3

Explanatory notes

Note 1 Number of members

The WOR does not specify the number of members of the COR or GOR. [WOR Article 6](#), which recommends a certain number of Works Council members, does not apply to the COR or GOR: these bodies are essentially free to appoint as many members as they wish.. However, neither the COR nor the GOR should be allowed to become too large, or they will be unable to function properly.

The Act requires that each Works Council that is subjacent to a COR must be represented on the COR by at least one of its members. In large companies with many Works Councils, this means that the COR will be very large. This problem can partly be solved by establishing a number of GORs to operate between the COR and the Works Councils: the COR's Rules of Procedure may prescribe that its membership should consist of individuals elected by and from the GORs rather than by and from the subjacent Works Councils (see [WOR Article 34 \(2\)](#)). Alternatively, in the case of a large number of subjacent Works Councils with widely divergent numbers of members, a system of 'weighted votes' may be the solution. In that case, the Rules of Procedure will assign a different voting 'weight' to the various votes, proportional to the number of employees they represent, to be stipulated in the Rules of Procedure.

The Rules of Procedure may stipulate that for each COR member elected by a subjacent Works Council or GOR, and for each GOR member elected by a subjacent Works Council, a deputy may be elected ([WOR Article 34 \(1\) and \(2\) \(final sentence\)](#)). Unlike the Works Council, the COR and the GOR do not require the permission of the entrepreneur to appoint deputies.

Note 2 Composition

A COR or GOR may be composed in several ways. The manner of its composition is to be indicated precisely in the Rules of Procedure. The general rule is that the COR or GOR shall consist only of members elected from the subjacent Works Councils ([WOR Article 34 \(1\) and \(7\)](#)).

There are two exceptions to this rule. The first is that a COR may consist wholly or partly of members elected by subjacent GORs ([WOR Article 34 \(2\)](#); see also the previous note). The second exception is that a COR or GOR may also comprise representatives of enterprises carried on by the same entrepreneur or the same group of companies that do not have a Works Council ([WOR Article 34 \(4\)](#)). This second exception is explained in more detail in note 3.

In applying the general rule, the COR or GOR is elected exclusively by and from the members of the subjacent Works Councils: the Rules of Procedure must state how many members of the COR and GOR, respectively, are elected by each Works Council. For the COR, this is specified in paragraph 2a in Article 2; for the GOR, this is specified in paragraph 2 in Article 2. In this provision, all Works Councils are to be stated, as well as the number of members for the COR or GOR, respectively, to be elected by each of them.

Notwithstanding this general rule, if one or more GORs have been established, the COR may lay down in its Rules of Procedure that it shall consist wholly or in part of

members elected by one or more of those GORs. If the Rules of Procedure stipulate that the COR shall consist wholly of members elected by one or more of those GORs, variant (2b) of paragraph (2) must be used for Article 2 of the COR's Rules of Procedure.

Alternatively, the COR may also introduce a 'mixed system', in which the COR consists partly of members elected by one or more GORs and partly of members elected by one or more Works Councils. These Works Councils may then not also be represented by one of the GORs that also elects members, as this would give the Works Councils double (i.e., direct and indirect) voting rights. A mixed system may be desirable when not all the Works Councils fall under a GOR.

If a mixed system is chosen, this must be clearly indicated in the COR's Rules of Procedure: Article 2 must then include a paragraph (2) that consists of phrases partly derived from variant (2a) and partly derived from variant (2b). For the purpose of clarity, one example of such a provision has been included in variant (2c) of Article 2 of these Model Rules of Procedure for CORs.

Note 3 Optional deviation from the general rule

Also notwithstanding the general rule, both the COR and the GOR Rules of Procedure may stipulate that representatives of one or more enterprises with no obligation to establish a Works Council may still have a seat on the COR or GOR. For this purpose, model paragraph (3) of Article 2 of the Rules of Procedure for CORs and GORs, respectively, may be used.

Note 4 Representation of as many groups as possible

Under the terms of [WOR Article 34 \(3\) and \(7\)](#), both the COR and GOR Rules of Procedure must ensure that the various groups of persons working in the subjacent enterprises are represented as fully as possible on the COR or GOR, respectively. The words 'as fully as possible' indicate that the specific circumstances of the individual enterprises must be considered. The number (and maximum number) of COR or GOR members that is desirable in view of the proper functioning of these councils may limit the possibility of taking each distinct group into consideration.

In the above models for Article 2 of the COR and GOR Rules of Procedure, the requirement stipulated in [WOR Article 34 \(3\)](#) has not yet been taken into account.

This requirement may be met for the COR by making Article 2a for the COR read as follows:

2. a. *The Works Council of [name of enterprise] shall elect from its number
 members of the COR.
 Of these members, shall be from group, from group
 and from group etc.*

The requirement of [WOR Article 34 \(3\)](#) may be met for the GOR by making Article 2 (2) for the GOR read as follows:

2. *The Works Council of [name of enterprise] shall elect from its number members of the GOR.
Of these members, shall be from group, from group and from group etc.*

In these model provisions, first the name of the relevant enterprise is to be filled in, then how many members of the COR or GOR are to be elected from this enterprise, and then how many are to come from the various groups. These groups must also be described in more detail (e.g., departments or categories of employees).

Article 3

The election of members of the COR/GOR shall take place no later than one month before the start of the COR's/GOR's next term of office.

Article 4

The members of the COR/GOR shall all resign simultaneously after years.
See note 1

Explanatory notes

Note 1 Termination of membership

[WOR Article 34 \(5\) and \(7\)](#) stipulates that, when a member of the COR or GOR ceases to be a member of the subjacent Works Council that elected him or her, that person's membership of the COR or GOR automatically ends. As a result of this provision, frequent interim changes in the composition of the COR or GOR could interfere with its proper functioning. It is therefore necessary to coordinate the terms of office of the Works Councils, GORs and COR in such a way that the respective elections to the COR or GOR take place as soon as possible after the start of the terms of office of the subjacent councils. A system of scheduled resignation from the COR or GOR (see also Section 2.2, [note 1](#) to Article 3) could complicate this situation even further, and is therefore not recommended.

4.2.3 Filing interim vacancies

Article 5

1. In the event of an interim vacancy on the COR/GOR, a successor shall be appointed by the Works Council/GOR that elected the member whose seat has become vacant.

2. Paragraph 1 shall not apply if the person whose seat has become vacant has a deputy: that deputy shall then fill the vacancy.
See note 1
3. If the interim vacancy is for a representative of an enterprise for which no Works Council has been established, the vacancy shall be filled in accordance with the Rules of Procedure specified in Article 2 (3).
See note 2

Explanatory notes

Note 1 Deputy members of the COR or GOR

If deputies have been elected for members of the COR or GOR, paragraph (2) must be included in Article 5. The Works Council or GOR concerned must then appoint a new deputy.

Note 2 Representatives

If use has been made of the possibility of including in the COR or GOR representatives of an enterprise without its own Works Council by adding the model provision for Article 2 (3) to the COR or GOR Rules of Procedure, the model for Article 5 (3) must also be used.

4.2.4 Procedure and secretariat of the COR and the GOR¹

Organising meetings of a COR or GOR

Article 6

1. The COR or GOR shall meet:
 - a. at the request of the chairman;
 - b. at the reasoned request of at least two members.
2. The chairman shall determine the time and location of the meeting.
A meeting at the request of members of the COR or GOR shall be convened within fourteen days of the chairman's receipt of their request.
3. The meeting shall be convened by the secretary, by means of written or electronic notification to the members of the COR or GOR. Except in the case of urgent matters, the members shall be notified at least seven days before the meeting.
4. A meeting can only be held if the majority of the members of the COR or the GOR as referred to in Article 2 (1) of the Rules of Procedure are present.
5. In the absence of both the chairman and the deputy chairman, the COR or GOR shall select a chairman from among the members present to chair the meeting.

¹ In Sections 4.2.4 and 4.2.5, the corresponding model provisions of Sections 2.8 and 2.9 of the Model Rules of Procedure for the Works Council are included for the COR and the GOR. For further details, please refer to the explanation in Sections 2.8 and 2.9.

The secretary of the COR or GOR

Article 7

1. The COR or GOR shall appoint a secretary.
2. The secretary shall be responsible for convening the COR or GOR meetings, drawing up the agenda and the minutes of the meetings, and managing the COR's or GOR's correspondence.

Agenda

Article 8

1. In consultation with the chairman, the secretary shall draw up an agenda for each meeting. Members of the COR or GOR may request the secretary to include an item in the agenda.
2. The secretary shall make the agenda known to the members of the COR or GOR and the entrepreneur, and shall, insofar as possible, ensure that persons working in the enterprise can peruse the agenda. Except in the event of urgent matters, notification of the agenda will take place no later than seven days before the meeting of the COR or GOR.

Decisions in the COR or GOR

Article 9

1. The COR or GOR shall reach its decisions based on a common majority of votes. Abstentions are not included in the calculation of the number of the votes cast.
2. Votes on business matters shall be cast by show of hands, and votes for persons by ballot.
3. If, in a vote on an appointment, none of the candidates gains a common majority after a first ballot, a second ballot shall be held between the two candidates who received the most votes in the first ballot. After the second ballot, the person with the most votes shall be elected. In the event of a tied vote, the outcome shall be decided by lot.
4. In the event of a tied vote for a decision to be taken by the COR or GOR that does not concern the appointment of a person, the proposal shall be discussed again during the next meeting. If, on that occasion, the votes are again equal, the proposal shall be deemed to have been rejected.

Minutes of the COR or GOR meeting

Article 10

1. As soon as possible after every COR or GOR meeting, the secretary shall draw up the minutes and send a draft to the members, who shall have the opportunity to lodge a (preferably reasoned) objection to the contents of the minutes. The COR or GOR shall decide on the content of the minutes and shall approve them at its next meeting.

2. The secretary shall make the minutes known to the persons working in the enterprise and to the entrepreneur. The minutes to be made public to the persons working in the enterprise shall not contain any details that must remain confidential in accordance with Article 20 of the Act.

The annual report of the COR or GOR

Article 11

1. Every year, before, the secretary shall draw up a report of the activities of the COR or GOR and its committees over the previous year. This annual report must be approved by the COR or GOR.
2. After approval from the COR or GOR, the secretary shall make the final annual report known to the entrepreneur and the persons working in the enterprise.

4.2.5 Final provisions

Amendments and additions to the COR/GOR Rules of Procedure

Article 12

1. These Rules of Procedure may be amended or supplemented by order of the COR or GOR.


See note 1

2. Before any amendment or addition is laid down in the Rules of Procedure, the COR or GOR shall give the entrepreneur the opportunity to express his views.
3. Any meeting at which a decision is taken to amend or supplement the Rules of Procedure must be attended by at least two-thirds of the members of the COR or GOR as referred to in Article 2 (1) of the Rules of Procedure.
4. Any such decision shall require a majority of at least two-thirds of the votes cast. Where this provision is concerned, abstentions are not included in the calculation of the number of the votes cast.
5. The COR or GOR shall make any amendments or new provisions known to the persons working in the enterprise and shall provide the entrepreneur with a copy of any such amendments or provisions.

Explanatory notes

Note 1 Amendments and additions to the Rules of Procedure

It will not be possible for all the changes made to the Rules of Procedure to take effect immediately. The incumbent COR or GOR, for example, cannot alter the current term of office.



Model
resolutions
for setting up
committees

5 Model resolutions for setting up committees

5.1 Introduction

Under the terms of [WOR Article 15](#), the Works Council may set up committees that it may reasonably be deemed to require for the performance of its duties. Under the terms of [WOR Article 15 \(1\)](#), the Works Council must inform the entrepreneur in writing of its intention to set up a committee before doing so, providing details of the committee's tasks, composition, powers and procedures. If the entrepreneur objects to this, it is advisable for the entrepreneur and the Works Council to consult on the matter. If the entrepreneur and the Works Council fail to reach agreement, then, perhaps after mediation or advice on the part of the Joint Sectoral Committee, the Works Council may request the subdistrict court judge [*kantonrechter*] to decide on the matter. Immediately after the committee has been set up, the entrepreneur should naturally be informed of this fact (e.g., by being sent a copy of the resolution to set up a committee), and told about its tasks and particularly its composition.

[WOR Article 17](#) regarding the provisions and facilities to be made available by the entrepreneur is also relevant to the Works Council's committees (see [Appendix B](#) for more information). Furthermore, the protection against victimisation and dismissal ([WOR Article 21](#) and [Articles 7:670 and 7:670a of the Civil Code](#)) also applies to committee members. [WOR Article 13](#) (the possibility of barring a member from participating in the activities of the Works Council) also applies to committee members ([WOR Article 15 \(5\)](#)).

A committee is set up by means of a separate resolution that sets out the committee's tasks, composition, powers and procedures. Such resolutions are not incorporated into the Works Council's Rules of Procedure, but are usually added to the Works Council's Rules of Procedure as an appendix.

[WOR Article 15](#) differentiates between various types of committees:

- Standing committees ([WOR Article 15 \(2\)](#));
- Divisional committees ([WOR Article 15 \(3\)](#)); and
- Preparatory committees ([WOR Article 15 \(4\)](#)).

The three types of committees are explained in detail in Sections 5.2, 5.3 and 5.4 below.

5.2 Standing committees

5.2.1 General remarks

Standing committees can be set up by the Works Council to deal with particular matters, for example an HSW (health, safety and welfare) committee [*VGW-commissie*], the electoral committee and the agenda committee.

The majority of members of the standing committees must be members of the Works Council, but other employees may also be members of such committees, for example because of their expertise or involvement in the matter concerned. A standing committee may also be made up solely of members of the Works Council, for example the agenda committee. Standing committees are generally set up for an indefinite period. If their members are appointed by the Works Council, their appointment is for the term of office of the Works Council.

The Works Council may endow a standing committee with some or all of its rights and powers regarding matters assigned by it to that committee; this must be specified in the inaugurating resolution. This applies not only to its rights and powers pursuant to the WOR but also pursuant to other legislation, for example the Working Conditions Act [*Arbeidsomstandighedenwet*].

There is an exception to this option of transferring powers, namely the power to conduct legal proceedings, which may not be transferred. It is only the Works Council itself that, under [WOR Article 26](#), can submit a request to the Enterprise Division [*Ondernemingskamer*] of the Amsterdam Court of Appeal or that, under [WOR Article 36](#), can petition the subdistrict court judge for a ruling. If a committee considers that legal proceedings are necessary, it can indicate such to the Works Council, which will then decide on the matter.

Where the standing committee's procedures are concerned, the inaugurating resolution can in many cases refer to the relevant provisions in the Works Council's Rules of Procedure.

5.2.2 Model resolution for setting up a standing committee

Pursuant to [Article 15, paragraphs \(1\) and \(2\) of the WOR](#), the Works Council adopts the following resolution to set up a standing committee:

Article 1

1. There shall be a standing committee (for)
See note 1
2. The committee shall comprise members, of whom at least shall be members of the Works Council.
See note 2
3. The committee shall deal with matters regarding, on behalf of the Works Council, and shall advise the Works Council on those matters, if so requested or of its own accord.
See note 3

Or, as a first alternative to paragraph (3) (see note 4):

3. The committee shall deal with matters regarding, on behalf of the Works Council, and, with regard to these matters, shall exercise the powers pertaining to the Works Council, with due observance of the following conditions:
 - a.
 - b. etc.

Or, as a second alternative to paragraph (3) (see note 4):

3. The committee shall deal with matters regarding, on behalf of the Works Council, and, with regard to these matters, shall exercise the powers pertaining to the Works Council as listed below, with due observance of the conditions specified in relation thereto:
 - a.
 - b. etc.

Explanatory notes

Note 1 Name of committee

The name of the committee must be included in Article 1 (1), e.g., ‘Electoral Committee’, ‘Standing Committee for Safety, Health and Welfare’, or ‘Standing Committee for Equal Treatment’.

Note 2 Composition

With regard to the composition of a standing committee, [WOR Article 15 \(2\)](#) states that the majority of the members of that committee must also be members of the Works Council. In addition, other ‘persons working in the enterprise’ (see in this regard Part 1, [Section 1.2.2](#)) may also have a seat on the standing committee. The number of members of the Works Council to be filled in in paragraph (2) is therefore at least half plus one of the total number of members to be elected to the standing committee. If a Works Council member resigns, his or her membership of a standing committee is also automatically terminated.

If, as a result of this, the majority of the standing committee no longer consists of Works Council members, the Works Council must take measures, the most obvious being the appointment of another Works Council member to the standing committee. A standing committee may also consist entirely of Works Council members; in that case, the part of the sentence in paragraph (2) beginning with ‘of whom’ may be replaced by ‘who are all members of the Works Council’.

Note 3 Matters to be dealt with by the standing committee

The matters that the standing committee in question will deal with on behalf of the Works Council must be listed in paragraph (3). This allows the Works Council to indicate, for example, that a Standing Committee for Safety, Health and Welfare not only deals with

matters of safety, health and welfare in connection with work, but also matters concerning the enterprise's care for the environment. See also [WOR Articles 25 1\(1\) and 28 \(4\)](#).

Note 4: Extension of powers

If the Works Council wishes to endow a standing committee with powers that extend beyond simply advising the Works Council, one of the alternative provisions for paragraph (3) must be used. Under the terms of [WOR Article 15 \(2\)](#), a Works Council, in its resolution to set up a standing committee, may transfer to the committee – in whole or in part – its rights and powers pertaining to the matters to be dealt with by the committee (see note 3). For instance, it may transfer the right to discuss these matters with the director of the enterprise, without transferring the Works Council's powers of endorsement under the terms of [WOR Article 27](#). It may also attach conditions to wholly or partly transferred powers. It is therefore important that, in its resolution to set up a the standing committee, the Works Council clearly delineates the committee's tasks, and includes a clear description of the powers transferred to the standing committee and any conditions attached to this transfer of powers. It should be noted that the full transfer of powers means that the standing committee can exercise the powers of the Works Council exclusively and independently (delegation).

Article 2

1. The committee members shall be appointed by the Works Council for a period starting at the time of appointment and ending when the term of office of [half] the Works Council members ends.

See note 1

2. The committee shall appoint a chairman and a secretary from its number.
3. The committee shall meet at the request of the chairman or at the request of members of the committee. A meeting can only be convened if at least of the committee members are present.

See note 2

4. Articles 17 (2) and (3), 18 (2), 19, 20 and 21 (1) of the Rules of Procedure for the Works Council shall apply *mutatis mutandis*.

See note 3

5. The members of the committee may resign from the committee at any time. They shall notify the chairman of the Works Council, the chairman of the committee, and the entrepreneur of their resignation in writing.

See note 4

Explanatory notes

Note 1 Term of office

In view of their duties and powers, standing committees should be linked to the term of office of the members of the Works Council; if this term of office ends, then the term of office of the standing committee should also end.

The word 'half' placed in square brackets in Article 2 (1) must be included if a system of scheduled resignation applies. The effect of the provision is that the

whole committee resigns with the scheduled resignation of half of the Works Council members, which is every two years. The new Works Council will meet to pass a resolution regarding the new composition of the committee, and may, of course, decide to reappoint members, with due observance of the principle that at least half of the committee members must be members of the Works Council. See also Section 2, [Article 3, note 1](#).

Note 2: Quorum

The number of committee members necessary to request a meeting, and the number of members who must be present for a meeting of the committee to be legally valid, respectively, are to be filled in here. Instead of citing precise numbers of members, the provision may stipulate, for instance, that the committee shall meet at the request of a quarter of its members and that at least half of the members must be present for a meeting to be legally valid.

Note 3: Reference to Model Rules of Procedure

The articles mentioned are from the Model Rules of Procedure for Works Councils (see Section 2). See also the notes to those articles.

Note 4: Termination of Works Council membership also means termination of membership of standing committee

As pointed out above, a committee member's membership of one or more standing committees ends when that member's membership of the Works Council ends.

5.3 Divisional committees

5.3.1 General remarks

Divisional committees can only be set up for parts of the enterprise. A divisional committee consists of employees working in the part of the enterprise concerned; in addition, the committee may also contain one or more members of the Works Council. Like the standing committees, divisional committees are generally set up for an indefinite period.

The inaugurating resolution must name the part of the enterprise for which the committee is being set up, and must specify the committee's composition and procedures.

In the inaugurating resolution, the Works Council can authorise the divisional committee to consult with the person in charge of the part of the enterprise concerned. In that case the following articles of the WOR apply *mutatis mutandis*: Articles [17](#), [22](#), [23](#), [23a, paragraphs 2, 4 and 6](#), [23b](#), [24 \(1\)](#), [25](#), [27](#), [28](#), [31a, paragraphs 1, 6 and 7](#), [31b](#) and [31c](#).

In that case, the powers of the Works Council pertaining to matters concerning the part of the enterprise in question are transferred to the committee, unless the Works Council decides to deal with certain matters itself. In the latter case, the divisional committee can no longer consult with the person in charge of that part of the enterprise. A divisional committee cannot exercise the powers of the Works Council pursuant to Articles [26](#) and [36](#) of the WOR (conducting legal proceedings).

5.3.2 Model resolution for setting up a divisional committee

Pursuant to [Article 15, paragraphs \(1\) and \(3\) of the Works Councils Act](#), the Works Council adopts the following resolution to set up a divisional committee.

Article 1

1. There shall be a committee for the [name of division] of the enterprise.
See note 1
2. The committee shall comprise members, who shall be elected from those persons working in the said part of the enterprise who are eligible to stand for election by those persons working in the said part of the enterprise who are eligible to vote. Articles 4 to 16 of the Rules of Procedure for the Works Council shall apply *mutatis mutandis*. The entrepreneur and persons working in the said part of the enterprise shall be informed about the composition of the divisional committee.
3. On behalf of the Works Council, the committee shall deal with the matters regarding the part of the enterprise for which it has been appointed, and shall advise the Works Council if so requested or of its own accord.

Or, as an alternative to paragraph 2:

2. The committee shall comprise members, who work in the said part of the enterprise. The members shall be appointed by the Works Council. The entrepreneur and the persons working in the said part of the enterprise shall be informed about the composition of the divisional committee.
See note 2

Or, as an alternative to paragraph 3:

3. On behalf of the Works Council, the committee shall deal with the matters regarding the part of the enterprise for which it has been appointed, and shall be authorised to consult with the person in charge of the said part of the enterprise.
See note 3

Explanatory notes

Note 1 The part of the enterprise

Paragraph (1) indicates for which part of the enterprise the divisional committee is to be set up: the name or another designation of the part suffices here.

Note 2 Composition

The divisional committee consists of persons working in the part of the enterprise concerned; it can also include one or more members of the Works Council. The divisional committee may be chosen from the persons working in the part of the enterprise in either of these ways:

- The members shall be elected by the employees of the part of the enterprise in question who are eligible to vote (first variant of paragraph (2)); or
- The members shall be appointed by the Works Council (second variant of paragraph (2)).

Both options assume that the divisional committee consists solely of persons working in the part of the enterprise concerned. Of course, one or more of these persons may also be members of the Works Council.

Under the terms of the first variant, members of the Works Council who work in the part of the enterprise concerned may be elected to the divisional committee. Under the terms of the second variant, the Works Council may appoint one or more Works Council members who work in the part of the enterprise concerned to the divisional committee. The participation of Works Council members in the divisional committee clearly links the committee to the Works Council and may promote effective collaboration. Members of a divisional committee who are also Works Council members do not need to work in the part of the enterprise concerned. These Works Council members then sit on the divisional committee specifically because of their Works Council membership. If that is the intention, it must be indicated separately in Article 2 of the inaugurating resolution. In the first variant of paragraph (2), the first sentence may then read as follows:

'The committee shall comprise members. Of this total number, member(s) shall be appointed by the Works Council; the other members shall be elected by the persons working in the said part of the enterprise who are entitled to vote from among the persons working in the said part of the enterprise who are entitled to stand for election.'

In the second variant of paragraph (2), the first two sentences may then read as follows:

'The committee shall comprise members, to be appointed by the Works Council. Of these, at least persons shall be members of the Works Council; the other members shall be persons working in the said part of the enterprise.'

Note 3 Powers

There are also two variants for paragraph (3). In the first, the divisional committee is empowered only to advise the Works Council. However, a divisional committee may also be granted the power to consult with the person in charge of the part of the enterprise concerned. In that case, the powers of the Works Council are transferred to the committee, unless the Works Council decides to deal with a particular matter itself ([WOR Article 15 \(3\)](#)). This 'unless' provision means that in a particular case the Works Council can itself exercise the powers that it has transferred (to the exclusion of the divisional committee) (mandate).

If use is made of the option to transfer the power to consult, the second variant must be used in paragraph (3).

Article 2

1. The committee members shall be appointed by the Works Council for a period starting at the time of the appointment and ending when the term of office of [half] of the Works Council members ends.

See note 1

2. The committee shall appoint a chairman and a secretary from its number.

3. The committee shall meet at the request of the chairman or at the request of members of the committee. A meeting may only be convened if at least of the committee members are present.
4. Articles 17, paragraphs 2 and 3, 18 (2), 19, 20 and 21 (1) of the Rules of Procedure for the Works Council shall apply *mutatis mutandis*.
5. The members of the committee may resign from the committee at any time. They shall notify the chairman of the Works Council, the chairman of the committee, and the entrepreneur of their resignation in writing.

Explanatory notes

Note 1: Reference to explanatory notes

See Section 5.2.2, [notes 1 to 4](#) in the explanatory notes to Article 2.

5.4 Preparatory committees

5.4.1 General remarks

Pursuant to [WOR Article 15 \(4\)](#), the Works Council can set up committees to prepare matters that it is to deal with (for example to prepare advice on the appointment of a director). Unlike the standing committees and the divisional committees, preparatory committees are temporary. A preparatory committee may only be set up for a specific period of time stipulated in the inaugurating resolution. The tasks, composition and procedures of a preparatory committee must be set out in the inaugurating resolution. At least one member of the Works Council must sit on the committee; in addition, other persons working in the enterprise may also be appointed. The preparatory committee may be assigned only preparatory tasks: the Works Council cannot transfer any rights or powers to the preparatory committee.

5.4.2 Model inaugural resolution for preparatory committee

Pursuant to [WOR Article 15, paragraphs \(1\) and \(4\)](#), the Works Council adopts the following resolution to set up a preparatory committee::

Article 1

1. There shall be a committee for the preparation of
See note 1
2. The committee shall comprise..... members, of whom shall be members of the Works Council. The members shall be appointed by the Works Council.
See note 2

Explanatory notes

Note 1 Matter to be prepared

This provision should list the matter or matters that the committee is being set up to prepare on behalf of the Works Council. The preparatory committee can only be assigned a preparatory task.

Note 2 Composition

The members of the preparatory committee are appointed by the Works Council itself. The committee must in any case include one or more Works Council members, but other persons working in the enterprise may also be members. The model provision given above assumes that this option is used. If the committee consists exclusively of Works Council members, paragraph (2) may read as follows:

'The committee comprises members, who are appointed by and from the Works Council.'

Article 2

1. The Committee shall be appointed for a period of
See note 1
2. The committee shall appoint a chairman and a secretary from its number.
3. The committee shall meet at the request of the chairman or at the request of members of the committee. A meeting may only be convened if at least of the committee members are present.
4. Articles 17, paragraphs 2 and 3, 18 (2), 19, 20 and 21 (1) of the Rules of Procedure for the Works Council shall apply *mutatis mutandis*.
5. The members of the committee may resign from the committee at any time. They shall notify the chairman of the Works Council, the chairman of the committee, and the entrepreneur of their resignation in writing.
See note 2


Explanatory notes

Note 1: Establishment for a particular period of time

The committee can only be set up for a particular period of time as specified by the Works Council in the inaugurating resolution. This period may be stipulated in units of time (weeks, months or years), but may also be linked to a particular project. In that case, paragraph (1) must state that the committee will be set up for the duration of the project, which is then briefly described.

Note 2: Reference to explanatory notes

The text for paragraphs (2), (3), (4) and (5) of the resolution to set up a preparatory committee is derived from the models for the standing and divisional committees, respectively; these are given in [Section 5.2.2](#) and [Section 5.3.2](#). See also [notes 2, 3 and 4](#) to Article 2 of the model resolution for setting up a standing committee (Section 5.2.2).



Appendices

APPENDIX A:

Tasks and powers of the Works Council, COR, or GOR pursuant to other legislation and regulations

1 General

The tasks and powers of the Works Council (including also the COR and the GOR) are not stipulated exclusively and exhaustively in the Works Councils Act (WOR); various other acts and regulations also allocate tasks and powers to the Works Council. This appendix is based on the existing provisions but is not exhaustive. The following summary does not take account of parliamentary bills that were being considered by the Dutch parliament when this publication appeared.

2 Tasks and powers in other legislation

A Legislation

a Equal treatment legislation

Where non-discrimination and equal treatment is concerned, [WOR Article 28](#) provides that the Works Council has a promotional task, namely to promote compliance with the provisions regarding terms of employment (paragraph (1)) and to guard against discrimination (paragraph (3)). Where work is concerned, the principle of non-discrimination/equal treatment has been worked out in a number of statutory provisions, some of which will be discussed briefly below.

General Equal Treatment Act [*Algemene Wet Gelijke Behandeling*] (AWGB)

The [AWGB](#) prohibits discrimination on the basis of religion, convictions about life, political affiliation, race, gender, nationality, sexual orientation or marital status. The prohibition of discrimination applies, *inter alia*, to recruitment and selection for a position, the commencement or termination of a position, terms of employment, promotion, and training and education.

Equal Treatment of Men and Women Act [*Wet Gelijke Behandeling van mannen en vrouwen*] (WGBm/v)

The [WGBm/v](#) and [Article 7:646 of the Civil Code \(BW\)](#) prohibit employers from discriminating between men and women as regards recruitment and selection for a position, the commencement of employment, terms of employment, promotion, provision of instruction, or termination of employment.

Discrimination according to hours worked

The Act Amending the Dutch Civil Code and Central and Local Government Personnel Act in connection with the prohibition on distinction between employees according to hours worked [*Wijzigingswet Burgerlijk Wetboek en Ambtenarenwet i.v.m. verbod tot maken van onderscheid tussen werknemers*

naar arbeidsduur] ([WAO](#)) prohibits direct and indirect discrimination according to hours worked. That prohibition is also laid down in [Article 7:648 of the Civil Code](#). The statutory provision is intended to ensure that employers treat full-timers and part-timers equally, including in the area of training (paid for by the employer), pay, overtime supplements, allowances for work at inconvenient hours, and specific monetary benefits.

Discrimination according to whether or not employment contract is temporary

[Article 7:649 \(1\) of the Civil Code](#) prohibits employers from making a distinction in terms of employment between employees with a permanent or temporary employment contract. The legislation also applies to on-call workers, seasonal (auxiliary) workers, holiday workers, home workers, and trainees if they are working on the basis of an employment contract. The legislation does not apply to employment agency workers, however.

Equal Treatment of Disabled and Chronically Ill Persons Act [*Wet gelijke behandeling op grond van handicap of chronische ziekte*] ([WGBh/cz](#))

Under the terms of the [WGBh/cz](#), an employer is not permitted to discriminate because of an employee being disabled or chronically ill, unless:

- there are risks to the health and safety of the person concerned and to others;
- the distinction is based on the existence of special facilities required by disabled persons so that they can function in society;
- the discrimination is positive discrimination, necessary in order to eliminate a disadvantage.

The prohibition on discrimination also means that the employer is obliged to make alterations so that people with a disability or chronic illness can carry out their work. The employer can only refuse to make an alteration of this kind if doing so would be disproportionately onerous for the employer. In assessing whether that is the case, account is taken of such factors as feasibility, the cost of the alteration, the size of the organisation, and the financial capacity of the organisation.

Equal Treatment in Employment (Age Discrimination Act) [*Wet gelijke behandeling op grond van leeftijd bij arbeid*] ([WGBL](#))

The [WGBL](#) concerns discrimination on the grounds of age (direct discrimination) or of other features or behaviours that result in discrimination on grounds of age (indirect discrimination). There are a few exceptions to the prohibition of discrimination related to age, for example dismissal because the employee has reached retirement age.

Options open to Works Council in the case of unequal treatment

The employer is obliged to ensure that there is a good ‘working environment’. It is always advisable for the Works Council and the entrepreneur to consult in the event of (supposed) unequal treatment.

The WOR provides a number of ways for the Works Council to carry out its task pursuant to [WOR Article 28 \(1\) and \(3\)](#). In addition to the information provided by the entrepreneur of his own accord, the Works Council can request additional information ([WOR Article 31 and 31b](#)). These matters can lead to internal

consultation between the Works Council and the entrepreneur and/or a confidential adviser [*vertrouwenspersoon*]. Many enterprises have an internal complaints procedure. If the entrepreneur wishes to institute or amend or withdraw such a complaints procedure, he must gain the consent of the Works Council ([WOR Article 27 \(1j\)](#)).

If internal consultation does not lead to a solution and a Works Council considers that there is distinction within the enterprise that is prohibited by law, it can request the Netherlands Institute for Human Rights [*College voor de Rechten van de Mens*] ([CRM](#); formerly the Equal Treatment Commission) to initiate an investigation. Submitting a request to the CRM is a simple matter (writing a letter) and free of charge.

b Working Conditions Act [*Arbeidsomstandighedenwet, 'Arbowet'*] and Working Conditions Decree [*Arbobesluit*]

Working conditions and the WOR

In addition to the health and safety legislation dealt with below, the WOR also assigns the Works Council a number of powers regarding working conditions. Pursuant to [WOR Article 28 \(1\)](#), for example, the Works Council has a promotional task and right of endorsement regarding regulations in the area of working conditions, absence due to illness, and reintegration policy ([WOR Article 27 \(1d\)](#)).

Working Conditions Act and Working Conditions Decree

The Working Conditions Act (WCA) comprises provisions to promote the best possible policy on working conditions in the enterprise. The Act requires employers and employees to work together in implementing that policy ([WCA Article 12 \(1\)](#)). The Working Conditions Act and the Working Conditions Decree (WCD) also directly assign powers to the Works Council regarding working conditions. The employer has the task, for example, to consult with the Works Council on matters affecting the policy on working conditions and on the implementation of that policy ([WCA Article 12 \(2\)](#)), with information being exchanged actively.

All employers are obliged to carry out a Risk Inventory and Evaluation (RI&E), setting out the risks to which the employees are exposed in the course of their work. The RI&E also includes an action plan, specifying what measures the employer will put in place with a view to the risks, and within what period that will be done. The Working Conditions Decree includes specific provisions for specific risks.

In complying with its obligations pursuant to the Working Conditions Act, every employer must call in the assistance of:

- one or more expert employees, often referred to as occupational health and safety officers [*preventiemedewerkers*]; besides being involved in drawing up the RI&E, they also advise the Works Council on measures taken or proposed by the employer to tackle risks (WCA Article 13); the occupational health and safety officers will provide the employer with a copy of their advice to the Works Council;
- certified experts who have specific tasks regarding protection and prevention, or an occupational health and safety service (WCA Articles 14 and 14a); the certified experts or occupational health and safety service will provide the Works Council with a copy of their advice to the employer.

For most sectors, enforcement of the regulations in the field of working conditions is assigned to the Inspectorate SZW [*Inspectie SZW*] (formerly the Labour Inspectorate; WCA Article 24).

The Inspectorate SZW carries out inspection visits to monitor and promote compliance with the occupational health and safety legislation. The Works Council can meet with the representatives of the Inspectorate SZW during their visit to the enterprise without other persons being present. The Works Council can also accompany the inspectors during their visit to the enterprise, unless the Inspectorate objects to this as preventing it from carrying out its duties effectively. The Inspectorate SZW draws up a report on all industrial accidents, copies of which it provides to the employer and to the Works Council (WCA Article 24 (5)).

Under the terms of the Working Conditions Decree, the Works Council's powers include the following:

- The Works Council must always be involved via consultation in drawing up or amending an internal emergency plan (WCD Article 2.5c).
- The Works Council is entitled to inspect the recorded results of occupational health examinations for workers exposed to hazardous substances (WCD Article 4.10c (3)) and records of workers' exposure to asbestos (WCD Article 4.53 (4)).
- The Works Council can express an opinion on the method of assessing and measuring noise; for that purpose it receives the results of assessments and measurements (WCD Article 6.7 (5) and (7)). The Works Council can express its opinion on measures to prevent noise, including hearing protectors for individuals (WCD Article 6.8 (8)).

The Health and Safety Catalogue

The basic principle of the Working Conditions Act is that government will focus on imposing target requirements. The social partners have been given the opportunity to make their own detailed arrangements on how the goals set by the legislature should be achieved. They can do so by using a Health and Safety Catalogue [*arbocatalogus*]. This sets out the various methods and solutions (means) agreed on by representatives of employers and employees in a given industry or sector, or at national level, with a view to complying with the target requirements in the working conditions legislation, and thus reducing workplace risks. Drawing up a Health and Safety Catalogue is not obligatory, either at sector or industry level. If a Health and Safety Catalogue applies to an enterprise, the employer must consult with the Works Council to determine what measures in the catalogue will be implemented. The Health and Safety Act does not include provisions regarding the Health and Safety Catalogue. More information about the Health and Safety Catalogue can be found at <http://www.arboportaal.nl>.

c Working Hours Act [*Arbeidstijdenwet*] and Working Hours Decree [*Arbeidstijdenbesluit*]

Pursuant to [WOR Article 28 \(1\)](#), the Works Council also has a promotional task as regards compliance with working hours and rest periods. The Works Council has a right of endorsement regarding the rules on working hours and rest period ([WOR Article 27 \(1b\)](#)) drawn up by the entrepreneur, except if those rules are incorporated into a collective labour agreement (CAO) ([WOR Article 27 \(3\)](#)).

Working Hours Act (ATW)

The ATW lays down rules regarding employees' working hours and rest periods. It sets a maximum within which arrangements on these matters can be made, partly derived from EU legislation. Many of the arrangements regarding these matters are laid down in a 'collective arrangement' [*collectieve regeling*], i.e. a collective labour agreement or rules set by a public authority. The ATW provides that a written agreement between the employer and the body representing the employees is equivalent to such a collective arrangement ([ATW Article 1:4 \(1\)](#)). It is important to know that arrangements made at CAO level take precedence over arrangements made with the Works Council ([ATW Article 1:4 \(2\)](#)).

The employer must give the Works Council the opportunity:

- to accompany representatives of supervisory authorities (the Inspectorate SZW) during their visits, unless these consider that that would prevent them from carrying out their duties effectively (for example interviewing witnesses) ([Article 6:3 \(a\) ATW](#));
- to talk to the representatives of the supervisory authorities without other persons being present ([Article 6:3 \(b\) ATW](#)).

Working Hours Decree (ATB)

The ATB comprises exceptions and additions to the ATW. There are general exceptions which apply to certain employees and certain situations, but also supplementary rules for the healthcare, mining and transport sectors, and a number of other sectors. Most of these exceptions are only applicable by means of a collective arrangement.

d Collective Redundancy Notification Act [*Wet melding collectief ontslag*] (WMCO)

An employer that intends collectively dismissing 20 or more employees in a single field of work, at one or more times within a period of three months, must notify the relevant employees' organisations and the Employed Persons Insurance Administration Agency (UWV) in advance. In the notification to the UWV, the employer must state, *inter alia*, whether the enterprise has a Works Council and whether the intention to dismiss is related to a decision within the meaning of [WOR Article 25 \(1\)](#); if the latter is the case, he must also state when the Works Council has or will be consulted regarding the decision concerned ([WMCO Article 4 \(4\)](#)). The UWV will not deal with the application

for a dismissal permit until the Works Council or the employees' organisations have been consulted ([WMCO Article 6 \(2\)](#)).

e Working Hours Amendment Act [*Wet aanpassing arbeidsduur*] (WAA)

Under this act, the employee can request the employer (if the employer has at least 10 employees) to reduce or increase his working hours if he has been employed for at least one year on the date when the change is to take place. The basic principle of the Act is that the employer will agree to the employee's request as regards its extent and when it will take effect, unless there are important reasons for not doing so from the point of view of the company's business or the services it provides. As regards the right to an increase in working hours, the statutory rules can be deviated from, on condition that this is provided for in a CAO or is regulated by a competent administrative body or, in the absence thereof, by agreement with the Works Council ([WAA Article 2 \(11\) and \(13\)](#)). The WAA is to be replaced by the new Flexible Work Act [*Wet flexibel werken*], which will give employees more options for working at favourable times and for telework.

f Work and Care Act [*Wet arbeid en zorg*] (WAZO)

This act regulates a number of situations in which the employee can request the employer to grant him or her leave, namely the birth of a child, emergencies or other brief absence, short-term or long-term care leave, and parental leave. The act specifies the conditions for requesting leave and for granting or refusing the request. Those conditions differ depending on the kind of leave concerned. They relate, for example, to the manner of requesting leave, income provision, and the grounds on which the employer may dismiss the request. The WAZO also specifies, for each kind of leave, whether and subject to what conditions it is permissible to deviate from the statutory provisions. When deviation is in fact permissible, it may be provided for in a CAO or the regulations of a competent administrative body or, in the absence thereof, by agreement with the Works Council.

g Right to instigate an inquiry ([Articles 2:344 – 2:359 of the Civil Code](#))

On request, the Enterprise Division of the Amsterdam Court of Appeal may order an inquiry [*enquête*] if there appear to be well-founded reasons for questioning the propriety of the policy pursued by an enterprise, namely a public limited company [*naamloze vennootschap N.V.*], private limited company [*besloten vennootschap met beperkte aansprakelijkheid B.V.*], a cooperative [*coöperatie*], or a mutual insurance company [*onderlinge waarborgmaatschappij*]. Associations [*verenigingen*] and non-profit organisations [*stichtingen*] with more than fifty employees are also subject to the right to instigate an inquiry. A request for an investigation can be submitted by the shareholders, the members of the legal entities referred to, and an employees' organisation which has members in the enterprise. An employees' organisation that intends to submit a request must give the relevant Works Council(s) the opportunity, in advance, to provide written comments on that intention ([Article 2:349 \(2\) of the Civil Code](#)).

The act does not empower the Works Council to submit a request for an investigation. However, the company's articles of association [*statuten*] or an agreement with the entrepreneur may assign that power to other parties, including the Works Council or employees ([Article 2:346\(e\) of the Civil Code](#)). See also [Appendix B](#).

The Enterprise Division will only grant the request for an investigation if there are well-founded reasons for questioning the propriety of the policy pursued by the enterprise.

h Supervision of large enterprises ('Structure Regime')

Certain 'large' enterprises (see below for the criteria) are subject to the 'Structure Regime' [*structuurregeling*]. This applies to large public and private limited companies (NVs and BVs) ([Articles 2:152-164a and 2: 262-274a of the Civil Code](#)) and also, in amended form, to large cooperatives and mutual insurance companies ([Article 2:63a et seq. of the Civil Code](#)). The following remarks deal only with NVs and BVs.

The Structure Regime stipulates that these large enterprises must have a system of internal supervision. The managements of an N.V. and a B.V. are subject to different systems of internal supervision. If supervision is by a separate Supervisory Board [*Raad van Commissarissen*] (RvC), then management and supervision are dealt with by two separate bodies. This is referred to as the 'dualistic management system' [*dualistische bestuursstelsel*] or the 'two-tier model'.

In addition to this two-tier model, there is now also (since 2013) an alternative system in which executive and (non-executive) supervisory directors form part of a single body, 'the board' [*bestuur*] (the 'one-tier model'). NVs and BVs are free to select one or other of these two systems. If the company intends amending its articles of association so as to change its two-tier model into a one-tier model, then, under [WOR Article 25](#), the Works Council has the right to render advice on this change of powers in the company, provided that the change will affect the enterprise.

The Supervisory Board (when reference is made below to the Supervisory Board or the supervisory directors, that includes the non-executive directors in the one-tier model) supervises the policies of the board and the general course of affairs within the legal entity and its business. For the exercise of its supervisory duties, the Supervisory Board of a Structure Regime enterprise has a number of statutory powers, for example the power of approval of important management decisions.

The law considers an enterprise to be 'large' and to be subject to the Structure Regime if it meets the following three criteria:

1. according to the balance sheet (with explanatory notes) its issued share capital plus reserves amounts to at least EUR 16,000,000;
2. a Works Council has been established for the enterprise itself or for a subsidiary pursuant to a statutory obligation;
3. a total of at least one hundred employees usually work for the company and its subsidiaries (taken together) in the Netherlands.

The Supervisory Board must draw up a profile of its size and composition; this must be discussed at the general meeting of shareholders (GMS) and with the Works Council, both when it is first drawn up and when any amendments are made

(Articles [2:158](#) and [2:268 \(3\)](#) of the Civil Code). Since 2013, larger NVs and BVs have been required to aim for a balanced distribution of seats on the Supervisory Board (as well as on the Board of Management); a balanced distribution means that at least 30% of the seats are held by women and 30% by men.

Members of the Supervisory Board of an enterprise subject to the Structure Regime are appointed by the GMS, pursuant to a proposal by the Supervisory Board. The GMS and the Works Council may recommend persons for appointment as members of the Supervisory Board; this is referred to as the ‘ordinary right of recommendation’ [*gewone aanbevelingsrecht*]. The Supervisory Board is not obliged to comply with this recommendation.

In the case of an NV or BV as referred to here, the Works Council has an ‘enhanced right of recommendation’ [*versterkt aanbevelingsrecht*] (or ‘special right of nomination’ [*bijzonder voordrachtsrecht*]) for a maximum of one third of the number of Supervisory Board members. This means that the Supervisory Board must include the persons recommended by the Works Council in its recommendation to the GMS. The Supervisory Board can only refuse a candidate on strict grounds that are listed exhaustively in the legislation, namely:

- the candidate is unsuitable to carry out the duties of a member of the Supervisory Board; or
- the Supervisory Board will not be properly composed if the candidate is appointed.

In such cases, the Supervisory Board and the Works Council must consult about the matter. If they fail to reach agreement, the Supervisory Board can request the Enterprise Division of the Amsterdam Court of Appeal to declare that its objection to the candidate nominated by the Works Council is well founded.

Pursuant to Articles [2:158](#) and [2:268 \(12\)](#) of the Civil Code, it is possible to deviate from the above appointment rules in the enterprise’s articles of association. This requires that the Supervisory Board, the GMS and the Works Council reach agreement on an alternative arrangement.

The Civil Code includes provisions for when several Works Councils are involved in the nomination of Supervisory Board members. If a COR has been established, it is only the COR that exercises the powers regarding the appointment procedure.

Ultimately, it is the GMS that decides on the appointment of a candidate proposed by the Supervisory Board, whether or not pursuant to the Works Council’s ‘enhanced’ recommendation. The GMS can reject the proposal by an absolute majority (i.e. at least half plus one).

Besides its powers regarding the appointment of Supervisory Board members of large NVs and BVs, the Works Council also has powers in relation to their dismissal (Articles [2:161](#) and [2:271](#) of the Civil Code).

i Right to information about policy on remuneration of board of NV

Under **WOR Article 31d**, the entrepreneur is obliged to provide the Works Council with written information, at least once a year, about the level and

content of the terms of employment and arrangements for each of the various groups of persons working in the enterprise. The same obligation applies with respect to the board and the supervisory body. WOR Article 31e comprises a number of exceptions to this provision.

The Dutch Civil Code (Article 2:135) requires NVs to have a policy in place regarding the remuneration of the board. That policy is adopted by the GMS and must cover a number of matters specified in the Civil Code (Article 2:135 (1)). If the company has established a Works Council pursuant to statutory provisions, the proposal to adopt the remuneration policy can only be submitted to the GMS after the Works Council has been given an opportunity, in good time, to adopt a position regarding it (Article 2:135 (2) of the Civil Code).

j Right of the Works Council to address the general meeting of shareholders (GMS)

The Works Council of an NV has the right to address meetings of shareholders regarding the following matters:

- approval of important board decisions within the meaning of Article 2:107a (3) of the Civil Code;
- adoption of the policy on the remuneration of directors (Article 2:135 (2) of the Civil Code);
- the appointment, suspension and dismissal of directors and Supervisory Board members in an NV which is not subject to the Structure Regime (Articles 2:134a and 2:144a of the Civil Code, respectively);
- the appointment of Supervisory Board members pursuant to a proposal by the Supervisory Board in an NV which is not subject to the Structure Regime (Article 2:158 (4) of the Civil Code).

k Medical Examinations Act [*Wet op de medische keuringen*] (Wmk)

Under the Wmk, Works Councils can submit a complaint to the Complaints Committee for Pre-Appointment Medical Examinations (CKA). The CKA ensures that the rules regarding pre-appointment medical examinations are complied with. It has a number of ways of doing so, one of the most important of which is to consider complaints about such examinations. More information about the CKA and its work can be found at <http://www.aanstellingskeuringen.nl/>.

l European Works Councils Act [*Wet op de Europese Ondernemingsraden*] (WEOR)

The purpose of this Act is to ensure that employees of groups of enterprises with enterprises in several Member States are properly informed and consulted about transnational matters. This Community-scale employee participation serves to complement employee participation at national level, which in the Netherlands is based on the WOR. The WEOR applies to and imposes obligations on the central management of a Community-scale enterprise and on the parent enterprise of a Community-scale group with its place of business or headquarters in the Netherlands. A Community-scale group of enterprises is deemed to exist if a parent enterprise controls a number of subsidiaries. A Community-scale enterprise is an enterprise that meets the following conditions during a period of two years:

- in at least two Member States it has an average of 150 employees per Member State; and also
 - it employs at least 1000 employees in the Member States taken together.
- The [WEOR](#) provides for Dutch employee representation bodies to be involved, *inter alia*, in the composition of the obligatory European Works Council (EWC).

The WEOR was amended in 2011 on the basis of EU legislation. Among the important changes are:

- the definitions of information and consultation have been tightened up;
- there is greater clarity as to when a European Works Council is competent;
- information and consultation have been coordinated at national and European level.

m Pensions legislation

The powers of Works Councils regarding pensions as a term or condition of employment are regulated by a number of different laws and codes of conduct. These include not only [WOR Article 27](#) (right of endorsement) but also the Pensions Act [*Pensioenwet*] and the Code for Directly Insured Schemes [*Code Rechtstreeks verzekerde regelingen*] (the Code). The WOR and the Code will not be discussed below.

The Netherlands has a number of different types of pension schemes: industry pension funds, company pension funds, insured schemes, the Premium Pension Institution (PPI), and multi-enterprise funds.

The Works Council mainly plays a role (potentially) as regards company pension funds. Depending on the administrative structure of the pension fund, it may also play a role – in addition to the right of endorsement arising from the WOR – under [Article 99 et seq. of the Pensions Act](#), in the composition of the pension fund’s board and/or stakeholders body.

Under [Article 23 \(4\) of the Pensions Act](#), the Works Council also has a right of endorsement if the entrepreneur intends having a pension agreement administered by a pension institution in a different Member State, a PPI, or a pension institution that has been granted an exemption within the meaning of [Article 212 \(2\) of the Pensions Act](#).

The Works Council has a right, each quarter, to know whether the enterprise has arrears of premium or has fallen below the threshold for the minimum required capital ([Article 28 \(2\) of the Pensions Act](#)).

There have been rapid changes in the rules in recent years, and further extensive alterations to the pensions system are also impending. Early in 2015, for example, a parliamentary bill was introduced giving the Works Council greater influence on pension schemes, including extending its right of endorsement to all proposed decisions to establish, amend or withdraw rules regarding the pension agreement.

B Other regulations relevant to the Works Council or COR

a The SER Code of Conduct for Mergers

The SER Code of Conduct for Mergers [*SER-Fusiegedragsregels*] is intended to protect the interests of employees when a merger of enterprises is being prepared and implemented.

Article 1 of the Code of Conduct for Mergers specifies, *inter alia*, what is to be understood by the terms ‘enterprise’ and ‘merger’. If the merger involves at least one Netherlands-based enterprise with fifty or more employees, the Code must be complied with as regards the associations of employees that it specifies.

The core of the Code is the procedure for notification, information and consultation with the employees’ organisations (Article 4 of the Code of Conduct for Mergers). Before agreement on a merger is reached, the parties involved must inform the employees’ associations that a merger is being prepared. The employees’ associations must then be given the opportunity to present their opinion on the proposed merger from the perspective of the employees’ interests. All this must be done in such a way that the opinion of the employees’ associations can have a significant influence on whether or not the merger takes place, and on the relevant arrangements.

Under Article 4 (7) of the Code of Conduct for Mergers, the parties to the merger are obliged to enable the relevant Works Councils to become aware of the opinion of the employees’ associations. This will allow the Works Councils to take that opinion into account when issuing their advice within the meaning of WOR Article 25.

b Public Takeover Bids Financial Supervision Act Decree

This decree, which applies only to listed companies, provides that as soon as it has published its offer document, the bidder must also inform its Works Council or its employees. The company that is the target of the bid must also inform its Works Council or employees. In fact the WOR and the Code of Conduct for Mergers require the employee representatives to already be informed at an earlier stage.

c Netherlands Corporate Governance Code

In 2003, the Tabaksblat Committee drew up the Netherlands Corporate Governance Code (often referred to as the ‘Tabaksblat Code’ or simply ‘the Code’). This was revised in December 2008 by the ‘Monitoring Committee’. The revised version replaced the 2003 version; it can be consulted at www.commissiecorporategovernance.nl.

The Code is intended for listed public companies. It contains principles and best practice provisions that regulate relations between the Board of Management, the Supervisory Board and the shareholders (i.e. the general meeting of shareholders). When the Code is being applied, the interests of the employees must always be taken into account.

The Code does not provide rules for the relationship between the company and its employees or their representatives but it does include best practice provisions regarding contacts between the Supervisory Board and the Works Council or COR.

Best practice provision III.1.1:

‘The division of duties within the Supervisory Board and the procedure of the Supervisory Board shall be laid down in a set of regulations. The Supervisory Board shall include in the regulations a paragraph dealing with its relations with the Board of Management, the general meeting of shareholders and the Works Council (or Central Works Council where relevant). The regulations shall be posted on the company’s website.’

Best practice provision III.4.1 g:

‘The chairman of the Supervisory Board shall see to it that the Supervisory Board has proper contact with the Board of Management and the Works Council or Central Works Council.’

Under certain circumstances, listed companies are permitted to deviate from the principles and best practice provisions of the Code. The company then states each year in its annual report how it has applied the principles and best practice provisions of the code in the past financial year and, if relevant, indicates with reasons why it has not applied a certain provision. This is referred to as the ‘comply or explain’ principle.

Non-application of one or more provisions of the Code may lead the Works Council or the COR to bring that up for discussion, for example at the twice-yearly consultation meeting ([WOR Article 24](#)), at which members of the company’s Board of Management and Supervisory Board are also present.

APPENDIX B

Agreements between the entrepreneur and the Works Council

1 General

Agreements between the entrepreneur and the Works Council (including the GOR and COR) may be made in several ways. They may be made orally (e.g., as a form of oral pledge from the entrepreneur which the Works Council accepts) or in writing (e.g., in the form of a promise or agreement laid down in the minutes of a consultation meeting, or in the form of a written agreement drawn up specifically for that purpose), with or without the designation of ‘agreement’ or ‘covenant’. Whatever the form chosen, it is recommended that all agreements should be laid down in writing.

The WOR contains a specific provision ([WOR Article 32 \(2\)](#)) relating to written agreements between the entrepreneur and the Works Council (often referred to as a ‘works agreement’ [*ondernemingsovereenkomst*]), designed to give such agreements a clear legal status. This means, among other things, that the arrangements regarding disputes in [WOR Article 36](#) will apply, which means that the Works Council (but also the entrepreneur) may request the subdistrict court judge [*kantonrechter*] to rule that the other party must comply with the works agreement. Before (or instead of) bringing a dispute about compliance with the works agreement before the subdistrict court judge, a party can first submit it to the Joint Sectoral Committee for mediation. Parties may also decide to agree on their own procedure for mediation, arbitration or a binding opinion, and to put that in writing in a works agreement.

2 What can be agreed in a works agreement?

[WOR Article 32 \(2\)](#) stipulates that in a written agreement between the entrepreneur and the Works Council,

- the entrepreneur may confer more authority on the Works Council than is conferred under the WOR (see (d) below);
- the entrepreneur and the Works Council may make agreements on how the provisions of the WOR and rules relating to them are to be implemented, in terms of the practical details relating to participation within the specific enterprise.

Besides agreements on extending the authority of the Works Council and the way in which the WOR is to be implemented, the entrepreneur and the Works Council can also make other agreements. For example, they could agree that one or more Works Council members should be exempted from their normal duties in order to carry out work for the Works Council. The entrepreneur and the Works Council may also agree on written procedures relating to the involvement of the Works Council in decision-making. See, for instance, [WOR Article 24 \(1\)](#), which describes agreements about when and how the Works Council is to be involved in decision-making, such as when the Works Council has the right to render advice, or when it has the right of endorsement. The Platform for Innovative Employee

Participation [*Platform voor Innovatieve Medezeggenschap*] (PIM) has drawn up a ‘Model Agreement on General Consultation Procedure’ [*Voorbeeldovereenkomst Algemene Gang Van Zaken Overleg*], with explanatory notes (see below under (a)). This can be consulted and downloaded from [this website](#). It is fair to assume that such agreements also fall within the scope of [WOR Article 32](#). For other examples of agreements, see also [Appendix C](#) on consultation between the Works Council and its electorate and [Appendix E](#) on the legal status of members of the Works Council.

3 Requirements that a works agreement should meet

[WOR Article 32 \(2\)](#) requires that agreements be laid down in writing. This written agreement may take various forms, from a formal covenant to a simple record in the minutes of a meeting.

A works agreement may extend the powers granted to the Works Council under the Act. By virtue of [WOR Article 32](#), agreements between the entrepreneur and the Works Council may not diminish the legal rights and authorities of the Works Council, but should serve to provide further specification or additions, tailored to the circumstances of the enterprise in question.

A works agreement will remain in force for an indefinite period of time, unless the Works Council and the entrepreneur agree otherwise (e.g., by specifying a specific period of validity). The validity of a works agreement made for an indefinite period of time is unaffected by the termination of the Works Council’s period of office or changes in the management (‘the director’) of the enterprise. A newly elected Works Council continues to be bound to the agreement, as does a new management. A works agreement entered into for an indefinite period of time can be terminated only by one of the parties giving notice of termination or by mutual agreement. The relevant case law has ruled that such notification of termination must be accompanied by well-founded arguments and must observe a reasonable period of notice.

As explained above (Section 1.3), the legal powers of the Works Council do not belong in the Works Council’s Rules of Procedure. The same applies to any extra powers that the works agreement confers on the Works Council and to other agreements made between the entrepreneur and the Works Council. The Works Council’s Rules of Procedure do not constitute an agreement with the entrepreneur. The Rules are binding only on the Works Council, not on the entrepreneur. The Rules of Procedure should therefore not incorporate any agreements made between the Works Council and the entrepreneur; for instance, about the number of hours available for consultation and the number of days available for training and development ([WOR Article 18](#)), or about the Works Council’s budget, if any ([WOR Article 22](#)). It is recommended that the text of any important agreements (whether laid down in a works agreement or not) be added as an appendix to the Rules of Procedure, as a reminder to the Works Council that they exist. This is another good reason for putting agreements between the entrepreneur and the Works Council in writing wherever possible.

Examples of matters that may be laid down in a works agreement are given below. It is important to note that, under the terms of the WOR, agreement between the entrepreneur and the Works Council on some of these matters is mandatory: these are indicated by a bullet point (•), together with a reference to the appropriate article that requires the entrepreneur and the Works Council to make such agreements.

a Agreements relating to the consultation meeting

Voluntary agreements

WOR Article 23a (2) allows the entrepreneur and the Works Council to agree to deviate from the legal requirement that the consultation meeting must be chaired alternately by the director or his deputy and by the chairman or deputy chairman of the Works Council. The Act allows the entrepreneur and the Works Council to make any other arrangement about the chairmanship of the consultation meeting, as they see fit. They may opt to have the meeting chaired by one of those taking part in the consultation meeting or by a third party. The entrepreneur and the Works Council are also free to make any agreement they wish about the term of office of the chairman.

In principle, the secretary of the Works Council acts as secretary to the consultation meeting. However, the entrepreneur and the Works Council are free to choose any other party to perform this duty.

Mandatory agreements

- WOR Article 23a (5) stipulates that the entrepreneur and the Works Council must make agreements about the procedures to be followed at the consultation meeting and about the time at which and the manner in which the agenda and minutes of the meeting are to be made available to the persons working in the enterprise.
- WOR Article 24 (1) stipulates that the general operation of the enterprise must be discussed in a consultation meeting at least twice a year. Under the terms of this article, the entrepreneur must announce decisions he is considering that relate to the matters listed in WOR articles 25 (advisory powers) and 27 (right of endorsement). The Act stipulates that agreements must be made about when and how the Works Council will be involved in the decision-making process.

b Agreements about mutual consultation and about training and development

Mandatory agreements

- WOR Article 18 (1) stipulates that the entrepreneur and the Works Council must jointly determine the number of hours (during working hours and with full pay) allocated to members of the Works Council and of Works Council committees for mutual consultation and consultation with other persons and for the purpose of acquainting themselves with the working conditions in the enterprise. WOR Article 18 (3) provides that the number of hours may not be fewer than 60 a year.
- WOR Article 18 (2) stipulates that the entrepreneur and the Works Council must also jointly determine the number of days made available to members of the Works Council and members of a standing or divisional committee for training and development, of sufficient quality, during working hours and with full pay.

The number of days referred to in [WOR Article 18 \(3\)](#) may not be fewer than:

- Three days a year for any member of a standing or divisional committee who is not also a member of the Works Council;
- Five days a year for any member of the Works Council who is not also a member of a standing or divisional committee;
- Eight days a year for any member of the Works Council who is also a member of a standing or divisional committee.

The number of hours for consultation and discussion and days for training and development are the minimum. When fixing the number of days and hours, the Act gives as a guideline that they should be enough for members of the Works Council and its committees to be reasonably able to carry out their work.

c Agreements about an annual budget for the Works Council and its committees

Voluntary agreements

Under the terms of [WOR Article 22 \(1\)](#), costs which may reasonably be deemed to be necessary for the Works Council and its committees to perform their duties are to be borne by the entrepreneur. [WOR Article 22 \(4\)](#) stipulates that the entrepreneur and the Works Council may jointly determine a fixed sum to cover the costs that the Works Council and its committees may incur in any one year, and which the Works Council may spend at its own discretion. However, the costs incurred in relation to those activities stipulated in [WOR Articles 17](#) and [18 \(1\)](#) (the provision of facilities by the entrepreneur, and paid interruption of work for the benefit of Works Council activities) may not be included in the budget. These costs will be borne by the entrepreneur.

The Works Council should bear in mind that the entrepreneur is not obliged to bear any costs that exceed the budget, unless the entrepreneur has agreed otherwise. If the entrepreneur refuses to bear such costs, the Works Council may not lodge an appeal with the subdistrict court judge.

Questions and disputes regarding the reasonableness or interpretation of the application of the statutory right to training and development (extent, payment etc.) can be submitted to the Joint Sectoral Committee. The Joint Sectoral Committees for the market sectors have set up a special body [*scholingskamer*] to deal with these matters, with fast-track proceedings. More information about the Joint Sectoral Committees is given in [Appendix F](#).

d Agreements about extension of powers of the Works Council

Voluntary agreements

Agreements about extensions to the Works Council's powers may be needed when the Works Council is granted powers that go beyond the advisory powers granted to it by the WOR. These additional powers may include, in particular, extended advisory powers and/or the right of endorsement, i.e. the granting of advisory power and/or the right of endorsement with respect to one or more matters other than those already mentioned in the WOR. If, in the works agreement, additional advisory powers have been granted to the Works Council other than those referred to in [WOR Article 25](#), then the right of appeal provided in [WOR Article 26](#) applies. If, in the works agreement, a different (additional) right of endorsement has been granted to

the Works Council, other than that provided by [WOR Article 27](#), then Article 27 (4) to (6) of the WOR applies (request to the subdistrict court).

[WOR Article 32](#) regarding the works agreement also applies to the Central and Group Works Councils (COR and GOR), on the understanding that those councils deal solely with matters of common interest to all or the majority of the enterprises for which they have been established, and regardless of whether the individual Works Councils have powers concerning those matters.

For the advisory power and/or the right of endorsement granted by virtue of [WOR Article 32 \(2\)](#), no advice or endorsement on the part of the Works Council is required to the extent that the enterprise has already settled the matter in a collective labour agreement or a public-law arrangement ([WOR Article 32 \(3\)](#)).

e Agreements about the implementation of the WOR

Voluntary agreements

Agreements about the implementation of the WOR must be made in writing, whatever the form (see ‘General’ at the beginning of this appendix). Agreements that have been made on the basis of [WOR Article 32](#) fall under the rules of arbitration stipulated in [WOR Article 36](#).

Agreements about the implementation of the WOR may include an agreement about the use of facilities. Under the terms of [WOR Article 17 \(1\)](#), the entrepreneur is obliged to allow the Works Council and Works Council committees (and if the entrepreneur has made a secretary available to the Works Council, also this secretary) to use facilities the entrepreneur has at his or her disposal insofar as these may reasonably be deemed necessary for them to perform their duties. The entrepreneur and the Works Council may make agreements on the use of facilities in order to define the legal rights of the Works Council, the committees and the secretary (e.g., with regard to the use of meeting rooms, recording the minutes, photocopiers, telephone, fax, e-mail, internal computer networks, access to the internet, etc.).

Agreements between the entrepreneur and the Works Council about consultation between the Works Council and its electorate are also considered to be agreements about the implementation of the WOR, and [WOR Article 17](#) in particular. See also [Appendix C](#).

Other examples of agreements about how the WOR is to be implemented include agreements about how information is to be provided to the Works Council. [WOR Articles 31 to 31d](#) contains several rules and regulations relating to this provision of information. The entrepreneur and the Works Council may jointly agree that information will be provided beyond that which is required of the entrepreneur under the terms of the Act. For example, in enterprises with 100 employees or more, the entrepreneur is obliged to inform the Works Council about pay differentials ([WOR Articles 31d](#) and [31e](#)). However, this does not prevent an entrepreneur and the Works Council in an enterprise with fewer than 100 employees from making a written

agreement that the entrepreneur will voluntarily apply WOR articles [31d](#) and [31e](#), or parts thereof.

f Agreements between the Works Council and the Supervisory Board in ‘large enterprises’

Appendix A explains the Structure Regime (Section 2 A (h)), the legal provisions that, *inter alia*, give the Works Council a say in the appointment of members of the Supervisory Board in ‘large enterprises’. Members of the Supervisory Board are appointed by the general shareholders’ meeting (of public and private limited companies) or by the membership meeting (of cooperative associations and mutual insurance associations), acting on the recommendation of the Supervisory Board. The Works Council is entitled to recommend persons for appointment to the Supervisory Board. In public and private limited companies, the Works Council has an enhanced right of recommendation of up to a maximum of one third of the membership of the Supervisory Board.

It is customary for the Supervisory Board to draw up a profile of its size and composition, taking into account the nature of the enterprise, its activities, the desired expertise and background of Supervisory Board members, and a balanced number of men and women (see also Appendix A [\(2\)](#) (A) (h)). This profile is discussed with shareholders or members as appropriate and with the Works Council, when first adopted and also in the event of any amendments. Large public and private enterprises are legally obliged to draw up a profile and discuss it with the Works Council. Although they are not legally bound to do so, it would be advisable and good practice for companies that are subject to the Structure Regime but not subject to this legal obligation to nonetheless draw up a profile and discuss it with the Works Council.

The profile is one of the more obvious matters on which the Supervisory Board and the Works Council can reach agreement. In reacting to the profile, the Works Council can express its wishes and opinions about what it sees as the most appropriate size and composition for the Supervisory Board. The Supervisory Board may take this into account when further developing the profile, and also subsequently when sounding out possible candidates and preparing a nomination for the post. The Works Council may further exert influence through its right of recommendation (‘enhanced’ or otherwise).

Another possible point upon which the Works Council and the Supervisory Board may wish to make agreements is the Council’s exercising of its right of recommendation. In practice, the Works Council and the Supervisory Board will often discuss informally the best composition and any desired changes or additions to the Supervisory Board. In this way, although no formal recommendation is made, the Works Council may nonetheless exert influence on the composition of the Supervisory Board. The Works Council and the Supervisory Board may also agree on procedures as to how the right of recommendation (‘enhanced’ or otherwise) may be exercised.

The Works Council, the Supervisory Board and the general meeting of shareholders (of public and private companies) or members meeting (of cooperative associations and mutual insurance associations) may also make

agreements on other matters relating to the appointments procedure (e.g., the precise procedure to be followed). This option to deviate from the legally determined appointments procedure gives the bodies involved an opportunity to make an arrangement that is tailored to the specific circumstances of their enterprise. In the case of public limited companies (NVs) and private limited companies (BVs), the law stipulates that if a deviation from the statutory appointments procedure is laid down in the articles of association, the prior consent of the Supervisory Board and the Works Council is required.

This option to deviate from the statutory procedure expressly applies only to the regulation of appointments. Other deviations from the Structure Regime are not allowed, such as the question as to whether the Structure Regime (i.e., mandatory Supervisory Board with legal powers) should apply or not. The legislation contains binding provisions in this regard.

g Contacts between Works Council, Board of Management and Supervisory Board

WOR Article 24 (1) stipulates that the general operation of the enterprise shall be discussed at least twice a year in consultation meetings. At these meetings, agreements will be made about when and how the Works Council will be involved in the decision-making process in matters that require its advice or endorsement. For these consultation meetings, WOR Article 24 (2) contains a provision for the presence of Supervisory Board members or members of the Board of Management who run the business. The Works Council may decide in particular cases that the obligation to attend can be waived.

It may be wise to make agreements concerning the presence of Supervisory Board members and members of the Board of Management at the above-mentioned twice-yearly consultation meetings. Agreements can also be made about the presence of Supervisory Board members and members of the Board of Management at consultation meetings other than those mentioned in WOR Article 24.

More generally, it may be advisable for the Works Council, the Board of Management and the Supervisory Board of the legal entity conducting the business to make shared agreements on how employee participation in the enterprise will be implemented in practice. Such agreements may relate to contacts between the Works Council, the Board of Management and the Supervisory Board and ways of improving them. In this context, see also Appendix A (2) (B) (c), about the Netherlands Corporate Governance Code.

Appendix C:

Agreements between the Works Council and the entrepreneur about consultation between the Works Council and its electorate

1 Introduction

A well-functioning Works Council is important for the enterprise as a whole. A key aspect of the functioning of a Works Council is the form and content of its relationship with the persons it represents. Without proper communication with those employees, a Works Council cannot properly represent them. A Works Council will only be able to generate support for its decisions if it maintains good contact with the persons it represents. This contributes to the quality of the decision-making process in the enterprise.

The foundation for a close relationship between the Works Council and the employees it represents is laid at the elections. It is important that these result in a representative Works Council, i.e. a Works Council to which the various groups of persons represented (different levels of positions, men and women, age groups, etc.) can relate and which they feel truly represents them. [WOR Article 9 \(4\)](#) stipulates that, if necessary, the Works Council must include provisions in its Rules of Procedure to ensure that the various groups of employees are represented in the Works Council as fully as possible.

The Works Council is a representative body elected by the employees and therefore may not act independently of the wishes and interests of its electorate. The Works Council is expected to represent the interests of the employees, for the purposes of promoting the proper functioning of the enterprise with regard to all its objectives. Nevertheless, Works Council members bear individual responsibility for their actions and determine their standpoint independently after considering all the interests involved.

The WOR contains a number of provisions that regulate in varying degrees the Works Council's consultations with its electorate. Some of these provisions apply primarily to the Works Council, while others apply primarily to the entrepreneur.

The provisions that apply primarily to the Works Council are designed to ensure that employees are kept well informed about and involved in the activities of the Works Council. For instance, the Works Council must specify in its Rules of Procedure the way in which the Works Council's meeting agendas and minutes and its annual report are to be made known to the persons working in the enterprise ([WOR Article 14](#)). One way for the Works Council to involve employees in its activities is to set up a standing committee, a divisional committee or a (temporary) preparatory committee. Within certain limits, employees who are not members of

the Works Council may also sit on these committees ([WOR Article 15](#); see also [Section 5](#)).

The provisions that apply primarily to the entrepreneur are designed to enable the Works Council and its committees to perform their duties. For instance, the entrepreneur must allow the Works Council and its committees to use any facilities that are at the entrepreneur's disposal and which they may reasonably be deemed to require in order to perform their duties ([WOR Article 17 \(1\)](#)). The Works Council and its committees may also make use of these facilities for the purpose of consulting their electorate. Furthermore, the entrepreneur must offer the members of the Works Council and its committees an opportunity (during working hours and on full pay) for mutual consultation and consultation with 'other persons' on matters relating to the performance of their duties and for the purpose of acquainting themselves with working conditions in the enterprise. These consultations must take place during a specific number of hours per year (at least 60), to be determined jointly by the entrepreneur and the Works Council ([WOR Article 18](#); see also [Appendix E](#)). [WOR Article 18 \(1\)](#) also contains a provision allowing Works Council members to 'consult with other persons', i.e. their electorate. However, this provision applies only to members of the Works Council and its committees, not to the persons consulted (the electorate).

The SER's Committee to Promote Employee Participation [*Commissie Bevordering Medezeggenschap*] (CBM) has produced a number of informative documents regarding the topics of contact between the Works Council and its electorate ([OR en achterbancontact](#)) and vacancies and the composition of the Works Council ([Vacatures en samenstelling OR](#)). These are available as interactive webpages on the [SER website](#). These webpages also include practical tips, suggestions and references to relevant literature.

2 General provision regarding consultation of the electorate

A more general provision regarding the consultation by the Works Council and its committees of its electorate (i.e., the persons working in the enterprise) is given in [the second sentence of WOR Article 17 \(1\)](#):

'The entrepreneur shall enable the Works Council and its committees to consult all persons working in the enterprise and shall enable the said persons to participate in such consultation, insofar as may reasonably be deemed to be necessary for the members of the Works Council and its committees to perform their duties.'

This provision specifies only the basic arrangement: the details need to be filled in at company level in consultation between the entrepreneur and the Works Council. This consultation (and the resulting facilitation of the Works Council's consultation of its electorate) may stimulate the Works Council to arrive at an efficient and effective way of consulting with its electorate – to the benefit of both the Works Council and its electorate and the entrepreneur.

In further defining the general provision at the level of the enterprise, the entrepreneur and the Works Council and its committees need to bear the following factors in mind. The basic obligation that the law imposes on the entrepreneur is to facilitate the consultation of the electorate insofar as it 'may reasonably be deemed to be necessary for the members of

the Works Council and its committees to perform their duties'. This criterion of reasonableness applies in two directions: i.e., the entrepreneur is obliged, on the one hand, to enable the Works Council and its committees to consult their electorate, and, on the other hand, to enable the 'persons working in the enterprise' to be consulted by the Works Council and its committees, but only insofar as this 'may reasonably be deemed to be necessary'.

This customised approach requires the entrepreneur to weigh, on the one hand, the potential organisational problems and loss of work time that will be caused by consultations between the Works Council and its electorate, against, on the other hand, the interests of the Works Council and, indeed, of the entrepreneur in being well informed about the opinions of the workforce. The reasonableness criterion requires of the Works Council and its committees that they determine the manner and frequency of their consultations wisely, taking into account the circumstances prevailing in the enterprise. The Works Council is naturally expected to try to arrange its consultations in a responsible way in the context of the operational management of the enterprise.

The entrepreneur and the Works Council need to consider together whether, in a given situation, employees or groups of employees need to be consulted orally during working hours, or whether some other, less intense form of consultation (e.g., in writing or digitally) or consultation outside working hours would be 'reasonable'. In the case of decisions (or proposed decisions) that are likely to have a great impact on the enterprise or some part of it, with significant consequences for a large part or all of the workforce, it may be necessary for employees or groups of employees to be given an opportunity to be consulted orally during working hours. Such meetings should probably only be held rarely and in exceptional circumstances. In the case of less far-reaching decisions on which the Works Council wishes to consult with the employees, such forms of consultation, which impose a burden on the entrepreneur, will normally be unnecessary. The reasonableness criterion would then imply that it should be sufficient for the Works Council to conduct a written or digital survey or hold a meeting either outside working hours, or partly in working hours and partly during a break (e.g., a lunch-time meeting). The reasonableness criterion requires parties to find a reasonable balance between the importance of consulting the electorate and the means of consultation chosen (i.e., there should be proportionality). The entrepreneur and the Works Council need to reach a reasonable agreement on such matters in mutual consultation.

3 Matters to consider when making agreements

The WOR deliberately refrained from making detailed provisions regarding the consultation by the Works Council of its electorate. The Works Council's relationship with those it represents depends strongly on the situation within the enterprise and issues that are current at any given time. The amount of time required, the facilities needed and the associated costs are not quantified, and no minimum or maximum is stated. Differences exist between enterprises and their circumstances, pertaining, for example, to the size and structure of the enterprise. The following types of question may be relevant:

- Is the enterprise situated in one location, or in several different locations?
- Is everything going smoothly or do many things change within a short period of time?

- Are there many different groups, positions and activities within the enterprise, or not?
- Is the company culture such that employees are notified and consulted about changes through the line organisation or is the Works Council the messenger of change?
- Is time available for consultations, or not?
- How much attention is given to communication within the company and are there resources such as a company newsletter, staff magazine, e-mail, intranet or suchlike?

Consultation between the Works Council and its electorate must therefore be tailored to these differences and circumstances. This is why the Works Council and the entrepreneur must obviously make agreements about the time and facilities required. Such agreements may take the form of a ‘works agreement’, i.e., a written agreement between the entrepreneur and the Works Council as meant in [WOR Article 32 \(2\)](#) (*ondernemingsovereenkomst*, see [Appendix B](#)).

The basic arrangement of [WOR Article 17 \(1\)](#) may be implemented in the form of a general provision for consultation between the Works Council and its electorate as part of the facilities arrangement. In addition, specific supplementary agreements may be made for each case. In making an arrangement or agreement, the following aspects need to be discussed: *When? About what? Which group or groups are involved? Which facilities are needed? What are the costs?* Each of these aspects is briefly explained in more detail below.

The questions of *when* and *about what* are closely connected. The WOR provides that, at least twice a year, in order to discuss (amongst other things) the general operation of the enterprise, the Works Council is informed either orally or in writing about the activities and the results of the enterprise in the previous period ([WOR Article 31a \(1\)](#)). The entrepreneur should also inform the Works Council about his expectations regarding the activities and results of the enterprise in the coming period. During these discussions, the entrepreneur should also inform the Works Council of any decisions he is preparing that relate to the matters referred to in Article [25](#) (advice) and [27](#) (endorsement) and should make arrangements with the Works Council as to when and how the Works Council should be involved in the decision-making process (see [WOR Article 24](#)). In the light of such matters, the Works Council may then wish to consult with its electorate.

In addition, the Works Council and/or the employees may periodically wish to discuss the functioning of the Works Council itself, possibly on the basis of its annual report and/or a Works Council work plan or policy plan. It is recommended that this be linked to the consultation about the general operation of the enterprise.

Furthermore, the Works Council will want to consult with its electorate if there are any proposed decisions that have major consequences for the enterprise and for all or some of the employees.. These may be matters such as those listed in [WOR Article 25](#), such as a reorganisation, merger or change of location of all or part of the enterprise. New arrangements regarding working hours, appointments or remuneration schemes ([WOR Article 27](#)) may also have a major effect.

If the enterprise is a publicly held company, the Works Council may wish to consult employees in connection with the Council's right to speak at the general shareholders' meeting. See in this connection Appendix A [\(2\)](#) (A) (j).

In exercising its right to raise the matter of the company's remuneration policy for board members, or the appointment or dismissal of members of the Board of Management or Supervisory Board, the Works Council may wish to consult its electorate.

In certain cases, in view of the interests at stake, the Works Council members may need to treat certain information in confidence. This confidentiality (see [WOR Article 20](#)) may complicate the consultation between the Works Council and its electorate. As a result, in such cases, the entrepreneur and the Works Council should carefully identify what information is confidential and how long it is under embargo.

Great care should be taken to ensure that the Works Council is not effectively prevented from consulting its electorate prior to reaching its final opinion. Exceptionally, however, it may be necessary to observe confidentiality until the decision-making process has been completed. The SER's Committee to Promote Employee Participation [*Commissie Bevordering Medezeggenschap*] (CBM) has produced [recommendations](#) regarding the Works Council and confidentiality [*OR en geheimhouding*].

What are the group or groups of people that the Works Council wishes to consult? If the issue in question applies to the whole enterprise, this will of course be all of the staff. For specific matters, one or more groups will usually be the interested parties and will want to be involved.

The Works Council is expected to organise consultations with its electorate in such a way that the group or groups concerned are heard in particular or exclusively, without losing sight of the interests of all staff. A proposal to reorganise the enterprise usually concerns the enterprise as a whole. In the case of a proposal to change the production process in a particular department, for example, the matter clearly does not affect the whole enterprise, and consultation may therefore be limited to the employees concerned.

What facilities do the Works Council and its electorate need? This question is closely linked to the specific circumstances in the enterprise in question. The facilities or resources needed partly depend on the issue in question and on the objectives to be achieved. Those objectives may include communicating relevant information, collecting questions and points of interest, hearing opinions and standpoints of those involved, and testing opinions about the Works Council's standpoint (definitive or provisional).

In order to communicate relevant information, which is one of the Works Council's key objectives, the Works Council should maintain regular contact with its electorate by distributing agendas and lists of meeting decisions/minutes and any other form of communication customary in the enterprise, such as newsletters (which may also be digital). In consulting with

its electorate about proposed changes, the Works Council requires facilities for the dissemination of information insofar as that information has not already been communicated through the line organisation and the 'usual' means of communication. If merger reports or proposals for reorganisation have already been widely dispersed, the Works Council will not need to do this. If it is purely a matter of communicating information, a written document or internal e-mail may be sufficient.

It will often be efficient to collect questions and points of interest by means of digital communication (for example through the intranet or e-mail), or in writing, for instance, in the form of a questionnaire. Works Council members may also visit employees in their place of work, or hold consultation hours. Alternatively, a meeting may be organised. The Works Council may appoint members from among its number to maintain contact with certain groups of staff (this is self-evident when Works Council members are elected from certain groups of employees in the context of a group electoral system).

For hearing the opinions and standpoints of those involved, in principle, the same means of communication are suitable. However, it will often be necessary to convene a meeting, as a meeting is an appropriate way of informing people and exchanging opinions.

Testing opinions about the standpoint (definitive or provisional) of the Works Council can be done in several different ways. A questionnaire, for instance, may be particularly suitable if discussion has reduced the Works Council's possible standpoints to two or three.

What costs are involved?

The costs of consultation between the Works Council and its electorate comprise not only the costs incurred by Works Council members themselves, but also the work time of the groups of employees being consulted. To minimise these costs, the Works Council is expected to use the facilities provided by the enterprise for the purposes of this consultation process, to ensure that the manner in which the process is organised is reasonable and necessary, and to discuss such matters with the entrepreneur, in accordance with [WOR Article 17 \(1\)](#).

Appendix D:

Agreements about the role of the Works Council in (International) Corporate Social Responsibility

1 CSR as a basic feature of modern business

What is (International) Corporate Social Responsibility (ICSR)?

Corporate Social Responsibility (CSR) is an increasingly important agenda point for enterprises, politicians and society in general. This trend is often seen to have begun with the SER's advisory report *De winst van waarden* (Corporate Social Responsibility: part of the core business) (November 2000). The concept outlined in that report – triple P, CSR as core business, tailor-made – is still relevant. In it, the SER notes that concern for the social effects of doing business is part of the core business of an enterprise. The enterprise seeks affirmation in society for its core functions; society gives the enterprise space and recognition – the licence to operate – if it complies satisfactorily with society's expectations. According to the report, there are two key elements that dictate whether one can rightly refer to CSR.

1. Consciously targeting business activities at value creation in three dimensions – People, Planet, Profit – and hence at contributing to society's prosperity in the longer term.
2. Maintaining a relationship with the various stakeholders which is based on transparency and dialogue and which responds to legitimate demands from society.

Since publication of the report in 2000, the international dimension of CSR has become increasingly important, as part of the irreversible process of globalisation. The SER's advisory report *Duurzame globalisering* (On sustainable globalisation: A world to be won) (June 2008) therefore includes a long section on International Corporate Social Responsibility (ICSR). This led in December 2008 to the SER's *Statement on International Corporate Social Responsibility*, intended for all relevant parties within the world of business.

ICSR involves not only the 'P' of People but also those of Planet and Profit in an international context. ICSR focuses not only on the actions of internationally operating Dutch companies, but also on what happens within 'their' chain. The SER takes responsible supply chain management to be the voluntary – but not non-committal – undertaking by companies to exercise a positive influence on the social and environmental policy of their suppliers.

There is growing awareness that CSR is – or should be – the natural basic feature of business today, and that it should therefore not be merely a non-committal matter. It is the approach to doing business in the 21st century, voluntarily and of course on the basis of the national and international normative framework. The latter aspect is described at length in the SER's *Statement*.

CSR and the Corporate Governance Code

The 2009 revised version of the [Corporate Governance Code](#) (see also Appendix A (2) (B) (c)) explicitly views CSR as part of good corporate governance. The Code provides that the Board of Management must formulate policy regarding the ‘social aspects of business that are relevant to the Company’. Since 1 January 2009, enterprises subject to the Netherlands Corporate Governance Code (listed companies) have therefore been required to submit social aspects of their business operations for approval by their Supervisory Board and to devote attention to them in their annual report (according to the ‘comply or explain’ principle).

Involvement of Works Council

The Works Council has been established for the purpose of promoting the proper functioning of the enterprise with regard to all its objectives ([WOR Article 2](#)). Since it is recognised that concern for the social aspects of entrepreneurship is a basic feature of modern business, it is obvious for there to be a certain level of involvement on the part of the Works Council in the enterprise’s CSR policy.

The Works Council can play a role in both drawing up and implementing CSR policy, and in creating support for it within the enterprise. Experience shows that, on the one hand, the Works Council can help bring the CSR policy adopted by the enterprise’s board to the attention of the employees through its own communication channels and networks. On the other hand, it can make the board aware of new ideas or problems within the enterprise, thus acting as a kind of catalyst.

Given the scope of the WOR, the Works Council will be involved primarily in the CSR policy of its own enterprise and that enterprise’s employees in the Netherlands, but it can also play a role in ensuring support for the international aspects of CSR and of responsible supply chain management by companies. The Works Councils of a number of large multinational enterprises are already doing this (see Section 3 below).

Some of the guidance offered by the legislation regarding the Works Council’s involvement in CSR policy will be discussed below, followed by possible voluntary agreements between the Works Council and the director.

2 Guidance in the legislation

Guidance in the WOR

An organisation is affected by all kinds of developments that have an impact on its affairs, including developments that are relevant to CSR. In the light of those developments, the organisation draws up a strategy, the results of which – if it is effective – will be beneficial for the organisation in the longer term. The Works Council plays a role in the strategy planning process.

- **WOR Article 24: consultation meeting**

At the meeting to discuss the general course of affairs within the organisation, the Works Council and the director discuss developments that may affect the strategic policy of the organisation. An ‘Article 24’ meeting is therefore highly suitable for discussing CSR with the director.

- **WOR Article 28: promotional tasks of the Works Council**

The WOR assigns a number of tasks to the Works Council which can be seen as ‘promotion’. Many of these have something to do with CSR, for example care for the environment, equal treatment and diversity, as well as with compliance with the health and safety legislation and with promoting work review meetings.

- **WOR Article 23 (3): right of initiative of the Works Council**

The Works Council can also make use of its right of initiative to place CSR on the agenda. That does not mean that it is required to put forward an elaborate, fully worked-out proposal. It is permitted to do so, but it may sometimes be more efficient for the Works Council to at first simply bring up a topic for discussion, such as CSR. This will enable both the Works Council and the director to consider whether and how the topic can be addressed.

- **WOR Articles 31a and 31b: provision of information to the Works Council**

The legislation requires the entrepreneur to provide extensive information to the Works Council, twice a year, regarding financial and economic policy (WOR Article 31a) and at least once a year regarding its social policy (WOR Article 31b). That information must then be discussed at one or more consultation meetings.

In the light of the information that it receives about the enterprise’s financial and economic policy ([WOR Article 31a](#)), the Works Council can also assess how the enterprise has devoted attention to sustainability in such areas as purchasing, procurement, mobility, construction, energy, and internal environmental protection.

Although the written information about the enterprise’s social policy ([WOR Article 31b](#)) only comprises data on the numbers and various groups of people working in the enterprise and the social policy pursued by the enterprise regarding those persons, the data must be provided in such a way as to show the effects that the various components of social policy have had on individual business units and job categories. This will then allow the Works Council to also assess the CSR aspects of the enterprise’s social policy.

In addition to this general guidance, the Works Council has the right of advice and endorsement regarding certain specific aspects of CSR. Its right to advise on investments and on environmental policy (internal environmental protection) ([WOR Article 25 \(1h\) and \(1l\)](#)) enables the Works Council to influence the ‘Profit’ and ‘Planet’ aspects of CSR, while its endorsement right regarding such matters as working conditions and staff training ([WOR Article 27](#)) allows it to influence the ‘People’ aspect. In this context, the Works Council must remember that the WOR has national effect.

Guidance in the Dutch Civil Code (BW)

- **Article 2:391 (1) of the Civil Code: non-financial aspects also to be covered in the annual report**

Pursuant to this article, ‘large enterprises’² are also obliged to report on their non-financial obligations insofar as they are relevant to interpreting the financial information and the position of the enterprise.

The Works Council can place discussion of the annual report and especially the section on non-financial obligations – of which CSR may form part – on the agenda for the consultation meeting.

- **Article 2:107a (1b) in conjunction with (3) of the Civil Code: Views of Works Council at general shareholders’ meeting**

This article concerns the Works Council’s right to address the general meeting of shareholders of public limited companies. It offers scope for the Works Council to also bring up aspects of CSR at that meeting.

The foregoing shows that a Works Council has various options for raising various aspects of CSR (including international CSR). Given the complexity of CSR/ICSR issues, it may well be that in doing so the Works Council feels a need for supplementary knowledge and expertise. Having the right to information ([WOR Article 31a](#)) and to call in an expert ([WOR Article 16](#)) and/or a Works Council committee on a particular issue ([WOR Article 15](#)) allows the Works Council to build up or obtain the necessary knowledge and expertise.

3 Options for voluntary agreements

As noted above, the consultation meeting is the most suitable venue for discussing CSR with the director. This can involve both the drawing up and implementation of CSR policy within the enterprise and the creation of support for it.

Besides placing CSR issues on the agenda for the consultation meeting, the director and the Works Council can also make voluntary supplementary agreements. At medium-sized enterprises that are not required to include non-financial information in their annual report, the Works Council and the director can agree, for example, that the director will provide information annually about the enterprise’s policy on CSR/ICSR and integrate it into the annual social report, for discussion at the consultation meeting.

In the case of ICSR issues, the OECD’s Guidelines for Multinational Enterprises provide an overarching framework of standards for enterprises’ international operations. The Guidelines offer pointers for enterprises in dealing with such matters as employment and industrial relations, human rights, child labour, the environment, corruption, and supply chain management.³ The Guidelines (which were revised in 2011) are endorsed by the

² ‘Large enterprises’ are enterprises that meet two of the following criteria: 1) assets amounting to more than EUR 17.5 m, 2) more than 250 employees, and 3) net turnover of more than EUR 35 m.

³ See <http://www.oesorichtlijnen.nl> for more information.

business community and also form an important component of the SER's *Statement on International Corporate Social Responsibility* (2008).⁴

The Foundation for Multi-National Works Council Discussion (MNO) has drawn up a model code which Works Councils can use to formalise their involvement in CSR policy.⁵

Possible topics for the consultation meeting

The following list presents a number of possible CSR/ICSR issues that can be placed on the agenda for the consultation meeting with the director. The list is intended to provide examples only and is therefore not exhaustive; CSR is above all a matter of 'customisation'.

- General principles: What does CSR mean within this particular enterprise? What changes are desirable to improve sustainability? How can people be made more familiar with the enterprise's vision and mission for CSR? Does the enterprise have a sustainable purchasing policy? How can the OECD Guidelines be made an integral part of the way the enterprise operates?
- Specific aims: Is it worth formulating specific aims for such matters as supply chain management or CO₂ reduction? What capacity and expertise does the enterprise need to achieve these aims?
- What problems may be involved? How can one increase support within the expertise for achieving these aims?
- Use of CSR tools: Is it worth developing a code for suppliers? What are the elements making up such a code? How can such a code be utilised most effectively? What experience is there within the enterprise in applying such codes?
- Annual social report: The director could provide information annually about the enterprise's policy on CSR/ICSR and integrate it into the annual social report, then discussing it at the consultation meeting with the Works Council.
- Consultations with external stakeholders: What role can the Works Council play in consultations about CSR with external stakeholders such as trade unions and NGOs?

⁴ See also SER (2011) [Tweede Voortgangsrapportage Internationaal Maatschappelijk Verantwoord Ondernemen](#), 17 March 2011.

⁵ MNO Foundation (2011) [De rol van medezeggenschap bij maatschappelijk verantwoord ondernemen](#) (www.stichting-mno.nl).

Appendix E:

The legal status of members of the Works Council

1 Considerations

A well-functioning Works Council is important for the functioning of the enterprise as a whole. One important requirement for a well-functioning Works Council is that, for any problems that may arise from combining Works Council duties with normal work, solutions are found to which both the management of the enterprise and the employees concerned can agree.

One of these problems concerns the amount of time taken up by Works Council duties. Neither the management nor the employees, Works Council members or candidate Works Council members can anticipate exactly how much time will be required for Works Council duties. These duties entail more than just preparing for and attending Works Council meetings and consultation meetings. Nor can the consequences of Works Council membership for the fulfilment of the positions held within the company by the members of the Works Council be anticipated exactly. This depends largely on variable factors per company and per employee, such as the size and complexity of the enterprise, the nature and extent of the problems with which the Works Council is confronted and the positions held by the employees concerned.

There are no set guidelines for dealing with this situation that are applicable to all enterprises. This is because the problems arise precisely from the interaction of the employees' normal work duties with their duties as participants in the consultation process, which can lead to circumstances that are quite different in different enterprises.

The starting point for tackling this problem is the statutory regulation regarding the protection of employees who are or have been involved in Works Council duties against victimisation or dismissal. The protection against victimisation is laid down in [WOR Article 21](#). This article imposes a duty of care on the entrepreneur to ensure that members and ex-members, the person holding the post of secretary, candidates or former candidates or anyone who takes or has taken the initiative to establish a Works Council are not placed at any disadvantage with respect to their position. When employees know that they are properly protected in this way, they are more likely to take part in the activities of the participation body. Such protection enables those taking part in Works Council activities to perform their duties free from any fear of intimidation by the management of the enterprise.

2 Protection against dismissal

Articles [7:670](#) and [7:670a](#) of the Civil Code provide employees who are or have been involved in Works Council duties a measure of protection against dismissal.

There are two types of such protection, with the type applying in any given case depending on the position the individual in question holds or held in relation to Works Council activities.

With respect to the groups of employees referred to in [Article 7:670a of the Civil Code](#), the employer needs the prior consent of the subdistrict court judge in order to terminate their employment contracts. The employees in question are:

- Employees who are on the list of candidates for a Works Council; employees who, within the past two years, have been a member of a Works Council, Central Works Council or Group Works Council or any committee of these Councils;
- Employees who are members of a preparatory committee of a Works Council, Central Works Council or Group Works Council.

The subdistrict court judge will only grant permission to terminate the employee's employment contract if the employer can show that the dismissal has no relation to the employee's activities in employee participation work. The subdistrict court judge's decision is final: no appeal to a higher court or a court of cassation is possible.

A greater degree of protection is provided by [Article 7:670 \(4\) \(1°\) of the Civil Code](#). This prevents an employer from terminating the employment contract of any employee who is a member of a Works Council, Central Works Council or Group Works Council, of a standing committee of these Councils or of a divisional committee of the Works Council. If the entrepreneur has appointed a secretary to the Works Council, this prohibition of termination also applies to the secretary.

The above-mentioned prohibition of termination does not affect the possibility of the subdistrict court judge allowing termination of the employment contract 'for serious causes' ([Article 7:685 of the Civil Code](#)). Such serious causes are (a) compelling grounds for dismissal or (b) changes in circumstances. What constitutes 'compelling grounds' is specified in Articles [7:677](#) and [7:678](#) of the Civil Code. Changes in circumstances may lead to dismissal for a wide range of reasons (e.g., commercial reasons, organisational reasons, poor or inadequate performance on the part of the employee, a 'disturbed working relationship' or lack of trust, or long-term disability).

The entry into force of the Work and Security Act [*Wet Werk en Zekerheid, WWZ*] on 1 July 2015 brought about changes in the statutory provisions regarding the protection of Works Council members from dismissal. In the new legislation, this is regulated in Articles [7:669](#), [7:670](#), [7:670a](#), [7:671a](#) and [7:671b](#) of the Civil Code.

3 Arrangements and agreements

Entrepreneurs are well advised to pay due attention to the legal status of Works Council members within the enterprise, and to consult with Works Councils about

this. If necessary, they should take appropriate measures to deal with the issues relating to the legal status of Works Council members, as mentioned below.

The nature and the size of the enterprise should, of course, be taken into account here, as should the way in which the work is organised. Ideally, the drawing up of general arrangements (preferably in writing) should be carried out in collaboration with the Works Council (or, if necessary, with the COR). General arrangements and agreements that ensue from this consultation with the Works Council should be made generally known in the enterprise.

It is recommended that specific agreements be made with individual Works Council members on the basis of the general arrangements, tailored to each member's situation.

Any actual promises or other substantive agreements made as a result should be put in writing, so that there can later be no doubt, either on the part of the director or the member's immediate superior, or on the part of the Works Council or the Works Council member in question.

4 Time needed

The WOR only gives a general indication of the amount of time required of individual Works Council members for Works Council duties. [WOR Article 17 \(2\)](#) stipulates that the Works Council and its committees shall as far as possible hold their meetings during normal working hours. Under the terms of [WOR Article 18 \(1\)](#), the entrepreneur and the Works Council must jointly determine the number of hours (during working hours and with full pay) allocated to members of the Works Council and of Works Council committees for mutual consultation and consultation with other persons. [WOR Article 18 \(2\)](#) stipulates that the entrepreneur and the Works Council must also jointly determine the number of days made available to members of the Works Council and members of a standing or divisional committee for training and development (during working hours and with full pay), of sufficient quality.

The actual amount of time required for Works Council duties depends on various factors, such as:

- The size, structure and complexity of the enterprise;
- The position of the person in question in the consultation system;
- The way the duties of the Works Council are allocated;
- The efficiency of the Works Council and its committees (if any);
- The extent to which use can be made of facilities, e.g. administrative facilities.

There is a certain amount of inherent tension between the proper performance of a Works Council member's normal work and Works Council duties. When a Works Council member spends a relatively large amount of time on Works Council duties, there is a danger that he or she may no longer perform his or her normal work optimally. It is important that, as an employee, the Works Council member, with regard to his or her colleagues and management, he or she continues to perform his or her normal work as well as possible. However, it is also necessary that the Works Council functions well, and this inevitably makes demands (often heavy demands) on the time of individual Works Council members.

With respect to each of the aspects mentioned above, it is important to resolve any tension as far as possible by establishing clear agreements between the entrepreneur and the Works Council about the proper functioning of the Works Council as a whole, the amount of time required to ensure that, and the amount of time that individual Works Council members may spend on Works Council duties during normal working hours.

In this context, proper consultation with the management of the department in which the Works Council member works is essential. Ideally, this should take place as soon as the employee has been nominated for Works Council membership. This will give both the management and the Works Council member (or candidate member) plenty of time to prepare for the fact that Works Council duties will take up time. Unforeseen circumstances (e.g., radical reorganisations) may lead to a temporary adjustment of the agreements concerning the amount of time made available. It may also be necessary to come to certain agreements in consultation with the entrepreneur. After all, it is the collective responsibility of the entrepreneur, the immediate superior and the individual in question to ensure that a Works Council member is not overburdened in carrying out his or her job. In this regard, care should be taken that the various duties are distributed among the Works Council members as equally as possible.

The immediate superior of a Works Council member will take account of the member's Works Council work when distributing work among all employees in his or her department. It is advisable to review arrangements periodically (e.g., at the start of a new term of office, or at other times) and where necessary to change them. Finally, it may be found useful (particularly in the case of a large company) to formalise a procedure for resolving any problems or disputes about how the arrangements made are to be implemented.

5 Career and income

Particularly with respect to career and income development, the entrepreneur should take specific measures to comply with the obligation to provide Works Council members with protection against victimisation, as referred to in [WOR Article 21](#). The following points deserve attention:

- The member's income should not be adversely influenced by Works Council membership;
- The Works Council member must be able to compete normally for promotion or transfers, and must be able to make normal use of training activities relevant to his/her position;
- Works Council work is also work. Factors relating to membership of the Works Council should not be allowed to have any negative impact on an employee's appraisal. It is therefore important that the extent to which the Works Council member may spend normal working hours on Works Council duties is clearly defined;
- Timely agreements should be made about what position the member will take up after membership of the Works Council has ended. For this aspect, which is particularly an issue in the case of exemption or partial exemption from normal activities, see the 'Exemption' section below.

6 Exemption

Particularly in large enterprises, one or more Works Council members – and in particular the chairman and/or secretary of the Works Council – may request, on the grounds of [WOR Article 18](#), full or partial exemption from their normal duties, in order to carry out their Works Council duties. It is important to bear in mind the disadvantages that attach particularly to full exemption. The Works Council members in question run the risk of becoming estranged from the workplace and their colleagues. This may lead to problems if, after a long period of exemption, they decide to return to their position. If full or partial exemption is decided upon, it is recommended that the entrepreneur and the Works Council members involved make agreements in writing, with due regard to any principles already determined. The following points should be taken into account:

- The duration of the exemption (e.g., the period of one term of office of the Works Council);
- The exemption should not result in any change to the member's employment contract; after the exemption period has elapsed, it will be determined whether the employee concerned can return to his or her old job again;
- It may not always be possible for an employee to return to his or her previous position.

In the meantime, the position may (perhaps necessarily) have been filled on a permanent basis by someone else. The position may also have been subject to significant organisational and technical changes, making a return to the original position problematic. Clearly, in such cases, the entrepreneur must offer the former Works Council member another position that is equal to the previous position in terms of content and salary.

7 Part-time work

Specific problems may also arise for Works Council members who are part-time employees. These mainly arise in connection with the amount of time required for Works Council duties in relation to the part-time work. The WOR provides a partial solution to these problems in that [WOR Article 17 \(3\)](#) stipulates in general terms that a member of the Works Council or a committee shall retain their entitlement to full pay or remuneration for the time during which they attend Works Council or committee meetings during working hours. This provision applies equally to part-time employees and full-time employees. [WOR Article 17 \(2\)](#) stipulates in close connection with paragraph (3) that the Works Council and its committees must, as far as possible, hold their meetings during normal working hours. This may give rise to problems in relation to Works Council members who work part-time; and the problems become more acute the fewer the hours the employee works.

Various situations may occur. For example:

- a. The Works Council usually meets during the normal working hours of a Works Council member who works part-time, but occasionally the meeting overruns and extends beyond this person's working hours. In that case, there is normally no need for any special measures.

- b. The Works Council usually meets outside the normal working hours of a Works Council member who works part-time. In this case, it is recommended that compensation in the form of time-in-lieu be given.
- c. The Works Council usually meets outside the normal working hours of a Works Council member who works part-time, but the Works Council member in question works so few hours that compensation in the form of time-in-lieu is not an option. In this case, given equal opportunities legislation, the part-time employee will normally receive pay or remuneration for time spent at Works Council meetings outside normal working hours. This is the same arrangement as applies to any full-time employee who is required to attend a Works Council meeting outside normal working hours.

8 Shift work

Some of the specific problems affecting Works Council members who work in shifts resemble those of members who work part-time and they can therefore be dealt with in a similar way: see the previous section (especially points (a) and (b)). However, one problem deserves special attention: the shift schedule of those Works Council members who work shifts. Given the desirability of Works Council business being conducted as far as possible during normal working hours, the Works Council should plan its activities as far as possible to take account of the normal shift schedule of any member who is a shift-worker, so that meetings can be scheduled during that member's normal working hours. Where, in exceptional cases, this is not possible, consideration could be given (in consultation with the employee's immediate superior) to swapping the shift of the Works Council member in question with that of another employee.

Appendix F: Joint Sectoral Committees

1 Introduction

Joint Sectoral Committees are made up of representatives of employers' and employees' organisations and mediate in disputes regarding employee participation issues (in many cases between the Works Council and the entrepreneur). They also provide information about employee participation and act as a source of knowledge and information.

The Works Councils Act (WOR) provides that the Social and Economic Council (SER) will set up Joint Sectoral Committees for groups of enterprises, to deal with matters relating to the Works Council, the Central Works Council (COR) and the Group Works Council (GOR), the employee representative body and the meeting with employees (within the meaning of [WOR Article 35b](#)) of these enterprises (see [WOR Article 37 \(1\)](#)). In the case of enterprises in which work is carried out exclusively or almost exclusively on the basis of a public-law employment contract, that power is exercised by the Minister of the Interior and Kingdom Relations ([WOR Article 46d \(d\)](#)).

There are three Joint Sectoral Committees: the Joint Sectoral Committee Market I (for enterprises in commercial sectors), the Joint Sectoral Committee Market II (for those in the care, social welfare, and social/cultural sectors), and the Joint Sectoral Committee for Government.

2 Tasks

Mediation

The main task of the Joint Sectoral Committees is to mediate between parties (in response to a written request) in disputes that can be traced to the WOR. If the Committee's mediation efforts fail, it will offer the parties advice on how to resolve the dispute.

The amendment of the WOR on 19 July 2013 means that it is no longer obligatory to submit WOR-related disputes to the Joint Sectoral Committee before commencing court proceedings. However, the WOR still assigns the Joint Sectoral Committee the task of dealing with employee participation issues resulting from application of the WOR. That includes mediating and advising on disputes that may arise about matters regulated by the WOR, for example between the Works Council and the entrepreneur.

The Joint Sectoral Committee can also be asked to mediate in the event of a dispute arising between an interested party (e.g., an employee) and the Works Council and/or the entrepreneur about the obligation to set up a Works Council, the adoption of the Works Council's Rules of Procedure, the publication of agendas and minutes of Works Council meetings, or Works Council elections.

Having the Joint Sectoral Committee deal with a dispute in this way has a number of advantages.

- The procedure is primarily intended to provide a forward-looking and sustainable solution, so that the process of employee participation can be set in motion once more. If the dispute cannot be resolved through mediation, the Joint Sectoral Committee will usually advise on the matter in writing. It will often also attempt to identify any underlying problem, and will include that in the advice it provides.
- The process of mediation and advice is informal, efficient and accessible. There are no requirements as to how the dispute is to be submitted, meaning that no expensive legal assistance is necessary.
- The process is free of charge, i.e. it does not cost anything for a dispute to be dealt with.
- The composition of the Joint Sectoral Committee guarantees that the dispute will be considered by a committee with the necessary legal knowledge, and which is also familiar with the specific sectors for which it has been established – it ‘knows the field’.

The Joint Sectoral Committees for the market sectors have each set up a special ‘training committee’ [*scholingskamer*] to answer enquiries and to deal with disputes about training and development for Works Council members. The training committees work with fast-track proceedings so as to clarify matters as quickly as possible.

Promoting employee participation / source of knowledge and information

Another important task of the Joint Sectoral Committees is to promote employee participation within the sector. They do this by, amongst other things, providing information and advice, and encouraging employers and employees in their implementation of employee participation.

Registration

The WOR provides that certain documents must be sent to the Joint Sectoral Committee for registration:

- the written decision by the entrepreneur to voluntarily establish a Works Council or to discontinue one that has been established voluntarily ([WOR Article 5a \(2\)](#))
- the works agreement [*ondernemingsovereenkomst*], in which additional powers are allocated to the Works Council ([WOR Article 32 \(2\)](#)).

The amendment to the WOR that came into force on 19 July 2013 did away with obligatory registration of the Works Council’s Rules of Procedure (and provisional Rules of Procedure) and its annual report. For the time being, the Joint Sectoral Committees in the market sectors will continue to register the Rules of Procedure and annual reports that they receive. The simplest way to submit these documents for registration is via the www.bedrijfscommissie.nl website (Registration / Registration Form).

Up-to-date information about the Joint Sectoral Committees and contact details can be found at www.bedrijfscommissie.nl (for the market sectors) and www.bedrijfscommissieoverheid.nl (for government).

Appendix G:

Committee to Promote Employee Participation

1 Introduction

The amended version of the Works Councils Act (WOR) that came into force in July 2013 explicitly gives the SER responsibility for promoting employee participation within enterprises. The SER has set up a Committee to Promote Employee Participation [*Commissie Bevoordere Medezeggenschap*] (CBM) to carry out that task. The CBM is made up of members designated by the employees' and employers' organisations, independent members, and an advisory member.

2 Tasks of the CBM

The core task of the CBM is to promote, in the broad sense, employee participation and the quality of that participation in enterprises. It is also charged with various tasks in the field of training and development for Works Council members, independently providing advice to the Dutch Government and Parliament on employee participation and the preparation of advisory reports by the SER in this field, dealing with requests from enterprises for exemption from the obligation to set up a Works Council, and monitoring of the Joint Sectoral Committees in the market sector. These tasks are specified in the resolution establishing the Committee to Promote Employee Participation [[Besluit Instelling Commissie Bevoordere Medezeggenschap](#)].

3 How does the CBM carry out its tasks?

The CBM deals with issues that are important for the development of employee participation, promotes discussion of those issues, and encourages the stakeholders to address them. The CBM draws up an annual work programme comprising current themes and topics that are relevant to employee participation in actual practice. It tackles these matters by means of recommendations, good practices, publications and information on the website, regularly also with the involvement of stakeholders.

As part of its responsibilities regarding training and development for Works Council members, the CBM formulates an annual proposal for reference amounts (to be set by the SER) for training and development of sufficient quality, and monitors the use of the relevant facilities by Works Council members.

4 Target group

The CBM carries out its activities primarily for the entrepreneurs and employees in companies who need to give concrete shape and substance to employee participation in the workplace. Intermediaries play an important role in contacts with this target group and in shaping employee participation by this target group. The CBM also involves these intermediaries in its work, e.g., training institutions, trainers and Works Council advisors.

5 Publications

A number of CBM publications are listed below that are relevant and useful for directors of enterprises, employees involved in employee participation, intermediaries, specialist Works Council publications and employee participation organisations, such as professional and sector-specific associations and organisations for Works Councils. This list is not exhaustive and is subject to change. The latest list can be found at www.ser.nl.

- [SER Scholingsspecial voor OR-leden; OR scholing: Goede medezeggenschap begint met scholing \(April 2015\)](#)
- [Rollen en bevoegdheden van medezeggenschap bij \(voorkomen van\) discriminatie \(December 2014\)](#)
- [Aanbeveling OR en geheimhouding \(27 October 2014\)](#)
- [Inzicht OR in zeggenschapsverhoudingen in een multinationale onderneming \(4 July 2014\)](#)
- [Voorlichtingsdocument over wijziging Artikel 31 WOR \(informatieverplichting voor internationale concerns\) \(27 June 2014\)](#)
- [Vacatures en samenstelling OR: Hoe krijgen we de OR vol? \(21 March 2014\)](#)
- [OR en achterban \(21 March 2014\)](#)
- [In de ondernemingsraad? Organiseer je draagvlak! \(1 February 2014\)](#)
- [Conflict tussen OR en bestuurder? Vraag om bemiddeling bij de bedrijfscommissie! \(1 February 2014\)](#)
- [Commissie Bevordering Medezeggenschap over wijziging WOR \(30 October 2013\)](#)
- [De Commissie Bevordering Medezeggenschap in het kort \(5 September 2013\)](#)

- Aanbeveling inzake de scholing en vorming van OR-leden (21 December 2012)

Up-to-date information about the CBM and contact details can be found at www.ser.nl.

APPENDIX H:

Foundation for Certification of Works Council Training

1 Introduction

The Foundation for Certification of Works Council Training [*Stichting Certificering Opleiding Ondernemingsraden*] (SCOOR Foundation) was established by the SER in August 2013 in the light of the SER's advisory report on the future of training and development for Works Council members [*Toekomst scholing en vorming leden ondernemingsraad*] (2011). In that report, the SER advocates a new training system for Works Councils in which monitoring the quality of the training provided is an important element.

The SER's recommendations were incorporated into the amendment to the Works Councils Act (WOR) of July 2013. The Explanatory Memorandum accompanying the amended Act states that the social partners represented in the SER will develop a system for ensuring and promoting the quality of training for Works Councils. It is in that context that the SER has set up the independent SCOOR Foundation.

2 Object and tasks

The SCOOR Foundation has the object (*set out in its Articles*) of monitoring the quality of the training programmes for Works Council members, as referred to in the WOR. This involves certification of institutions that provide training and courses for Works Council members and other employee representation bodies.

The Foundation's work mainly comprises:

- assessing requests for certification from institutions offering training and development for Works Council members (awarding, renewing, suspending or revoking certificates);
- coordinating the independent audit agency that assesses training institutions;
- informing Works Councils, entrepreneurs and training institutions about the importance of certification.

3 Certification regulations

The SCOOR Foundation's certification regulations have been drawn up so as to assess the quality of training programmes for Works Council members. The regulations comprise six parts, setting requirements, *inter alia*, for the training institutions' quality assurance systems, operational management and knowledge of employee participation of the institutions offering training. All such institutions – including one-man businesses or specialised departments of a training institution – may qualify for certification. Participation in the certification procedure is voluntary.

Actual assessment in the light of the certification requirements is carried out by an independent audit agency, after which the board of the SCOOR Foundation decides whether a certificate should be awarded (or renewed, suspended or revoked, as the case may be). A certificate is basically valid for three years.

Transitional regulations apply to 35 training institutions that had been recognised by the Joint Centre for Works Councils (GBIO) at the beginning of 2013.

4 SCOOR register

Training institutions that have received SCOOR certification are included in the SCOOR register. This also lists the training institutions covered by the aforementioned transitional regulations and for which GBIO recognition still applies.

5 More information

More information about the SCOOR Foundation and contact details can be found at www.scoor.nl.

Social and Economic Council of the Netherlands

Bezuidenhoutseweg 60

P.O. Box 90405

NL-2509 LK The Hague

The Netherlands

T +31 (0)70 349 9499

E communicatie@ser.nl

www.ser.nl

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