

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 duties, composition, powers and procedures. If the entrepreneur objects, 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 has already been addressed in Chapter 2, section 2.8, in the explanatory note under 'Procedure and secretariat of the Works Council'. This provision is also addressed in Appendix B. It suffices to say here that WOR Article 17 regarding the provisions and facilities to be made available by the entrepreneur also applies to the committees of the Works Council. Furthermore, the protection against victimisation and dismissal (WOR Article 21 and Dutch Civil Code Articles 7:670 and 7:670a) 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)). *See Appendix E.*

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. Obviously, the entrepreneur must be provided with a copy of the resolution to set up a committee.

WOR Article 15 differentiates between different types of committees:

- A Standing committees (WOR Article 15 (2))
- B Divisional committees (WOR Article 15 (3))
- C Preparatory committees (WOR Article 15 (4)).

5.2 Model resolutions for setting up committees (A, B and C)

In this section, models are provided for resolutions with regard to setting up standing committees (A), divisional committees (B) and preparatory committees (C), respectively. Explanatory notes are provided for each model.

A Model resolution for setting up a standing committee

Pursuant to Article 15, paragraphs (1) and (2) of the Works Council Act, the Works Council makes 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 handle matters regarding on behalf of the Works Council, and shall advise the Works Council 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 handle 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 handle 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.

Note 1

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

With regard to the composition of a standing committee, WOR Article 15 (2) states that (at least) the majority of the members of that committee must also be members of the Works Council. In addition, other 'persons working in the enterprise' may also have a seat on the standing committee. The number of members of the Work 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 this 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

The matters that the standing committee in question will handle 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 handles 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) and 28 (4).*

Note 4

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 assigned by it to the committee (*see note 3*). This does not include the pursuit of legal proceedings; this power is limited to the Works Council itself. The Works Council may transfer 'the' (i.e., all) powers pertaining to those matters to the standing committee, or it may transfer these powers in part. 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 duties, and includes a clear description of the powers transferred to the standing committee and any conditions attached to these powers.

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 may only be convened if at least members of the committee are present.

See note 2.

- 4 Articles 17 (2) and (3), 18 (2), 19, 20 and 21 (1) of the Rules of Procedure for Works Councils 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.

Note 1

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. *See also Chapter 2, Article 3, note 1.*

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 re-elect members, with due observance of the principle that at least half of the committee members must be members of the Works Council.

Note 2

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 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

The articles mentioned are from the Model Rules of Procedure for Works Councils (*see Chapter 2*).

Note 4

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

B Model resolution for setting up a divisional committee

Pursuant to Article 15, paragraphs (1) and (3) of the Works Councils Act, the Works Council makes 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 Works Councils 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.

Or, as an alternative to this provision (see note 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.

3 On behalf of the Works Council, the committee shall handle those matters regarding the said 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 this provision (see note 3):

On behalf of the Works Council, the committee shall handle those matters regarding the said 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.

Note 1

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

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.

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 of paragraph (2), 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 of paragraph (2), 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.

If no Works Council members work in the part of the enterprise concerned, the penultimate sentence of WOR Article 15 (3) provides for a solution. In addition to persons working in the part of the enterprise in question, this provision allows one or more Works Council members (elected by the Works Council from its number and who are not working in the part of the enterprise concerned) to be members of the divisional committee. These Works Council members then sit on the divisional committee specifically because of their Works Council membership.

If any of these options are used, this must be indicated separately in Article 2 of the 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 of the Committee shall be persons working in the said part of the enterprise.’

Note 3

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 who manages the part of the enterprise concerned. 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 handle certain matters itself (WOR Article 15 (3)). If use is made of the option to transfer the power to hold discussions, the second variant must be used in paragraph (3).

If the Works Council transfers the power to hold discussions with the manager of the part of the enterprise concerned to the divisional committee, under the terms of WOR Article 23c, a number of provisions in the WOR with regard to those consultations will apply *mutatis mutandis*.

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 [all/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 members of the committee are present.
- 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.
- 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.

Note 1

Regarding the words in square brackets, see Article 2, note 1 of the model resolution for setting up a standing committee.

C Model resolution for setting up a preparatory committee

Pursuant to Article 15, paragraphs (1) and (4), of the Works Council Act, the Works Council makes 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.

Note 1

This provision should list the matters that the committee is being set up to prepare on behalf of the Works Council. The preparatory committee may be assigned only preparatory duties: the Works Council cannot transfer any rights or powers to the preparatory committee.

Note 2

The members of the preparatory committee are appointed by the Works Council itself. At least one or more members of the Works Council must sit on the committee; in addition, other persons working in the enterprise may also be appointed. 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 the period of
See note 1.
- 2 [in accordance with the model provisions under A and B]
- 3 [in accordance with the model provisions under A and B]
- 4 [in accordance with the model provisions under A and B]
- 5 [in accordance with the model provisions under A and B]
See note 2.

Note 1

The committee may only be set up for a specific period, to be stipulated by the Works Council in the 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 that is then briefly described.

Note 2

The text for paragraphs (2), (3), (4) and (5) of the resolution to set up a preparatory committee may be derived from the models under A and B for the standing and divisional committees, respectively.