

## 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, to make it easier for companies to adapt the model to their specific circumstances.

### 2.1 Definitions

#### ▼ Article 1

- 1 The following definitions apply to these Rules of Procedure:
  - a The entrepreneur: ..... See notes 1 and 3.
  - b The enterprise: ..... See notes 2 and 3.
  - c The Act: the Works Councils Act (WOR)
  - d The Joint Sectoral Committee: the Joint Sectoral Committee for ..... 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 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: 'Mr P. Jansen' (one-man business); 'B.V. Handelonderneming Jansen'; 'Stichting Ouderenzorg Rokkeveen-oost'; 'v.o.f. Jansen & Co'; 'Vereniging tot exploitatie van kinderdagverblijf Bambi'; or 'Chocomelco Coöperative'.

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 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, under ‘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 advances 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).

### **Example**

Under the terms of WOR Article 1 (3a), ‘persons working in the enterprise’ include: temporary workers who, in the context of the activities of an enterprise, have been working for the said enterprise for at least 24 months on the basis of a contract with a temporary employment agency [*uitzendovereenkomst*], as defined in the Dutch Civil Code [*Burgerlijk Wetboek*], Article 7: 690.

The ‘contract with a temporary employment agency’ is meant in the broader sense here and refers to any employment contract in which the employee is ‘seconded’ by the employer to another party to carry out work under the supervision and management of that party. WOR Article 1 (3a) there-

fore covers all employees who are ‘lent out’ by an employer to another party. This not only includes temporary workers, but also employees who are seconded. These employees have the right of participation in the enterprise from which they are seconded. They also have the right of participation in the ‘borrowing’ entrepreneur’s enterprise, provided that they have been recognised as ‘persons working in the enterprise’ after having worked in the enterprise for 24 months.

Under the terms of WOR Article 6 (2) and (3), respectively, ‘persons working in the enterprise’ who have worked in the enterprise for 6 months are entitled to vote, and after a year, they are entitled to stand for election. ‘Borrowed’ employees are entitled to vote after they have worked in the enterprise for 30 months, and are entitled to stand for election after having worked in the enterprise for 36 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, as a result of which the employee receives the right of participation, which includes the right to vote and/or stand for election in the ‘borrowing’ entrepreneur’s enterprise.

The need to apply WOR Article 6 (4) 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). If there is doubt about whether any such person falls under the WOR definition of ‘persons working in the enterprise’, the entrepreneur and the Works Council may (if so desired, and erring on the side of caution) recognise that person as such. *For further information, see Section 1.2.*

Conversely, if it is in the interests of 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.

The importance of such 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. Finally, these employees will also be entitled to vote and to stand for election. *See note 2.*

### **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 distinguishable from that of 'The entrepreneur'. WOR Article 1 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. Jansen may operate a shoe shop called 'Jansen's shoe shop', and the Stichting Ouderenzorg Rokkeveen-oost may operate a community centre called 'Wijkcentrum Rokkeveen-oost').

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 (e.g., 'Kinderdagverblijf Bambi Rosmalen'). 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 in the interests of 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 in the interests of 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 in the interests of 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: ‘BV ....., also on behalf of BV ..... and BV .....’ 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 3 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. *See also: [www.bedrijfscommissie.nl](http://www.bedrijfscommissie.nl).*

One important 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 WOR. If the Committee’s mediation efforts fail, it will offer the parties advice on how to resolve the dispute. Only when this procedure of mediation and advice has been completed are the parties free to submit the dispute, if necessary, to the subdistrict court judge (WOR Article 36). If the party submitting the matter has not already invoked the help of the Joint Sectoral Committee, the judge will declare the submission inadmissible (see WOR Article 36 (3)).

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 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. The employees' association in question would at that point become an 'authorised' employees' association (employees' organisation) as meant in the WOR and the Rules of Procedure, but would not (and wrongly so) be included in the Rules of Procedure. This could create confusion. 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 and 2.*
- 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.*

#### 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 Section 1.2 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 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 |
|--|---------------------------------|
| <50*                                     | 3                               |
| 50-100                                   | 5                               |
| 100-200                                  | 7                               |
| 200-400                                  | 9                               |
| 400-600                                  | 11                              |
| 600-1,000                                | 13                              |
| 1,000-2,000                              | 15                              |

\*Works Council established voluntarily or on the basis of a collective labour agreement

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 – with the permission of the entrepreneur – 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. In general, this opportunity will only be exploited in special circumstances: for example, when one or more Works Council members are frequently absent due to their position in the enterprise. If a Works Council wishes to make use of this opportunity, it must include a separate provision on deputising in its Rules of Procedure.

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 Works Council 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. If this type of non-individual deputising is chosen in combination with the list system [*lijstinstelling*] (see Section 2.5.3) and/or the group electoral system [*kiesgroepenstelling*], the deputy members must be appointed from the same list or electoral group, respectively. The chosen form of deputising must be clearly laid down in the relevant provision in the Rules of Procedure.

Generally, where deputy members bound to individual members are appointed, a deputy becomes a ‘normal’ Works Council member if the membership of the person he or she represents ends before their term of office expires. See also Article 15 (2.6) and notes. The Rules of Procedure must state which rules apply.

The choice of deputising system (individual or not) also has consequences for the nomination and election of deputy Works Council members. A ‘pairing’ system is obvious in the case of deputies bound to individual members: in addition to the candidate Works Council members who are to be allocated a personal deputy, the personal deputies are also nominated. This must be laid down in the Rules of Procedure.

### **Note 3 The appointment of a chairman or deputy chairman**

WOR Article 7 stipulates that the Works Council must elect a chairman and ‘one or more deputy chairmen’ from its number. Under the terms of Article 2 (2), at least one deputy chairman must be appointed. 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 4 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 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, under the terms of note 3, two or more deputy Works Council chairmen are elected, in Article 2 (3), ‘a 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. Article 3 (1) of the Rules of Procedure should therefore select one of the following three options: ‘*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. 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. Every two years, half their number shall resign simultaneously, as indicated in a schedule drawn up by the Works Council beforehand.*’

The Act (and consequently the above alternative clause for Article 3 (1)) refers to the resignation of ‘half’ of the members of the Works Council. 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 solve this in its schedule of outgoing members by letting the greater and lesser ‘halves’ stand down by turns.

To make implementing a schedule of outgoing members possible, in the case of the first election of a Works Council, the Rules of Procedure must contain a temporary provision to deal with the fact 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. In effect, their term of office is therefore only two years.

The temporary provision for this reads as follows:

*‘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 temporary provision can be included at the end of the Rules of Procedure, 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, 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. 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)).

#### ***Provision in Rules of Procedure***

*‘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; the right to vote and the right to stand for election; nomination**

### **▼ 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.)

### 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.

### ▼ 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 in the interests of 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 are entitled to vote.’*

The WOR defines exactly who is meant by ‘persons working in the enterprise’. See also Section 1.2 (*‘Employees’ as defined in the WOR*) and Article 1, note 1.

WOR Article 6 (4) allows the entrepreneur and the Works Council to jointly recognise other persons as ‘persons working in the enterprise’. See also Article 1, note 1.

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 Article 6 (5), the Works Council may deviate from this in its Rules of Procedure, if this is in the interests of 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 entitled to stand for election to the Works Council.’ See also note 1.*

### **▼ 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 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 determine the minimum number of signatures required for the valid submission of a list of candidates from those persons who are not members of any employees' organisation which has submitted a list of candidates. *See note 3.*
- 5 The list of candidates referred to in paragraph (4) may be submitted to the secretary of the Works Council up to three weeks before the election date.
- 6 Together with each list of candidates, a written statement from each candidate appearing on the list shall be submitted clearly stating he or she accepts the nomination.
- 7 A candidate's name may appear on one list of candidates only.

## Explanatory notes

### Note 1 The nomination of candidates

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 particular groups of employees. The latter type of list is also known as a free list [*vrije lijst*].

The Works Council may, if so required, replace the periods stipulated above in paragraphs (1), (3) and (5) by longer periods, e.g., 12, 8 and 4 weeks, respectively. This may be particularly desirable for larger enterprises or enterprises with parts in various locations.

### Note 2 The lists of candidates

These rules regarding nomination apply to both the individual candidate system and to the list system. For more information about these systems, see the general explanatory notes in Section 2.5.1, and the notes to Articles 11, 12 and 13.

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. If the list system is used, the names are not be pooled, and voters are presented with the various lists; they choose a list, and then vote for the candidate of their choice from that list.

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. This advice is particularly relevant in the case of the list system. If a list in this system bears fewer names than the number of persons ultimately elected from that list, vacancies will immediately arise. In that case, the vacancies arrangement in Article 15 of the Rules of Procedure will apply. *See the notes to Article 15.*

### **Note 3 The free lists**

Paragraph (4) concerns the free lists. In implementing this provision, the Works Council must ensure that the free lists are supported by the required number of signatures. These signatures have to be drawn from the persons working in the enterprise who are entitled to vote (see Article 5, note 1) and who are also either

- not members of an employees' organisation; or
- members of an employees' organisation that has not submitted a list of candidates.

The minimum number of signatures required is one-third of the total number of persons as defined above, with the proviso that 30 signatures will always be sufficient (WOR Article 9 (2b)). The voters in question are allowed to sign more than one free list.

The following examples are given for the purpose of clarification:

#### **Example 1**

A total of 200 employees are entitled to vote. Two employees' organisations with a total of 50 members put forward candidates. The required number of signatures for free lists is calculated as follows:  $200 - 50 = 150$ ; one-third of  $150 = 50$ . In this case, 30 supporting signatures are sufficient, because that is the maximum number of signatures (WOR Article 9 (2b)). If no employees' organisation nominates any candidates, the total number of employees entitled to vote is simply divided by three ( $200/3 = 67$ ), and in that case, too, 30 signatures will be sufficient.

#### **Example 2**

A total of 90 employees are entitled to vote. Three employees' organisations with a total membership of 70 put forward candidates. The required number of signatures is then calculated as follows:  $90 - 70 = 20$ ; one-third of  $20 = 7$ . In this case, a candidate list can be submitted with seven supporting signatures.

The Act also allows members of an employees' organisation to be nominated on a free list, even if the employees' organisation of which they are a member has already submitted a list of candidates. However, members of that employees' organisation may not support the candidate on the free list with their signature.

### **▼ 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 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 less 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 persons who are entitled to vote, 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 (renumbering paragraph 3 as paragraph 4):  
*“If a person entitled to vote 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. If the list system is used (*see the notes to Article 11*), the candidate lists as such must be stated on the ballots. 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. One way of doing this is to require the use of a network ID. The voter needs to log into the network of the enterprise by entering a unique user name and password combination known only to the employee. The employee can then go to the site where the electronic Works Council election is being held. 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**

- 1 The election takes place by secret electronic voting.
- 2 On the day 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 someone else, by means of a written proxy, to cast the vote on their behalf.

## 2.5 Electoral systems

### 2.5.1 General explanatory notes

#### Note 1 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. *See also Article 7, note 2.*

#### Note 2 The individual candidate system

In the individual candidate system, each voter votes for several candidates. 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.

#### Note 3 The list system

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.

The list system enables the voters to easily hold those elected accountable during or after their term of office. In the list system, interim vacancies are filled by a candidate from the same list. 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, both managerial and support staff, and so on).

The following examples are given for the purpose of clarification:

#### Example 1

There are two lists of candidates submitted by employees’ organisations (List A and List B) and a free List C. List A gets 50 votes, List B 78 votes and List C 22 votes. A total of 150 valid votes have been cast, and the Works Council comprises 7 members. The quota in this example is determined as follows:  $150 \div 7 = 21.43$ . List A has met the quota twice and has 7.14 surplus votes; List B has met the quota three times, and has 13.71 surplus votes; and List C has met the quota once and has 0.57 surplus votes.

The allocation of seats is then as follows: List A receives two seats, List B receives three seats and List C receives one seat. One seat still remains to be allocated, and is allocated to the list with the most surplus votes: List B.

### **Example 2**

There are two lists of candidates submitted by employees' organisations (List A and List B) and a free List C. List A gets 40 votes, List B 15 votes and List C 35 votes. A total of 90 valid votes have been cast, and the Works Council comprises 5 members. The quota in this example is determined as follows:  $90 \div 5 = 18$ . List A has met the quota twice and has 4 surplus votes; List B has not met the quota; and List C has met the quota once and has 17 surplus votes.

The allocation of seats is then as follows: List A receives two seats, List B receives none and List C receives one seat. Two seats still remain to be allocated, and are allocated to the lists with the most surplus votes. List C has the most surplus votes, and so gains one seat. As List B's 15 votes are now considered to be surplus votes, List B receives the last seat.

### **Note 4 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, empowered 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 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.

In the following two sections, Articles 11 to 14 are elaborated on in further detail, first in the context of the individual candidate system (Section 2.5.2) and then in the context of the list system (Section 2.5.3). The Works Council must select one of these systems and must state this choice in its Rules of Procedure.

## 2.5.2 Articles 11 to 14 for the individual candidate system

### ▼ Article 11

Each voter shall cast ..... votes, on the understanding that he or she may cast only one vote per candidate. *See notes 2 and 3 of the general notes in Section 2.5.1 and note 2 below.*

### ▼ Article 12

- 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:
  - 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 it contains anything other than the indication of the selected candidates.

### ▼ Article 13

- 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. *See note 1.*
- 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. *See notes 2 and 3 of the general notes in Section 2.5.1 and note 2 below.*

## Explanatory notes

### Note 1 Number of votes on the ballot paper

In the individual candidate system, each voter must cast the same number of votes for each ballot paper. This is why the Rules of Procedure must state how many votes each voter must cast. 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).

### **Note 2 Full announcement**

'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.

#### **▼ 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.

### **2.5.3 Articles 11 to 14 for the list system**

#### **▼ Article 11**

Each voter shall cast one vote only.

#### **▼ Article 12**

- 1 After the conclusion of the election, the Works Council shall count the valid votes cast for each candidate and for each list of candidates.
- 2 A ballot paper shall be deemed invalid if:
  - 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.

#### **▼ Article 13**

- 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. 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. *See note 1.*
- 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. *See note 2.*

## Explanatory notes

### Note 1 Allocation of remaining seats

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’. *For the definition of the final sentence of paragraph (1), see also the remarks about preference votes in Section 2.5.1, note 3.*

### Note 2 Full announcement

‘Shall make these fully known’ means that under the terms of Article 13 (2), both the number of votes cast for each list and for each of the candidates shall be made known, irrespective of whether those candidates were elected or not.

### ▼ 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.

## 2.6 Procedure for interim vacancies

### General

#### Note 1 Interim vacancies

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.

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, see note 2 below, or suspension) likewise does not result in a vacancy.

#### Note 2 Barring a Works Council member from participating in the activities of the Works Council

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 can 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 must be submitted to the Joint Sectoral Committee (WOR Article 36 (3)). 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)).

### **Note 3 When an employee ‘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’. In short, a person is deemed to be ‘working in the enterprise’ if:

- That person is working in the enterprise on the basis of an employment contract or public-law employment contract with the entrepreneur who carries on the enterprise. In this context, it is important to note that 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 (WOR Article 1 (2)).
- That person is working on the basis of an employment contract or public-law employment contract with the entrepreneur but carries out the work in the enterprise of a different entrepreneur. Termination of the work with that ‘different entrepreneur’ does not mean that the person in question is no longer working in the enterprise (WOR Article 1 (3b)).
- That person is a temporary worker who has been working in the enterprise in connection with activities of 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 Dutch Civil Code (see WOR Article 1 (3a)).

Such employees have the right to participate in the enterprise of their own, ‘lending’ employer and, if the requirements as stated in WOR Article 1 (3a) have been met, also have the right to participate in the enterprise of the ‘borrowing’ entrepreneur. In such a case, ‘ceasing to work in the enterprise’ of the ‘borrowing’ entrepreneur does not mean that the person also loses his or her right to participate in the enterprise of the ‘lending’ entrepreneur.

### **Note 4 Designation as ‘persons working in the enterprise’**

This may also include one or more groups whom, under the terms of WOR Article 6 (4), the entrepreneur and the Works Council may jointly designate as ‘persons working in the enterprise’.

*See also Section 1.2, under “Employees’ as defined in the WOR’ and Article 1, note 1).*

## **▼ 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 is eligible, the outcome shall be decided by lot and in accordance with Article 13 (2) for the individual candidate system in Section 2.5.2 of this document. 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.

### Note 3 Term of office

The period of six months may be replaced by another 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 time of the commencement and conclusion of the election, 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 Determining the number of signatures required for submitting a list of candidates by those who are not members of an employees' organisation that has submitted a list of candidates, as outlined in Article 7 (4);
  - d The validity of a list of candidates, as outlined in Article 8;
  - e Determining the election results, as outlined in Article 13 (2);
  - f 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 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 should first be submitted to the Joint Sectoral Committee for mediation before it is submitted to the subdistrict court judge.

### 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. If the Works Council amends a previously disclosed provision to which an objection has been lodged, the Works Council must immediately 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 two weeks of the chairman's receipt of the request.
- 3 The meeting shall be convened by the secretary, by means of written notification to the members. Except in the case of urgent matters, the members shall be notified at least one week before the meeting. *See note 3.*
- 4 A meeting can only be held if the majority of the Works Council members 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’ (the meetings of the Works Council with the entrepreneur). Consultation meetings are covered by and organised pursuant to WOR Article 23. This 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 to decide whether the Work Council is to meet before all or certain consultation meetings. The Rules of Procedure of an enterprise to which the ‘Structure Regime’ [*structuur-regeling*] 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.

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.*

### 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 (half plus one) 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 of the Rules of Procedure. 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. *See also Article 2, note 1.*

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 and Article 20, note 1.*

## ▼ 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, all correspondence and managing all documents intended for or sent by the Works Council. *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 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 Dutch Civil Code Article 7:670). (See Appendix A 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 one week 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 one week is based on WOR Article 14 (2g). *See also Article 17 (3) of these Model Rules of Procedure and note 3 thereof.*

## **▼ 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 (at least half plus one) 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 issue 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 commissioners on the basis of the Structure Regime.

### Note 3 Decisions based on a different majority of votes

Paragraph (3) assumes that Article 20, paragraph (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 internal post or e-mail. 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, as well as to the authorised Joint Sectoral Committee. *See note 2.*

## 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.

### Note 2 Sending the annual report to the Joint Sectoral Committee

The obligation to also send the annual report to the Joint Sectoral Committee is laid down in WOR Article 49 (2). *See also Article 1, note 4.*

## 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 the entrepreneur's 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. *See notes 3 and 5.*
- 4 Any such decision shall require a majority of two-thirds of the votes cast. 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 and the Joint Sectoral Committee 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. 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.

### **Note 2 The entrepreneur's views**

These provisions are based on WOR Article 8 (2). *See also Introduction, Section 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.