

Model Rules of Procedure for Works Councils

January 2022

Social and Economic Council of the Netherlands

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Preface

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

The present edition of the Model Rules is a revised and updated version of that of 2020. The text can be downloaded from the SER's website (<https://www.ser.nl/en/Publications/model-rules-procedure-works-councils>). The various model forms can also be downloaded for adaptation into rules for a company's own particular situation. A free digital tool is also available on the website with which a Works Council can quickly and easily create a tailor-made set of Rules of Procedure.

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

A well-functioning Works Council is important for the enterprise as a whole. I trust that the new Model Rules of Procedure for Works Councils can play a useful role for both Works Councils and enterprises.

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

January 2022

Jacqueline Prins
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1 Introduction

1.1 General

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

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

The Model Rules of Procedure for Works Councils also include two appendices with specific information. *Appendix A* discusses agreements between entrepreneurs and their Works Council. *Appendix B* comprises a model text for a letter to employees concerning the electoral register (an appendix to Article 7 of the Model Rules of Procedure or Works Councils).

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

1.2 The system of employee participation defined in the WOR

1.2.1 Types of employee participation

The WOR regulates for the following types of employee participation:

The Works Council

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

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

The employee representative body

Enterprises with fewer than fifty employees may establish an employee representative body (pvt) (*WOR Article 35c (1)*). This will consist of at least three people chosen directly by and from among the employees.

If a majority of the employees of an enterprise with more than ten but fewer than fifty employees are in favour of establishing an employee representative body (*WOR Article 35c (2)*), or if it is required under the terms of a collective labour agreement, the enterprise is obliged to establish an employee representative body (see also the Guidelines for Employee Representative Bodies [*Leidraad personeelsvertegenwoordiging*]). An enterprise with fewer than ten employees may establish an employee representative body if it so wishes (*WOR Article 35d*).

Meetings with employees

Under the terms of *WOR Article 35b*, entrepreneurs operating an enterprise which normally employs ten to fifty persons and for which no Works Council or employee representative body has been established are obliged to hold meetings with employees at least twice a year. This obligation lapses as soon as a Works Council or employee representative body has been established. Differing and supplementary ways of organising employee participation

The WOR provides scope for organising employee participation otherwise than according to the basic rules stipulated in that legislation. In practice, for example, an attempt is made to involve as many employees as possible directly in participation, including those who work within the organisation without having an employment contract or appointment. If the Works Council considers it necessary in order to promote participation, theme groups or sounding board groups may be set up (with the approval of the director). Employee involvement can also be increased by organising meetings or making use of digital platforms. This requires constant attention on the part of the Works Council for these different types of more direct employee participation.

The Works Council has the task of promoting participation at departmental level by encouraging proper work review meetings and the transfer of powers within the organisation (*WOR Article 28 (2)*). Such meetings will involve everybody working in the department concerned. Internal delegation and work review meetings are extremely important for employees' personal wellbeing and development in the workplace.

1.2.2 'Employees' as defined in the WOR

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

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

- those persons who have worked in the enterprise for at least 15 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 (BW)* (*WOR Article 1 (3a)*);

- those persons working, on the basis of an employment contract or public law employment contract with the entrepreneur, in the enterprise of another entrepreneur (WOR Article 1 (3)(b)).

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

WOR Article 6 (2) or (3) provides that persons working in the enterprise are entitled to vote after they have done so for three months, and are entitled to stand for election after three months. Formally speaking, this would mean that an employment agency worker could vote after eighteen months and also be elected after eighteen (i.e. the term of fifteen months plus three 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 eighteen months has passed, if this is conducive to the proper implementation of the Act. Pursuant to WOR Article 6 (5), the Works Council can also deviate from the three month requirements in WOR Article 6 (2) and (3) relating to length of service, if doing so is conducive to the proper implementation of the Act. It is possible that the legislature will reduce these legal deadlines for the right to vote and stand as a candidate on the advice of the SER.

The need to apply WOR Article 6 (4) and perhaps also WOR Article 6 (5) may arise with regard to persons for whom it is not entirely clear whether they carry out their work activities in or for the enterprise on the basis of either a public law employment contract or an employment contract with the entrepreneur, or on any other legal basis, for example persons who work from home or standby workers and voluntary workers. If there is doubt about whether any such person falls under the WOR's definition of 'persons working in the enterprise', or if the entrepreneur and the Works Council find it desirable for other reasons, they can recognise that person as such.

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

do not belong in the Rules of Procedure. Agreements as referred to in WOR Article 6 (4) may be included in a separate document that may be added as an appendix to the Works Council's Rules of Procedure. If the entrepreneur and the Works Council fail to agree on the extension of the group of 'persons working in the enterprise', or the nullification of such an extension, either party may petition the subdistrict court judge [*kantonrechter*] to decide on the matter. Before or instead of having recourse to the courts, they can also separately or jointly request the Joint Sectoral Committee [*bedrijfscommissie*] to mediate. The importance of these matters should not be underestimated. Employees who have been recognised as 'persons working in the enterprise' are included in the headcount to determine whether an enterprise has 50 employees and is therefore obliged to establish a Works Council. This headcount is also used to determine the number of Works Council members. These employees are also included in the headcount for the requirement of 50 employees to justify the establishment of a Works Council for a part of the enterprise (WOR Article 4; see also note 2 to Article 1 of the Model Rules of Procedure). The number of persons working in the enterprise also determines the number of members making up the Works Council.

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

1.3 Provisional and definitive Rules of Procedure

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

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

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

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

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

obliged to give the entrepreneur an opportunity to offer comments before finalising its Rules of Procedure.

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

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

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

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

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

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

A well-functioning Works Council is important for the enterprise as a whole. Key factors include not only how the Works Council is made up, but also how it relates to its electorate, and how this is reflected in practice. To a large extent, this depends on the situation within the enterprise, and is mainly driven by current issues. The Model Rules of Procedure do not contain separate provisions governing consultations between Works Council members and their electorate.

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

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

The Rules of Procedure shall therefore only deal with the regulation of those matters that the WOR specifies may or must be covered in them. These matters (and consequently the Rules of Procedure themselves) are limited to the routine business of the Works Council. The Rules of Procedure are, in other words, precisely what their name suggests – rules governing the procedural affairs of the Works Council. Accordingly, they should not deal with the legal duties and powers of the Works Council. Nor should they include any 'additional' powers that, in agreement with the entrepreneur, have been granted to the Works Council, or any agreements made between the entrepreneur and the Works Council about the use of facilities and services (such agreements may be included in an appendix to the Rules of Procedure; see Appendix A for more information). The Rules of Procedure should also not contain any provisions that impose obligations on other parties (e.g., the entrepreneur, the employees, the employees' organisations or the Joint Sectoral Committee), since the Rules of Procedure are binding only on the Works Council itself.

1.4 The appointment of committees

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

Committees are appointed pursuant to a resolution setting out their task, composition, powers, and way of working. These resolutions are not included in the Works Council's Rules of Procedure themselves and therefore do not form part of them.

The resolution inaugurating a committee generally takes the form of an appendix to the Rules of Procedure. The Works Council does not have the authority to set up a committee entirely independently; consultation with the entrepreneur is required. The Works Council must therefore first present a draft of the inaugurating resolution to the entrepreneur.

WOR Article 15 differentiates between various types of committees:

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

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

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, subdivided for each article into one or more notes.

The completion form can be downloaded from the SER's website (<https://www.ser.nl/en/Publications/model-rules-procedure-works-councils>). A free [digital tool](#) is also available on the website with which a Works Council (OR) can quickly and easily create a tailor-made set of Rules of Procedure.

2.1 Definitions

Article 1

The following definitions apply to these Rules of Procedure:

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

Explanatory notes

Note 1 The entrepreneur

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

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

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

Equally, the entrepreneur may expect the Works Council to also comply with the Works Councils Act. The entrepreneur [*ondernemer*] is to be distinguished from the director [*bestuurder*]. The entrepreneur is the natural person or the legal entity or company that carries on the enterprise.

The director acts on behalf of the entrepreneur. Under the terms of WOR Article 1 (1e), the director is the person who 'alone or jointly with others, exercises the highest direct authority in managing work within an enterprise'.

The Act assumes that every enterprise has at least one officer who acts as director. If the entrepreneur is a natural person as in the case of a one-man business, this person may also be the director. If the entrepreneur is a legal entity, the managing director or manager of the company is usually the director. If there is more than one director, as a rule, one of the directors will be designated to consult with the Works Council.

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

The entrepreneur is usually also the employer of the persons working in the enterprise, but this may not always be the case. This has to do with the definition of employee used by the WOR.

The Act does not use 'employees' but instead 'persons working in the enterprise': this definition is explained in WOR Article 1 (2) and (3). For further information, see Section 1.2.2 of the Introduction ('Employees' as defined in the WOR).

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

Note 2 The enterprise

Under Article 1 (b), the name and address (including the municipality) of the enterprise's place of business are to be filled in. The definition of 'The enterprise' must be distinguished from that of 'The entrepreneur'. WOR Article 1 (1c) defines an 'enterprise' as 'an[y] organisation operating in the

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

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

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

Note 3 The enterprise and the Joint Works Council

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

WOR Article 3 (3) provides for the establishment of a Joint Works Council for two or more enterprises that are carried on not by the same entrepreneur, but by different entrepreneurs, if these entrepreneurs are 'joined together in one group'. 'Group' is used here to mean 'group of companies' [*concern*]. Entrepreneurs joined together as a group of companies made up of two or more enterprises in which a total of at least fifty persons are normally working must establish a Joint Works Council for all or for a number of those

enterprises, if this is conducive to the proper implementation of the WOR in the enterprises concerned. If it is decided that a Joint Works Council is to be established for a group of companies, the entrepreneurs concerned must appoint one of the entrepreneurs in their group to act on their behalf as 'the entrepreneur' with regard to the Joint Works Council. The name and legal form of this entrepreneur will be indicated in the Rules of Procedure for the Joint Works Council under the heading 'The entrepreneur'. The entrepreneurs represented by this entrepreneur must also be listed. The definition of 'the entrepreneur' may then be as follows:

'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 4 contains separate Model Rules of Procedure and notes for the COR and GOR.

Note 4 The Joint Sectoral Committee

The name of the authorised Joint Sectoral Committee is to be filled in under Article 1 of the Works Council's Rules of Procedure.

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

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

Note 5 Employees' organisations

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

Note 6 Administrative secretary

The entrepreneur may appoint an 'administrative secretary' [*ambtelijk secretaris*] to carry out secretarial and policy tasks (professionally) for the Works Council. The administrative secretary is added to the Works Council to provide support but is not a member of the Works Council. This position exists in addition to that of the secretary of the Works Council, who is in fact a member.

Model provision Article 1(f) concerning the appointment of an administrative secretary

f. Administrative secretary: the official added to the Works Council by the entrepreneur. He/she is not a member of the Works Council.

2.2 Composition and term of office

Article 2

1. The Works Council shall comprise members.
See notes 1,2, 3, and 4.
2. The Works Council shall elect a chairman and a deputy chairman from its number.
See note 5
3. The chairman or in the chairman's absence, the deputy chairman shall be the legal representative of the Works Council.
See note 6

Explanatory notes

Note 1 Number of Works Council members

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

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

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

Number of persons working in the enterprise	Number of Works Council members
Fewer than 50 (Works Council set up voluntarily or on basis of collective labour agreement)	3 members
50 to 100	5 members
100 to 200	7 members
200 to 400	9 members
400 to 600	11 members
600 to 1000	13 members
1000 to 2000	15 members

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

Note 2 Deputy Works Council members

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

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

The chosen form of deputising must be clearly laid down in the relevant provision in the Rules of Procedure.

Note 3 Different contents for group electoral system

These Model Rules of Procedure for Works Councils are based on a system in which the members of the Works Council are all elected by and from all employees entitled to vote. Paragraph 1 of Article 2 needs to read differently if the group electoral system is applied (see Section 3 below).

Note 4 Earmarking of seats

Another way to enhance the representation of certain groups in the Works Council is to work with earmarked seats. These are then allocated to certain groups of employees, parts of the enterprise, or branches. The Works Council stipulates in its Rules of Procedure whether and, if so, which groups of employees, parts of the enterprise, or branches are to be allocated one or more earmarked seats (by means of an addition in Article 2(1)).

Alternative for Article 2(1) in the case of earmarked seats

The Works Council shall comprise members.
Of the total number of seats on the Works Council, shall be earmarked, namely:
..... for a representative of Y (group, part of enterprise, or branch);
..... for a representative of Z (group, part of enterprise, or branch).

Note 5 The appointment of a chairman and deputy chairman

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

Note 6 The chairman or deputy chairman representing the Works Council

There are a number of ways in which a Works Council may become involved in legal proceedings. Consider, for example, the proceedings referred to in WOR Articles 26, 27 and 36 and interlocutory proceedings.

The Works Council itself is then the official party to the proceedings. The chairman (or deputy chairman) of the Works Council may represent the Works Council in legal proceedings without requiring any additional authorisation. If two or more deputy Works Council chairmen are elected, in paragraph 3, 'the deputy chairman' must be replaced by 'a deputy chairman to be designated by the chairman'. The Works Council may allow itself to be assisted in legal proceedings by a third party, e.g., a trade union representative or a lawyer.

Article 3

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

Explanatory notes

Note 1 The resignation of Works Council members

WOR Article 12 states as a general rule that the members of the Works Council must all resign simultaneously every three years. In its second paragraph, however, it allows the Works Council to deviate from this rule by stipulating in its Rules of Procedure that the members must all resign simultaneously every two or every four years. 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. The Act refers to the resignation of 'half' of the members. Normally, however, the total number of members will be an odd number, of which, strictly speaking, there is no half. In practice, the Works Council will resolve this in its schedule of outgoing members by letting the greater and lesser 'halves' stand down by turns. If the Works Council wishes to implement this option, Article 3 (1) must then read as follows: *'The term of office of the members of the Works Council is four years. After two years of each term of office, half their number shall resign, as indicated in a schedule drawn up by the Works Council beforehand.'*

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

A transitional provision can regulate this as follows:

Model transitional provision

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

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

If, in order to fill a vacancy or an interim vacancy, a member does not join the Works Council until some time after the start of the term of office, the term of office for that member will in fact be shorter than the term referred to in Article 3.

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

Note 2 Eligibility of Works Council members for re-election

Under the terms of WOR Article 12 (1), resigning Works Council members are, in principle, immediately eligible for re-election, but the Works Council

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

Model provision for Article 3 (3)

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

Electoral process: from preparation to announcement of result

General explanatory notes

The Works Council's Rules of Procedure set out the electoral procedure. They state in any case:

- the candidature procedure (including applicable deadlines, any electoral groups, or divisional committees)
- the voting method
- the determination of the result
- the filling of interim vacancies
- the objections procedure

The Works Council can arrange the elections in different ways. When drawing up and amending the Works Council's Rules of Procedure, it is important to carefully weigh the advantages and disadvantages of the various options. Those options should be chosen that best suit the enterprise concerned. Keep things simple. In the case of a small(ish) enterprise, for example, using electoral groups is not an obvious method. We give a brief overview below of the issues to be considered and the decisions to be taken.

Phase 1: Integrated voting or voting via electoral groups

The basic version of these Model Rules of Procedure is based on a system in which the members of the Works Council are all elected by and from all employees entitled to vote ("integrated voting").

In order to achieve balanced representation of groups of employees, a Works Council may choose to establish electoral groups.

Another way to enhance the representation of certain groups in the Works Council is to work with earmarked seats. (See also note 4 to article 2).

Integrated voting

In the case of integrated voting, the members of the Works Council are elected by and from all employees entitled to vote, for the Works Council as a whole.

Voting via electoral groups

In order to promote the representation of certain groups in the Works Council, the Works Council may establish electoral groups (WOR Article 9). Certain groups, parts of the enterprise, or branches will thus be represented in any case, and to a predetermined extent, within the Works Council. This prevents a certain group from always failing to obtain a seat on the Works Council. An electoral group comprises a proportion of the electorate on the basis of certain common characteristics and interests, for example:

- departments
- positions/professions
- location/region
- type of contract (permanent/flex)
- employee/volunteer

Prior to the elections, the Works Council lays down the following in the Rules of Procedure:

- the names of the electoral groups
- a clear description of the electoral groups
- how many seats on the Works Council are available for each electoral group

The elections are organised per electoral group (see Section 3 Model Rules of Procedure regarding electoral groups).

This means that:

- the Works Council draws up the electoral register of employees entitled to vote and to be elected for each electoral group; each person working in the enterprise belongs to an electoral group, but to no more than one electoral group
- candidates put themselves up to election from within the electoral groups
- the Works Council determines the election result for each electoral group
- interim vacancies are filled per electoral group

Disadvantage of the group electoral system

Elections via electoral groups may result in it not being possible to fill certain seats if no candidate comes forward for this electoral group (including in a by-election). The electoral group seat concerned will then remain vacant and the Works Council will function with too few members. If this occurs repeatedly, the group electoral system should be reconsidered. Integrated elections may then perhaps be more appropriate for the enterprise.

Integrated elections with earmarked seats

If the Works Council is aiming for proportional representation but wishes to avoid the disadvantages of the group electoral system (i.e. the risk of seats not being filled), it can choose to work with earmarked seats. It then designates a number of seats for certain groups of employees, parts of the enterprise, or branches. If no candidates are available for the earmarked seats, those seats may be filled by other candidates.

The Works Council stipulates in its Rules of Procedure which groups of employees, parts of the enterprise, or branches are to be allocated one or more earmarked seats. See also note 4 to article 2. For each person entitled

to vote or stand for election, the electoral register must indicate the group/part/branch to which they belong.

Electoral committee

Pursuant to WOR Article 16, the Works Council can appoint an electoral committee. See also WOR Article 15 and note 2 to Article 4 of the Model Rules of Procedure for Works Councils and Section 5.

Phase 2: Candidacy procedure

Electoral register

Once the date of the election has been announced, the Works Council (or its electoral committee) 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. The Works Council shall then inform all employees that the electoral register has been drawn up and that they can contact the Works Council (or its electoral committee) with any questions and/or remarks that they may have.

When drawing up the electoral register, it is important to check who is covered by the term 'persons working in the enterprise' and whether the Works Council has deviated in its Rules of Procedure from the statutory deadlines regarding the right to vote and stand for election (see also WOR Article 6 and notes 1 and 2 to Article 5 of the Model Rules of Procedure for Works Councils).

Lists of candidates

Lists of candidates can then be submitted by:

1. an employees' organisation ('trade union list')
2. voters who are not members of an employees' organisation or who are members of an organisation that has not submitted a list of candidates ('free list').

If a voter meets the requirements for being elected, he/she can submit him/herself as a candidate on a list. This does not apply if he/she is a member of an employees' organisation which has submitted a list of one or more candidates. Such voter will require his/her candidacy to be submitted by a member of an employees' organisation or a member of an employees' organisation which has not submitted a list.

A list of candidates can comprise one or more candidates.

Deadlines

In order to facilitate the elections, it is advisable to adhere to a schedule. Article 7 of the Model Rules of Procedure for Works Councils lists various deadlines. The periods concerned may be reduced or extended. According to the schedule set out in Article 7, the employees' organisations first submit their lists of candidates ('trade union lists'), followed by the submitters of the 'free lists'. This enables members of employees' organisations who wish to stand as a candidate on a free list to know whether they can stand for election or whether they must have their list submitted by a voter who is not a member of an employees' organisation or who is a member of an employees' organisation which has not submitted a trade union list.

The Works Council may also choose to have the deadlines for submission of trade union lists and free lists begin and end simultaneously. In that case, it is wise to allow the period for amending an invalid list to be longer than one week (as currently provided for in [Article 8](#) of the Model Rules of Procedure for Works Councils).

Phase 3: Voting for candidates

At the end of the candidacy period the Works Council (or its electoral committee) will determine whether or not a vote is necessary. If there are fewer or the same number of candidates as the number of seats on the Works Council, no vote is required. In that case, the candidates will be deemed to have been elected and can all become members of the Works Council.

Electoral systems

There are two electoral systems for voting: the individual candidate system [*personenstelsel*] and the list system [*lijststelsel*]. Prior to the elections, the Works Council must state its choice in its Rules of Procedure.

[Section 2.5](#) explains the individual candidate system and the list system and the differences between them.

A key difference between the two systems is that in the individual candidate system, voters primarily vote for individuals, whilst in the list system, their vote is primarily based on a particular 'platform'. The list system is most suitable for (larger) enterprises in which voters and candidates often do not know one another personally.

Phase 4: Determination and announcement of results

When determining the election results, it is important whether the election was conducted by means of the integrated system or the group electoral system. In the case of electoral groups, the results must also be determined and announced for each electoral group.

The Works Council must lay down how the result is to be determined in its Rules of Procedure. See in that regard [Sections 2.5.1](#) and [2.5.2](#) and [article 12](#) and [13](#) of the Model Rules of Procedure for Works Councils. If certain seats have been earmarked for certain groups, these are first allocated to the candidates concerned (integrated system or per electoral group). Once the earmarked seats have been filled, the remaining seats will be allocated.

The Works Council (or its electoral committee) shall announce the results of the elections to all parties concerned: the entrepreneur, the persons working in the enterprise, and the employees' organisations that have submitted a trade union list.

2.3 Organisation of elections

Article 4

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

Explanatory notes

Note 1 The organisation of the first Works Council election

The Works Council is responsible for organising the elections, but this does not, of course, apply to the election of members of the first Works Council, the organisation of which is the responsibility of the entrepreneur. Prior to establishing the first Works Council, the entrepreneur must draw up 'provisional Rules of Procedure', after consultation on the matter with the employees' organisations involved.

The entrepreneur can base his provisional Rules on the present Model Rules of Procedure, which also include provisions for organising elections to the Works Council in accordance with the Act. See also [Section 1.3](#) of the Introduction.

Note 2 The electoral committee

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

Article 5

1. Persons who have been working in the enterprise for at least three months on the election day shall be eligible to vote.
See note 1
2. Persons who have been working in the enterprise for at least three months on the election day shall be eligible to stand for election.
See note 2

Explanatory notes

Note 1 The right to vote

In principle, anyone who has been working in the enterprise for six months is entitled to vote ([WOR Article 6 \(2\)](#)). [WOR Article 6 \(5\)](#) allows the Works Council to deviate from this, if this is conducive to the proper implementation of this Act within the enterprise. The minimum term of six months may be extended or reduced in the Rules of Procedure.

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

To prevent any misunderstanding, it is pointed out that Article 5 as well as the legal provisions on which this provision in the Rules of Procedure is based concerns the length of service [*diensttijd*], i.e., the period during which the employee is 'employed under the terms of an employment contract'. This means that during periods of illness or incapacity for work, the length of service continues to accrue.

Note 2 The right to stand for election

In principle, employees will need to have worked in the enterprise for at least a year before they are entitled to stand for election (WOR Article 6 (3)). Under the terms of WOR Article 6 (5), the Works Council may deviate from this in its Rules of Procedure, if this is conducive to the proper implementation of this Act within the enterprise. The minimum term of one year may be extended or reduced in the Rules of Procedure.

In order to encourage people to put themselves forward as candidates, a Works Council may agree with the director, in a written agreement, on measures that will help to ensure that Works Council work can be combined with a normal position. Different matters will play a role in different organisations. A customised approach will be required. That may involve, for example, a compensation arrangement for irregular working hours, hours for which Works Council members are exempted from their regular work (excluding the rights they have pursuant to the WOR), or an exemption for filling in hours and replacement at the department that provides a Works Council member.

Article 6

1. In consultation with the entrepreneur, the Works Council shall determine the election date and the times at which the election will begin and end. The secretary of the Works Council shall notify the entrepreneur, the persons working in the enterprise, and the employees' organisations. There shall be a period of at least 13 weeks between this notification and the election date.
See note 1
2. The election date shall not be earlier than four weeks before and no later than two weeks before the end of the term of office of the resigning Works Council members.
3. During the elections, the Works Council, or the electoral committee that it has set up, may call on the assistance of one or more polling stations, each consisting of no more than three persons working in the enterprise.
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 an election register comprising the persons working in the enterprise who are entitled to vote on the election day or to stand for election. The Works Council shall then inform all persons working in the enterprise that the electoral register has been drawn up.
See note 1
2. Nominations shall take place by submitting a list of one or more candidates to the secretary of the Works Council. The secretary shall issue a duly dated acknowledgment of receipt to the person who submitted the list.
See note 2
3. Employees' organisations may submit their lists of candidates up to six weeks before the election date.
4. Within one week of the expiry of the period stated in paragraph 3, the Works Council shall announce which employees' organisations have submitted a list of candidates.
5. After the announcement referred to in the previous paragraph has been made, one or more employees who are entitled to vote and who are not a member of an employees' organisation that has put up candidates may submit a list of candidates.
See note 3
6. The lists of candidates as referred to in paragraph 5 may be submitted to the secretary of the Works Council up to no later than three weeks before the election date.
7. Together with each list of candidates, a written statement from each candidate appearing on the list shall be submitted clearly stating that he or she accepts the nomination.
8. A candidate's name may appear on one list of candidates only.

Explanatory notes

General explanatory notes

Article 7 of these Model Rules of Procedure lays down the Procedure for and phases of the nomination of candidates and is based on WOR Article 9 (2). This provision concerns two types of candidate lists, i.e., those submitted by employees' organisations and those submitted by persons or groups of persons working in the enterprise and who are entitled to vote. The former lists are also referred to as 'trade union lists', while the latter are also known as 'free lists'.

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

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

- The election date will be announced at least thirteen weeks prior to the elections (Article 6 (1) Model Rules of Procedure).

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

The deadlines specified in Article 6 (1), Article 7 (1), (3), (4) and (6) and Article 8 (3) of the Model Rules of Procedure are to ensure that the electoral process runs smoothly. It is of course possible to set longer or shorter deadlines.

Note 1 Electoral register

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

The Works Council shall then inform all persons working in the enterprise that the electoral register has been drawn up. To this end, a model text has been attached to these Model Rules of Procedure which can be used, for example, in a letter, e-mail, or newsletter addressed to all persons working in the enterprise concerning the elections/election register. If they wish to know whether they have been included in the electoral register, or if they are in doubt as to whether they are entitled to vote and/or stand for election, they can approach the Works Council (or its electoral committee).

Within one week after the Works Council has announced that the electoral register has been drawn up, any interested party may lodge an objection with the Works Council pursuant to Article 16 of the Model Rules of Procedure for Works Councils. The purpose of that article is to make it possible to draw the Works Council's attention to any errors. One such objection might be that a person has wrongly been included in or excluded from the electoral register.

Under privacy legislation, persons working in the enterprise must have been informed, prior to drawing up the electoral register, of the reason for drawing it up and of the retention period for the information. That notification may be deemed to be included in the standard privacy statement that an employer should have issued to its employees. No consent is however required for the publication of solely their names in the electoral register.

Note 2 The lists of candidates

The Works Council shall announce which employees' organisations have submitted lists of candidates, and can confine itself to doing so. It is not the intention for the Works Council to announce which persons are on the lists of candidates submitted by the employees' organisations. The candidate lists (both trade union lists and free lists) must be announced at the same time (see also Article 8 of the Model Rules of Procedure for Works Councils).

Note 3 The free lists

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

He requires the support of at least one other employee eligible to vote who is not a member of an employees' organisation that has submitted a list of candidates. The Model Rules of Procedure for Works Councils provide that lists drawn up by the employees' organisations should be submitted first and only then any free lists. This means that when they stand in the election, members of employees' organisations who wish to be a 'free candidate' know whether 'their' employees' organisation has submitted a list of candidates as referred to in paragraph 5. The sequence of submission is not mandatory, meaning that trade union lists and free lists can be submitted simultaneously.

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. The trade union lists and the free lists shall be checked simultaneously.
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.

See note 1

Note 1 Announcement of lists of candidates

Elections must be fair. This means, among other things, that all candidates have the same amount of time to campaign and make themselves known to

voters, and that the relevant period starts and ends simultaneously for all of them.

The lists of candidates for elections may be published within the organisation. In order to organise (legally) obligatory Works Council elections, it is necessary to publish lists of candidates ([WOR Article 9](#)). Given the GDPR, there is a legitimate interest in doing so. The Works Council (or its electoral committee) must ensure that personal data is handled carefully when these lists are drawn up and distributed and that they do not find their way outside the organisation. It is important that employees are properly informed about what is done with their data, both before and after voting. It must be clear, for example, what data will be disclosed when votes are announced and how the data will be stored.

Article 9

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

See note 1

Explanatory notes

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

This provision is for when the total number of nominees is equal to or fewer than the number of seats on the Works Council as stipulated in Article 2 of these Rules of Procedure.

When the number of seats available exceeds the number of candidates nominated, it is advisable to hold by-elections after, say, six months to fill the vacancies. For more information on by-elections, 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 eligible voter shall put the paper in the designated ballot box, except when the ballot is sent by post.
See notes 2 and 3
3. Each eligible voter may vote by proxy for no more than two other eligible voters, provided that a written proxy has been obtained.
See note 5

Explanatory notes

Note 1 Secret ballot

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

Note 2 Voting by post

A 'certified ballot paper' is a ballot paper stamped or signed by or on behalf of the Works Council or the electoral committee, respectively. If votes must be cast by post (e.g., by employees who cannot attend because they are carrying out their job elsewhere), a careful procedure must be followed and the confidentiality of the voting must be guaranteed. The ballot papers must be sent to the employees concerned some time before the day of the election, and the employees must be informed that the completed ballot papers must be returned in good time, and at the latest on the day of the elections. For persons who cannot attend on the official election day, it may be necessary to allow them to vote beforehand. When drawing up Article 10, it is recommended that the Works Council bear this in mind and make arrangements accordingly. In such cases, it is advisable to include a provision in the Rules of Procedure, for example by adding a new paragraph 3.

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

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

Note 3 Ballot papers

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

Note 4 Electronic voting

The Model Rules of Procedure for Works Councils assume written voting. Several articles include the word 'ballot(s)', for example. 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 electronic voting (for example by means of a digital election tool) must meet a number of conditions in order to lead to a valid election process. Before the elections take place, the responsibilities of the Works Council (or its electoral committee) and the supplier of the digital election tool (the contractor) must be laid down in writing. This also applies to the processing of personal data. Arrangements must be made with the supplier in a processor agreement [*verwerkersovereenkomst*] regarding the careful processing of the data, including its storage in accordance with the GDPR. The election process must be objectively verifiable. As a contribution to this, the contractor must clarify what steps it will take in the various phases of the process (for example by means of a logbook).

Electronic voting must also meet the following conditions:

1. The digital election tool must guarantee the accessibility of the elections, on the one hand by providing comprehensible (user) information to the voter in the form, for example, of written instructions or a video and, on the other, by being accessible and easy to use for all voters.
2. The digital election tool must prevent fraud by sending unique voting codes only to those voters who are on the list of eligible voters provided to the contractor by the Works Council (or its electoral committee). Each voter must be able to vote only once. This means that the digital election tool registers that someone has voted and who that was, and that it is technically impossible to use the same unique voting code more than once. No additional voting codes will be provided either.
3. The digital election tool must guarantee the confidentiality of voting. This means that the hardware and software used must be equipped to do so. The tool must not, for example, register which vote goes to which candidate, so that the vote cast cannot be traced back to the voter who cast it. The tool must also provide a full 'official record' of the election results.
4. The digital election tool must guarantee that the provisions of [Article 14](#) of the Model Rules of Procedure regarding the deletion of data are complied with and that the objections procedure set out in [Article 16](#) of the Model Rules of Procedure is complied with in full.

If electronic voting is to be used, the Works Council may include an alternative to Article 10. If the Works Council opts for electronic voting, this has implications not only for the wording of Article 10 but also for other articles such as Article 12 of the Model Rules of Procedure.

Alternative Article 10 in the case of electronic voting

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

Note 5 Voting by proxy

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

2.5 Systems for voting and for allocation of seats on the Works Council

2.5.1 General explanatory notes

Two electoral systems

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

Individual candidate system

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

List system

The list system is most suitable for larger enterprises in which voters and candidates often do not know one another personally. The list system is not unlike elections for the city council or parliament, where the elector does not usually vote for a specific person but, rather, for a 'platform' or particular interests.

In the list system, each voter casts one vote for one of the lists of candidates, on the understanding that he or she is thereby voting for the preferred candidate on that list (this is the 'preference vote' that in practice is often given to the candidate at the top of the list [*lijsttrekker*]). The total number of votes cast for each list is the primary factor determining the number of seats that are allocated to a list, according to quotas; the system of surplus votes is the secondary determining factor. Subsequently, on the basis of the order of the names on the lists, it is determined which candidates from each list are selected, also taking the preference votes into account. Any preference votes cast may change the order of candidates on the list. The Rules of Procedure must contain a provision regarding preference votes; for example, that a candidate who achieves the quota individually shall definitely be allocated a seat, regardless of his or her position on the list of candidates.

Article 13 of these Model Rules of Procedure contains such a provision.

It is advisable for each list of candidates to contain at least as many names of persons as the party or parties submitting the list expect to be elected from that list.

These examples are by way of clarification.

Example of seat allocation:

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

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

The allocation of seats is then as follows: list A receives four seats, list B six seats, and list C one seat. Two seats remain to be allocated, and are

allocated to the lists with the most surplus votes. List B (with 53.8 surplus votes) and list C (with 52.3 surplus votes) qualify for these seats.

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

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

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

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

List A therefore receives seven seats, but that list comprises only five candidates. The two remaining seats are allocated to the other lists as follows:

The total number of votes for lists B and C is 500 and the number of seats to be filled is two (the two seats that could not be filled by List A). The quota is $500 \div 2 = 250$.

- List B has failed to gain the quota, as well as 150 surplus votes
- List C has gained the quota once, as well as 100 surplus votes

List C receives the first of the two seats because it has gained the quota; list B receives the second seat because it has the largest number of surplus votes.

Articles 11 to 13 explain the individual candidate system and the list system. Section 3 includes model provisions regarding the group electoral system.

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

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

Individual candidate system	List system
<i>Article 11</i>	<i>Article 11</i>
Each voter shall cast votes, on the understanding that he or she may cast only one vote per candidate. <i>See note 1</i>	Each voter shall cast one vote only.
<i>Explanatory notes</i>	
<p><i>Note 1 Number of votes on the ballot paper</i></p> <p>In the individual candidate system, each voter must cast the same number of votes on each ballot paper.</p> <p>This is why the Rules of Procedure must state how many votes each voter must cast.</p> <p>Normally, each voter casts as many votes for candidates on the ballot paper as there are vacant seats on the Works Council. Voters may also be allowed to cast fewer votes than there are vacant seats, provided that the rule that each voter must cast the same number of votes is upheld. The reason for this rule is that the election results will be distorted if voters knowingly or unknowingly cast fewer than the prescribed number of votes. If the voter selects fewer names, he or she will not have cast 'the required number of votes', and the ballot paper will therefore be deemed invalid under the terms of Article 12 (2c) of the Model Rules of Procedure.</p>	

Individual candidate system		List system	
<i>Article 12</i>		<i>Article 12</i>	
1	After the conclusion of the election, the Works Council shall count the valid votes cast for each candidate.	1	After the conclusion of the election, the Works Council shall count the valid votes cast for each list of candidates and for each candidate.
2	A ballot paper shall be deemed invalid if: <ul style="list-style-type: none"> a. it is not certified by or on behalf of the Works Council; b. it is unclear which candidate an eligible voter has voted for; c. the required number of votes have not been cast; d. any marks are made other than an indication of the selected candidate list. 	2	A ballot paper shall be deemed invalid if: <ul style="list-style-type: none"> a. it is not certified by or on behalf of the Works Council; b. it is unclear which candidate an eligible voter has voted for; c. more than one vote has been cast; d. any marks are made other than an indication of the selected candidate list.

Individual candidate system		List system	
<i>Article 13</i>		<i>Article 13</i>	
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.	1	<p>In order to determine the results of the election, the Works Council shall first calculate the quota by dividing the number of valid votes cast by the number of seats to be filled on the Works Council.</p> <p>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.</p> <p>Votes cast for a list that has not reached the quota shall also be treated as surplus votes, provided that they amount to at least threequarters of the quota. In the event that two or more lists have an equal number of surplus votes, it shall be decided by lot which list will receive one of the remaining seats first.</p> <p>The seats allocated to a list shall be given to the candidates in the order in which they were listed, with the proviso that any candidate who met the quota individually shall definitely be elected.</p> <p>If the application of these provisions to a list results in more seats being allocated to a list than there are candidates, the seat or seats that cannot be filled shall be transferred to one or more of the other lists containing candidates to whom no seat has been assigned.</p> <p><i>See note 1</i></p>

2	The Works Council shall determine the results of the election and shall make these known to the entrepreneur, the persons working in the enterprise and the employees' organisations that submitted candidates. <i>See note 2</i>	2	The Works Council shall determine the results of the election and shall make these known to the entrepreneur, the persons working in the enterprise and the employees' organisations that submitted lists of candidates. <i>See note 3</i>
<i>Explanatory notes</i>		<i>Explanatory notes</i>	
<i>Note 1 Determination of result in the case of earmarked seats</i>		<i>Note 1 Allocation of seats</i>	
In the case of earmarked seats, an alternative should be used instead of Article 13 above.	<p>The system for allocating seats in the list system shall consist of the following stages:</p> <ul style="list-style-type: none"> ▪ Determination of the quota [kiesdeler] (total number of votes cast divided by the number of available seats). ▪ Allocation of seats to lists based on the quota. ▪ Allocation of surplus seat or seats to a list or lists with most surplus votes. ▪ Allocation of the seats gained by the lists to the candidates on each list. ▪ If a list is allocated more seats than it has candidates, the seats shall be allocated instead to another list or lists. ▪ See Section 2.5.1 and the examples given there. ▪ 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'. 		
		<i>Note 2 Determination of result in the case of earmarked seats</i>	
In the case of earmarked seats, an alternative should be used instead of Article 13 above.			

Individual candidate system		List system	
<i>Alternative Article 13 in the case of earmarked seats</i>		<i>Alternative Article 13 in the case of earmarked seats</i>	
1	The earmarked seats will first be filled. This will be done with the elected candidates for these seats. The candidates who, consecutively, have received the most votes shall have been elected. Earmarked seats not to be filled in this way will be further taken into account in the distribution of the other seats.	1	To determine the results, the earmarked seats will first be filled and then the other seats.
2	The candidates who, consecutively, have received the most votes shall have been elected for the other seats. If there are several candidates with an equal number of votes for the last remaining seat or seats, the outcome shall be decided by lot.	2	<i>Earmarked seats</i> The Works Council shall calculate the quota by dividing the number of votes validly cast by the total number of seats on the Works Council. The earmarked seat(s) shall be filled by the elected candidates for these seats; those candidates shall have been elected who, consecutively, have received the most votes. The total number of votes for a list shall be reduced by the number of votes for the candidate to whom an earmarked seat has been allocated, up to a maximum of the quota. Earmarked seats not to be filled in this way will be further taken into account in the distribution of the other seats.
3	The Works Council shall determine the results of the election and shall make these fully known to the entrepreneur, the persons working in the enterprise and the employees' organisations that submitted lists of candidates.	3	<i>Other seats</i> The Works Council shall recalculate the quota by dividing the remaining votes by the remaining seats. 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.
		4	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.
	5	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.
	6	If the application of these provisions to a list results in more seats being allocated to a list than there are candidates, the seat or seats that cannot be filled shall be transferred to one or more of the other lists containing candidates to whom no seat has been assigned.
		<i>Explanatory notes to alternative Article 13 List system in the case of earmarked seats</i>
		<p>The votes cast for a candidate who is allocated an earmarked seat shall be deducted from his/her list up to a maximum of the quota; the excess shall continue to form part of the total for that list.</p> <p>The following example will clarify the system of seat allocation in the case of earmarked seats.</p> <p>Example calculation 9 seats, 3 earmarked 360 total votes List A: 140 votes List B: 110 votes List C: 95 votes</p> <p>Earmarked seats: Step 1: $360 \div 9 = 40$ Step 2: Each list happens to have a candidate for one of the 3 earmarked seats. All three earmarked seats have been filled. Step 3: The candidate in List A takes 15 votes, the candidate in List B receives 10, and the candidate in List C receives</p>

	<p>5. These are deducted from their list, leaving for List A 125 votes, for List B 110, and for List C 95. The total number of votes after deduction of the votes allocated via an earmarked seat is then $125 + 110 + 95 = 330$ (if one of the earmarked seats were not to have been filled, it would be included in the allocation of the remaining seats).</p> <p>Other seats: Step 1: The quota is calculated again: $330 \div 6 = 55$ Step 2: List A has met the quota twice and has 15 surplus votes; List B has met the quota twice and has 0 surplus votes; and List C has met the quota once and has 40 surplus votes. Step 3: The remaining seat goes to the list with the most surplus votes, List C. List A has 2 seats, List B has 2 seats, and List C has 2 seats. (Assuming that List C contains only a single candidate, the remaining seat goes to the list with the highest number of surplus votes, namely List A.) Step 4: Allocation of the seats to the candidates per list.</p>
<i>Note 2 Publication and distribution</i>	<i>Note 2 Publication and distribution</i>
<p>The Works Council shall determine whether the number of votes cast in respect of non-elected candidates will also be announced. In order to protect their position, it may choose not to do so. If they so request, non-elected candidates must of course be informed of the number of votes cast for them.</p>	<p>The Works Council shall determine whether the number of votes cast in respect of non-elected candidates will also be announced. In order to protect their position, it may choose not to do so. If they so request, non-elected candidates must of course be informed of the number of votes cast for them.</p>

Article 14

The secretary of the Works Council shall retain the used ballot papers in a sealed envelope and destroy them three months after the election result has been determined.

See note 1

Explanatory notes

Note 1

This article must be amended if electronic voting is used, for example as follows: *'The secretary shall ensure that any data in his/her or a third party's possession that is equivalent to the data on ballot papers is deleted three months after the election result has been determined.'*

This point must be addressed in the arrangements made with the supplier of the election tool. See also Article 10 of the Model Rules of Procedure for Works Councils.

2.6 Filling interim vacancies

2.6.1 General explanatory notes

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

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

In order to determine whether someone has 'ceased to work in the enterprise', it is important to be aware of what is meant in the WOR by 'working in the enterprise'. See the Introduction, [Section 1.2.2](#).

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

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

Besides by-elections for interim vacancies, by-elections may also be held for one or more seats that have remained unfilled since the beginning of the Works Council's term of office.

If, in order to fill a vacancy or an interim vacancy, a member does not join the Works Council until some time after the start of the term of office, the

term of office for that member will in fact be shorter than the term referred to in Article 3 of the Model Rules of Procedure for Works Councils.

Exclusion of a member

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

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

Article 15

1. In the event of an interim vacancy on the Works Council, the Works Council shall appoint as the successor of the member concerned the first eligible candidate according to the results of the most recent election.
See notes 1, 2 and 3.
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 4

Explanatory notes

Note 1 Earmarked seats

If the Works Council has specified in its Rules of Procedure that certain seats are earmarked, Article 15 (1) should be replaced by the following alternative:

Alternative for Article 15 (1) in the case of earmarked seats

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. If the vacancy concerns an earmarked seat, a candidate from the relevant group will be the first person eligible for the vacancy. If there is no candidate from the group concerned, the earmarked seat shall be allocated to the candidate who, according to the result of the last election held, is the first to qualify for it.

Note 2 Succession in the individual candidate system

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

Note 3 Succession in the list system

In the list system, the successor is the candidate who would have qualified for a seat if there had been one more seat to be allocated to the list from which the outgoing Works Council member was appointed. If that list is 'exhausted', the seat will be allocated to one of the other lists in accordance with the provisions of [Article 13 \(1\)](#). If all the lists are 'exhausted', a by-election will be necessary.

Note 4 Term of office

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

2.7 Objections Procedure

Article 16

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

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

See notes 2 and 3

Explanatory notes

Note 1 Difference between the arrangements for objections and disputes

These arrangements for objecting to the Works Council must be distinguished from the 'general disputes resolution arrangement' in [WOR Article 36](#). The arrangements in Article 16 of the Model Rules of Procedure are intended to make it possible to draw the Works Council's attention to any errors. One such objection might be that a person has wrongly been included in or excluded from the electoral register. In the majority of cases, the Works Council can and will rectify such mistakes. However, if problems cannot be solved in this way, the arrangement for disputes set out in [WOR Article 36](#) may always be followed, whereby the dispute may first be submitted to the Joint Sectoral Committee for mediation before it is submitted to the

subdistrict court judge. If the Committee's mediation efforts fail, it will offer the parties advice on how to resolve the dispute. This procedure is not required by law but it is recommended and is free of charge.

Note 2 Deciding and acting promptly

In these types of situations, deciding and acting promptly are usually imperative: the Works Council must rapidly come to a decision about the objection. If the objection is justified, the Works Council must also rapidly make the necessary arrangements. 'Necessary arrangements' may be arrangements of all kinds, for example changing deadlines or making them less stringent, and publicly announcing the rectification of errors. If the provision by the Works Council in response to an objection amends a previously disclosed provision, the Works Council must make this amendment known not only to the person who lodged the objection, but also to all other persons working the enterprise.

Note 3 Submitting an objection to the electoral committee

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

2.8 Procedure and secretariat of the Works Council

Article 17

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

See notes 1 and 2
2. The chairman shall determine the time and location of the meeting. A meeting held at the request of Works Council members shall be convened within fourteen days of the chairman's receipt of the request.
3. The meeting shall be convened by the secretary, by means of written or electronic notification to the members. Except in the case of urgent matters, the members shall be notified at least seven days before the meeting.

See note 3
4. A meeting can only be held if the majority of the Works Council members as referred to in Article 2 (1) of the Rules of Procedure are present.

See note 4
5. In the absence of both the chairman and the deputy chairman, the Works Council shall select a chairman from among the members present to chair the meeting.

Explanatory notes

Note 1 Organising a Works Council meeting

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

arrangements with regard to when such consultation meetings are to be convened.

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

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

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

Paragraphs 1a and 1b of Article 17 stipulate two instances in which a Works Council meeting must be convened. Other cases in which the Works Council considers it desirable to convene a meeting may be added to the Rules of Procedure under Article 17 as the Works Council sees fit. This makes it possible, for instance, to stipulate that the Works Council is to meet before all or certain consultation meetings. The Rules of Procedure of an enterprise to which the 'Structure Regime' [*structuurregeling*] applies might, for example, contain a provision stating that a meeting must also be convened with regard to the filling of a vacancy on the Supervisory Board and the rights and powers of the Works Council in this context. See also Appendix B. The number of 'at least two' members in paragraph 1b is merely an example. The greater the number of Works Council members, the more appropriate it is to stipulate a greater number of members or a certain proportion of the total number of Works Council members under b, e.g., 'at least a quarter of the members'. A 'reasoned request' refers to a request that indicates at least which matter the members requesting the Works Council meeting wish to discuss at that meeting.

Note 3 Convening a meeting

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

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

Note 4 Quorum

Paragraph 4 stipulates the quorum for the meeting, i.e., the minimum number of members that must be present for a legally valid meeting to be convened. At least the majority of the members must be present for the

meeting to be valid. 'The majority of the Works Council members' means the majority of the total number of Works Council members under the terms of Article 2 (1) of the Rules of Procedure. That means that it is actually the number of seats on the Works Council that is concerned, with vacant seats also being counted.

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

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

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

Article 18

1. The Works Council shall appoint a secretary.

See note 1

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

See note 2

Explanatory notes

Note 1 The secretary of the Works Council

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

Generally, the Works Council shall appoint one of its members as secretary. The term 'the Works Council secretary' [*bestuurlijk secretaris*] usually refers to this person appointed from among the members of the Works Council.

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

The administrative secretary also enjoys protection against victimisation and dismissal (WOR Article 21 and Article 7:670 of the Civil Code). (See Appendix 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 seven days before the Works Council meeting.

See notes 1 and 2

Explanatory notes

Note 1 Agenda

See also the notes to Article 18 regarding the Works Council secretary.

Note 2 Term for publication and distribution of the agenda

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

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 tied, the proposal shall be deemed to have been rejected.

Explanatory notes

Note 1 Decisions based on a common majority of votes

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

Note 2 Decisions about individuals

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

Note 3 Decisions based on a different majority of votes

Paragraph 3 assumes that Article 20 (1) stipulates that the Works Council shall make its decision based on a common majority of votes. If, in accordance with the options referred to 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 known to the persons working in the enterprise shall not contain any details that must remain confidential in accordance with [WOR Article 20](#).
See note 2

Explanatory notes

Note 1 Minutes of the Works Council meeting

The secretary's minutes of the Works Council meeting must contain an account of the discussions at that meeting and a description of the decisions reached. The members of the Works Council may object to the contents of

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

Note 2 Publication and distribution

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

The version of the minutes made available to the persons working in the enterprise may not contain any information about matters which, under the terms of WOR Article 20, must be kept 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

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

After approval from the Works Council, the secretary shall make the final annual report known to the entrepreneur and the persons working in the enterprise.

Explanatory notes

Note 1 The annual report of the Works Council

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

2.9 Final provisions

Article 23

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

Note 1 Amendments and additions to the definitive Rules of Procedure

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

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

Note 2 The entrepreneur's views

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

Note 3 Qualified quorum

Paragraph (3) concerns the quorum, i.e., the number of members that must be present to convene a legally valid Works Council meeting. It is recommended that amendments to the Rules of Procedure require that a qualified majority and not a common majority of Works Council members must be present at the meeting, as such amendments may have significant consequences (e.g., with regard to the Works Council's term of office).

The majority of two-thirds of the total number of Works Council members as referred to in paragraph (3) is a typical qualified majority, but the Works Council is free to opt for a different qualified majority (e.g., three-quarters). See also [Article 17, note 4](#).

Note 4 Qualified majority

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

Note 5 Cumulation

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.

3 Model Rules of Procedure regarding electoral groups

3.1 General explanatory notes

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

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

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

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

3.2 Model Rules of Procedure regarding electoral groups

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

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

Definitions

Article 1

The following definitions apply to these Rules of Procedure:

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

Composition

Article 2

1. The Works Council shall consist of members elected by and from among the following electoral groups: members shall be elected by and from among the group/the part of the enterprise; members shall be elected by and from among the group/the part of the enter-prise etc.
See notes 1 and 2
2. The Works Council shall elect a chairman and a deputy chairman from its number.
3. The chairman or in the chairman's absence, the deputy chairman shall be the legal representative of the Works Council.

Explanatory notes

Note 1 Allocation of seats to electoral groups

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

Note 2 Clear specification

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

Term of office

Article 3

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

Organisation of elections

Article 4

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

Right to vote and to stand for election

Article 5

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

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

Election date

Article 6

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

Candidacy

Article 7

1. No later than nine weeks before the election date, the Works Council shall draw up, for each electoral group, an electoral register listing all persons working in the enterprise and those who are entitled to vote on the election day and who are entitled to stand for election. The Works Council shall then inform all persons working in the enterprise that the electoral register has been drawn up.
2. Nominations for each electoral group shall take place by the submission of a list of one or more candidates to the secretary of the Works Council. The secretary shall issue a duly dated acknowledgment of receipt to the person who submitted the list.
3. Employees' organisations that include persons among their members who are entitled to vote and who belong to an electoral group may submit their lists of candidates for that particular electoral group up to six weeks before the election date.
4. Within one week of the expiry of the period stated in paragraph 3, the Works Council shall announce which employees' organisations have submitted a list of candidates and for which electoral groups.

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

Article 8

The Works Council shall check whether the submitted lists of candidates and the candidates on those lists meet the requirements of the Act and of these Rules of Procedure. The trade union lists and the free lists shall be checked simultaneously.

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.

The Works Council shall issue the valid lists of candidates to the persons working in the enterprise simultaneously and no later than two weeks before the election date.

Voting Procedure in elections

Article 9

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

Article 10

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

[3.2.1 Articles 11 to 13 in the group electoral system for the individual candidate system and the list system](#)

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

Individual candidate system		List system	
Article 12		Article 12	
1	After the conclusion of the election, the Works Council shall count the valid votes cast for each candidate.	1	After the conclusion of the election, the Works Council shall count the valid votes cast for each list of candidates and for each candidate.
2	A ballot paper shall be deemed invalid if: <ul style="list-style-type: none"> a. it is not certified by or on behalf of the Works Council; b. it is unclear which candidate an eligible voter has voted for; c. the required number of votes have not been cast; d. any marks are made other than an indication of the selected candidate list. 	2	A ballot paper shall be deemed invalid if: <ul style="list-style-type: none"> a. it is not certified by or on behalf of the Works Council; b. it is unclear which candidate an eligible voter has voted for; c. more than one vote has been cast; d. any marks are made other than an indication of the selected candidate list.

Individual candidate system		List system	
Article 13		Article 13	
1	The candidates who, consecutively, have received the most votes for each electoral group shall be elected. If there are several candidates with an equal number of votes for the last remaining seat or seats, the outcome shall be decided by lot	1	In order to determine the results of the election, the Works Council shall first calculate the quota, for each electoral group, by dividing the number of valid votes cast in each electoral group by the number of seats to be filled on the Works Council by that electoral group. Subsequently, each list of candidates, for each electoral group, shall be allocated seats on the basis of the number of valid votes cast for that list divided by the quota. Seats that cannot be filled accordingly shall be allocated to the lists with the largest number of surplus votes consecutively. Votes cast for a list that has not reached the quota shall also be treated as surplus votes, provided that they amount to at least three-quarters of the quota. In the event that two or more lists have an equal number of surplus votes, it shall be decided by lot which list will receive one of the remaining seats first. The seats allocated to a list shall be given to the candidates in the order in which they were listed, with the proviso that any candidate who met the quota individually shall definitely be

			<p>elected.</p> <p>If the application of these provisions to a list result in more seats being allocated to a list than there are candidates, the seat or seats that cannot be filled shall be transferred to one or more of the other lists containing candidates to whom no seat has been assigned.</p>
2	The Works Council shall determine the results of the election and shall make these known to the entrepreneur, the persons working in the enterprise and the employees' organisations that submitted lists of candidates.	2	The Works Council shall determine the results of the election and shall make these known to the entrepreneur, the persons working in the enterprise and the employees' organisations that submitted lists of candidates.

3.2.2 Other provisions

Retention period for ballot papers

Article 14

The secretary of the Works Council shall retain the used ballot papers in a sealed envelope and destroy them three months after the date of the election result.

Interim vacancies

Article 15

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

Objections procedure

Article 16

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

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

Organising a Works Council meeting

Article 17

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

The secretary of the Works Council

Article 18

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

Agenda

Article 19

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

Decisions in the Works Council

Article 20

1. The Works Council shall reach its decisions based on a common majority of votes. Abstentions are not included in the calculation of the number of the votes cast.
2. Votes on business matters shall be cast by show of hands, and votes for persons by ballot.

3. If, in a vote on an appointment, none of the candidates gains a common majority after a first ballot, a second ballot shall be held between the two candidates who received the most votes in the first ballot. After the second ballot, the person with the most votes shall be elected. In the event of a tied vote, the outcome shall be decided by lot.
4. In the event of a tied vote for a decision to be taken by the Works Council that does not concern the appointment of a person, the proposal shall be discussed again during the next meeting. If, on that occasion, the votes are again tied, the proposal shall be deemed to have been rejected.

Minutes of the Works Council meeting

Article 21

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

The annual report of the Works Council

Article 22

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

Amendments and additions to the Rules of Procedure

Article 23

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

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

4.1 General explanatory notes

Central Works Council and Group Works Council

In the event of a partnership of enterprises (managed by single entrepreneur or forming part of a group of enterprises [*concern*]), the entrepreneur may, if it is conducive to the proper implementation of the Act, establish a Central Works Council (COR), with which the management of the partnership may discuss common policy with regard to all the enterprises involved. A COR is an overarching body covering all enterprises managed by the entrepreneur or that form part of a group of enterprises (WOR Article 33 (1)). If the umbrella Works Council (OR) will only act for some of the enterprises concerned, then it is deemed to be a Group Works Council (GOR, WOR Article 33 (2)).

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

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

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

Separate Rules of Procedure

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

Provisional Rules of Procedure

As in the case of the Works Council, the entrepreneur must draw up provisional Rules of Procedure for the COR and the GOR before they are established (WOR Article 48 (3)). After they have been established, the COR and the GOR must agree on definitive Rules of Procedure themselves (WOR Article 34 (6), which states that Article 8 applies *mutatis mutandis*). Although WOR Article 48 does not make it mandatory, it is an obvious step for the entrepreneur, before drawing up the provisional Rules of Procedure for the COR or GOR, to consult the existing Works Councils/GORs that will fall under the COR or the GOR. WOR Article 48 stipulates that the entrepreneur must consult the relevant employees' organisations about the draft of any proposed provisional Rules of Procedure.

Model Rules of Procedure for Works Councils can be used

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

Joint Works Council

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

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

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

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

4.2.1 Definitions

Article 1

The following definitions apply to these Rules of Procedure:

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

Explanatory notes

Note 1 The entrepreneur

For the definition of 'the entrepreneur' and the information to be filled in under (a), attention is drawn to the notes to Article 1 of the Model Rules of Procedure for Works Councils. See Section 2, Article 1 ([notes 1](#) and [3](#)). A COR is established for all enterprises having a Works Council under an entrepreneur ([WOR Article 33 \(1\)](#)); while a GOR is established for a number of enterprises under an entrepreneur ([WOR Article 33 \(2\)](#)). Under the terms of [WOR Article 33 \(3\)](#), it is also possible to set up a COR or a GOR for all or a number of enterprise falling under 'a group of entrepreneurs' [*concern*];

these entrepreneurs appoint one of their number to act as the responsible entrepreneur on their behalf in relation to the COR or GOR for the purposes of the WOR. This entrepreneur's name should be filled in under (a). The names of the entrepreneurs he represents must also be given. The definition of 'the entrepreneur' might then read as follows: 'BV, also on behalf of BV and BV

Note 2 The enterprise

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

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

Note 3 The Joint Sectoral Committee

The name of the authorised Joint Sectoral Committee is to be filled in under (f).

4.2.2 Composition and term of office

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

Article 2 voor de COR

1. The COR shall comprise members.

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

See note 1

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

2a. The Works Council of [name of enterprise] shall elect from its number members of the COR.

The Works Council of [name of enterprise] shall elect from its number members of the COR.

The Works Council of [name of enterprise] etc.

See notes 2 and 4

2b. The GOR of [name of enterprise] shall elect from its number members of the COR.

The GOR of [name of enterprise]etc.

See notes 2 and 4

2c. The Works Council of [name of enterprise] shall elect from its number members of the COR.

The GOR of [name of enterprise] shall elect from its number members of the COR.

The Works Council of [name of enterprise] shall elect from its number members of the COR.

The GOR of [name of enterprise]etc.

See notes 2 and 4

3. The persons working in [name of enterprise] shall elect from their number members of the COR.

With regard to the system of nominating and electing these members, the Rules of Procedure for the Works Council of [name of enterprise] shall apply *mutatis mutandis*, provided that, for the enterprise concerned, the duties of the Works Council as set out in these Rules of Procedure for electing the COR are implemented by the COR.

See note 3

Article 2 voor de GOR

1. The GOR shall comprise members.

The GOR shall elect a chairman and one or more deputy chairmen from its number.

See note 1

2. The Works Council of [name of enterprise] shall elect from its number members of the GOR.

The Works Council of [name of enterprise] shall elect from its number members of the GOR.

The Works Council of [name of enterprise] etc.

See notes 2 and 4

NB: *Depending on the composition of the GOR, the provision in paragraph 3 will be included, if relevant.*

3. The persons working in [name of enterprise] shall elect from their number members of the GOR. With regard to the system of nominating and electing these members, the Rules of Procedure for the Works Council of [name of enterprise] shall apply *mutatis mutandis*, provided that, for the enterprise concerned, the duties of the Works Council as set out in these Rules of Procedure for electing the GOR are implemented by the GOR.

See note 3

Explanatory notes

Note 1 Number of members

The WOR does not specify the number of members of the COR or GOR.

WOR Article 6, which recommends a certain number of Works Council members, does not apply to the COR or GOR: these bodies are essentially free to appoint as many members as they wish.

However, neither the COR nor the GOR should be allowed to become too large, or they will be unable to function properly.

The Act requires that each Works Council that is subjacent to a COR must be represented on the COR by at least one of its members. In large companies with many Works Councils, this means that the COR will be very large. This problem can partly be solved by establishing a number of GORs to operate

between the COR and the Works Councils: the COR's Rules of Procedure may prescribe that its membership should consist of individuals elected by and from the GORs rather than by and from the subjacent Works Councils (see WOR Article 34 (2)). Alternatively, in the case of a large number of subjacent Works Councils with widely divergent numbers of members, a system of 'weighted votes' may be the solution. In that case, the Rules of Procedure will assign a different voting 'weight' to the various votes, proportional to the number of employees they represent, to be stipulated in the Rules of Procedure.

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

Note 2 Composition

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

There are two exceptions to this rule. The first is that a COR may consist wholly or partly of members elected by subjacent GORs (WOR Article 34 (2); see also the previous note).

The second exception is that a COR or GOR may also comprise representatives of enterprises carried on by the same entrepreneur or the same group of companies that do not have a Works Council (WOR Article 34 (4)). This second exception is explained in more detail in note 3.

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

Notwithstanding this general rule, if one or more GORs have been established, the COR may lay down in its Rules of Procedure that it shall consist wholly or in part of members elected by one or more of those GORs. If the Rules of Procedure stipulate that the COR shall consist wholly of members elected by one or more of those GORs, variant (2b) of paragraph (2) must be used in Article 2 of the COR's Rules of Procedure. Alternatively, the COR may also introduce a 'mixed system', in which the COR consists partly of members elected by one or more GORs and partly of members elected by one or more Works Councils. These Works Councils may then not also be represented by one of the GORs that also elects members, as this would give the Works Councils double (i.e., direct and indirect) voting rights. A mixed system may be desirable when not all the Works Councils fall under a GOR.

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

Note 3 Optional deviation from the general rule

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

Note 4 Representation of as many groups as possible

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

In the above models for Article 2 of the COR and GOR Rules of Procedure, the requirement stipulated in WOR Article 34 (3) has not yet been taken into account. This requirement may be met for the COR by making Article 2 for the COR read as follows:

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

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

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

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

Article 3

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

Article 4

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

See note 1

Explanatory notes**Note 1 Termination of membership**

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

4.2.3 Filling interim vacancies**Article 5**

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

Explanatory notes**Note 1 Deputy members of the COR or GOR**

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

Note 2 Representatives

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

4.2.4 Procedure and secretariat of the COR and the GOR¹

Organising meetings of a COR or GOR

Article 6

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

The secretary of the COR or GOR

Article 7

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

Agenda

Article 8

In consultation with the chairman, the secretary shall draw up an agenda for each meeting. Members of the COR or GOR may request the secretary to include an item in the agenda.

The secretary shall make the agenda known to the members of the COR or GOR and the entrepreneur, and shall, insofar as possible, ensure that persons working in the enterprise can peruse the agenda. Except in the event of urgent matters, notification of the agenda will take place no later than seven days before the meeting of the COR or GOR.

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

Decisions in the COR or GOR

Article 9

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

Minutes of the COR or GOR meeting

Article 10

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

The annual report of the COR or GOR

Article 11

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

4.2.5 Final provision

Amendments and additions to the COR/GOR Rules of Procedure

Article 12

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

Explanatory notes

Note 1 Amendments and additions to the Rules of Procedure

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

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

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

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

WOR Article 15 differentiates between various types of committees:

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

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

5.2 Standing committees

5.2.1 General remarks

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

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

The Works Council may endow a standing committee with some or all of its rights and powers regarding matters assigned by it to that committee; this must be specified in the inaugurating resolution.

This applies not only to its rights and powers pursuant to the WOR but also pursuant to other legislation, for example the Working Conditions Act [Arbeidsomstandighedenwet].

There are exceptions to this option of transferring powers:

1. it is only possible if the majority of the number of members of the committee consists of members of the Works Council;
2. the power to conduct legal proceedings may not be transferred.

It is only the Works Council itself that, under WOR Article 26, can submit a request to the Enterprise Division [Ondernemingskamer] of the Amsterdam Court of Appeal or that, under

WOR Article 36, can petition the subdistrict court judge for a ruling. If a committee considers that legal proceedings are necessary, it can indicate such to the Works Council, which will then decide on the matter.

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

5.2.2 Model resolution for setting up a standing committee

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

Article 1

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

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

3. The committee shall deal with matters regarding, on behalf of the Works Council, and, with regard to these matters, shall exercise

the powers pertaining to the Works Council, with due observance of the following conditions:

- a.
- b. etc.

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

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

- a.
- b. etc.

Explanatory notes

Note 1 Name of committee

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

Note 2 Composition

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

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

Note 3 Matters to be dealt with by the standing committee

The matters that the standing committee in question will deal with on behalf of the Works Council must be listed in paragraph (3). This allows the Works Council to indicate, for example, that a Standing Committee for Safety, Health and Welfare not only deals with matters of safety, health and welfare in connection with work, but also matters concerning the enterprise's care for the environment. See also WOR Articles 25 1(l) and 28 (4).

Note 4 Extension of powers

If the Works Council wishes to endow a standing committee with powers that extend beyond simply advising the Works Council, one of the alternative provisions for paragraph (3) must be used. Under the terms of WOR Article 15 (2), a Works Council, in its resolution to set up a standing committee, may transfer to the committee – in whole or in part – its rights and powers pertaining to the matters assigned by it to the committee (see note 3). The Works Council can transfer all its powers regarding those

matters to the standing committee. It can also transfer some of its powers; 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 standing committee, the Works Council clearly delineates the committee's tasks, and includes a clear description of the powers transferred to the standing committee and any conditions attached to this transfer of powers. It should be noted that the full transfer of powers means that the standing committee can exercise the powers of the Works Council exclusively and independently (delegation).

Article 2

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

Explanatory notes

Note 1 Term of office

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

The word 'half' placed in square brackets in Article 2 (1) must be included if a system of scheduled resignation applies. The effect of the provision is that the whole committee resigns with the scheduled resignation of half of the Works Council members, which is every two years. The new Works Council will meet to pass a resolution regarding the new composition of the committee, and may, of course, decide to reappoint members, with due observance of the principle that at least half of the committee members must be members of the Works Council. See also Section 2, Article 3, note 1.

Note 2 Quorum

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

members and that at least half of the members must be present for a meeting to be legally valid.

Note 3 Reference to Model Rules of Procedure

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

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

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

5.3 Divisional committees

5.3.1 General remarks

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

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

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

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

5.3.2 Model resolution for setting up a divisional committee

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

Article 1

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

Or, as an alternative to paragraph 2:

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

Or, as an alternative to paragraph 3:

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

Explanatory notes

Note 1 The part of the enterprise

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

Note 2 Composition

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

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

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

The committee shall comprise members. Of this total number, member(s) shall be appointed by the Works Council; the other members shall be elected by the persons working in the said part of the

enterprise who are entitled to vote from among the persons working in the said part of the enterprise who are entitled to stand for election.'

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

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

Note 3 Powers

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

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

Article 2

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

Explanatory notes

Note 1 Reference to explanatory notes

See Section 5.2.2, notes 1 to 4 in the explanatory notes to Article 2.

5.4 Preparatory committees

5.4.1 General remarks

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

5.4.2 Model inaugural resolution for preparatory committee

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

Article 1

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

Explanatory notes

Note 1 Matter to be prepared

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

Note 2 Composition of Committee

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

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

Article 2

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

5. The members of the committee may resign from the committee at any time. They shall notify the chairman of the Works Council, the chairman of the committee, and the entrepreneur of their resignation in writing.
See note 2

Explanatory notes

Note 1 Establishment for a particular period of time

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

Note 2 Reference to explanatory notes

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

APPENDIX A: Agreements between the entrepreneur and the Works Council

1 General

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

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

Parties may also decide to agree on their own procedure for mediation, arbitration or a binding opinion, and to put that in writing in a works agreement.

2 What can be agreed in a works agreement?

WOR Article 32 (2) stipulates that in a written agreement between the entrepreneur and the Works Council:

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

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

It is fair to assume that such agreements also fall within the scope of WOR Article 32.

3 Requirements that a works agreement should meet

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

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

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

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

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

a Agreements relating to the consultation meeting

Voluntary agreements

WOR Article 23a (2) allows the entrepreneur and the Works Council to agree to deviate from the legal requirement that the consultation meeting must be chaired alternately by the director or his deputy and by the chairman or deputy chairman of the Works Council. The Act allows the

entrepreneur and the Works Council to make any other arrangement about the chairmanship of the consultation meeting, as they see fit. They may opt to have the meeting chaired by one of those taking part in the consultation meeting or by a third party. The entrepreneur and the Works Council are also free to make any agreement they wish about the term of office of the chairman.

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

Mandatory agreements

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

b Agreements about mutual consultation and about training and development

Mandatory agreements

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

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

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

Voluntary agreements

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

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

Questions and disputes regarding the reasonableness or interpretation of the application of the statutory right to training and development (extent, payment etc.) can be submitted to the Joint Sectoral Committee.

d Agreements about extension of powers of the Works Council

Voluntary agreements

Agreements about extensions to the Works Council's powers may be needed when the Works Council is granted powers that go beyond the advisory powers granted to it by the WOR. These additional powers may include, in particular, extended advisory powers and/or the right of endorsement, i.e. the granting of advisory power and/or the right of endorsement with respect to one or more matters other than those already mentioned in the WOR. If, in the works agreement, additional advisory powers have been granted to the Works Council other than those referred to in WOR Article 25, then the right of appeal provided in WOR Article 26 applies. If, in the works agreement, a different (additional) right of endorsement has been granted to the Works Council, other than that provided by WOR Article 27, then Article 27 (4) to (6) of the WOR applies (request to the subdistrict court).

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

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

e Agreements about the implementation of the WOR

Voluntary agreements

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

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

Agreements between the entrepreneur and the Works Council about consultation between the Works Council and its electorate are also considered to be agreements about the implementation of the WOR, and WOR Article 17 in particular.

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

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

Members of the Supervisory Board are appointed by the general shareholders' meeting (of public and private limited companies) or by the membership meeting (of cooperative associations and mutual insurance associations), acting on the recommendation of the Supervisory Board. The Works Council is entitled to recommend persons for appointment to the Supervisory Board. In public and private limited companies, the Works Council has an enhanced right of recommendation of up to a maximum of one third of the membership of the Supervisory Board.

It is customary for the Supervisory Board to draw up a profile of its size and composition, taking into account the nature of the enterprise, its activities, the desired expertise and background of Supervisory Board members, and a balanced number of men and women (see also Appendix A (2) (A) (h)). This profile is discussed with shareholders or members as appropriate and with the Works Council, when first adopted and also in the event of any amendments. Large public and private enterprises are legally

obliged to draw up a profile and discuss it with the Works Council. Although they are not legally bound to do so, it would be advisable and good practice for companies that are subject to the Structure Regime but not subject to this legal obligation to nonetheless draw up a profile and discuss it with the Works Council.

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

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

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

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

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

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

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

More generally, it may be advisable for the Works Council, the Board of Management and the Supervisory Board of the legal entity conducting the business to make shared agreements on how employee participation in the enterprise will be implemented in practice. Such agreements may relate to contacts between the Works Council, the Board of Management and the Supervisory Board and ways of improving them.

APPENDIX B: Model text for a letter to employees concerning the electoral register (appendix to Article 7 of the Model Rules of Procedure for Works Councils).

The following text may be used by the Works Council in a letter, e-mail or newsletter addressed to all persons working in the enterprise concerning the election procedure, more specifically the electoral register:

'Elections for the Works Council (OR) of [name of enterprise] will be held on [date of elections]. The Works Council has drawn up an electoral register listing persons working in the enterprise who, on the election day, are eligible to vote and/or stand for election. Pursuant to the (Dutch) Works Councils Act [Wet op de ondernemingsraden, 'WOR'] and the Rules of Procedure for the Works Council [OR-reglement], persons who have been working in the enterprise for at least [...] months on the election day are eligible to vote. Persons who have been working in the enterprise for at least [...] months on the election day are eligible to stand for election to the Works Council. To find out whether or not you have been included in the electoral register, or if you are in doubt as to whether you are eligible to vote and/or stand for election, you should approach the Works Council (i.e. its electoral committee) [via: contact details for electoral committee].

Pursuant to Article [...] Article 7(1) of the Model Rules of Procedure for Works Councils] of the Rules of Procedure for the Works Council, you may lodge an objection with the Works Council (i.e. its electoral committee) against the Works Council's decision regarding the electoral register (or how it was drawn up) within one week from today.'