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## Explanatory Memorandum GD 01 – Supervisory Board model and equivalent alternatives

**This explanatory memorandum forms part of the Standards Applicable under the Recognition Scheme for Charitable Organisations and enters into force on 1 January 2026. Specific terms in this explanatory memorandum have the same meaning as those used in the standards.**

### 1. INTRODUCTION

The Supervisory Board model is a governance model under which a Charitable Organisation has a management board and a Supervisory Board. The term ‘Supervisory Board’ is commonly used in the case of Charitable Organisation. In the Dutch Civil Code (DCC), the Supervisory Board is referred to as the board of supervisory directors.

The term ‘equivalent alternatives to the Supervisory Board model’ refers to governance models containing checks and balances that are similar to those contained in the Supervisory Board model.

This explanatory memorandum discusses equivalent alternatives to the Supervisory Board model and relates to standard 5.1.1 for categories D and E. Charitable Organisations that fall into categories A, B or C are not required to use a Supervisory Board model or equivalent alternative but are of course free to do so.

#### The standard

A	B	C	D	E	Standard 5.1.1 – Governance structure
S	S	S	S	S	The Charitable Organisation Charity lays down the governance model used in its articles of association and regulations.
	S	S			The Charitable Organisation has a Supervisory Board model (or an alternative model equivalent to the Supervisory Board model, see the preamble).

### 2. ALTERNATIVE MODELS EQUIVALENT TO THE SUPERVISORY BOARD MODEL

Two models may serve as equivalent alternatives to the Supervisory Board model:

- the one-tier board model
- the management board model/management model, provided a number of conditions are met (see under 3).

#### The one-tier board model

In the one-tier board model, a distinction is made within the board between one or more executive directors and a number of non-executive directors. This one-tier board model has been regulated in the DCC since the middle of 2021. For associations, see article 44a of Book 2 DCC, and for foundations, see article 291a of Book 2 DCC. It should be noted

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that, at the time of publication of this explanatory memorandum, this statutory provision has not yet entered into force. The reason for this is that the Chamber of Commerce does not, or not yet, provide associations or foundations with the possibility of registering a director as either an executive or a non-executive director. Nevertheless, it is currently already possible to opt for a one-tier board model and to register directors without the designation executive or non-executive. The allocation of duties within the one-tier board model is laid down in the articles of association. The duties of the non-executive directors include supervising the performance of duties by the executive directors.

### **The management board model/management model**

In this model, board members are not charged with the day-to-day management. The day-to-day management is the responsibility of one or more managing directors who are not members of the board. In this management board model/management model, the board members conduct the supervision of the management, while the ultimate responsibility for the actions of the management lies with the board. The management's own position in relation to the board is not regulated by law.

Unlike the standards that entered into force on 1 January 2025, from 1 January 2026 onwards the management board model/management model will be considered an equivalent alternative to the Supervisory Board model, provided it has been duly implemented (see section 3 below).

### **3. THE DULY IMPLEMENTED BOARD MODEL/MANAGEMENT MODEL**

The management board model/management model is considered an appropriate alternative for the Supervisory Board model, provided the following characteristics are laid down in the articles of association and the regulations.

- (1) The day-to-day management of the Charitable Organisation (including the management of the executive office) rests with a management consisting of one or more managing directors who are not board members. The board members therefore have no executive tasks (except in special circumstances). Those involved (board members and managing directors) are expected to be aware of their roles so as to give substance to the aforementioned allocation of duties.
- (2) The management enjoys a certain degree of autonomy in relation to the board. The managing directors have a responsibility of their own in terms of being guided by the interests of the Charitable Organisation in the performance of their duties. The above at the same time implies a responsibility not to follow instructions from the board, should these be contrary to the interests of the Charitable Organisation.

- (3) The board operationalises its 'employer role' vis-à-vis the management. This means that the board appoints, dismisses and suspends the managing directors and supervises their performance.
- (4) The board has both a supervisory role and an advisory role in relation to the management. This means that the board supervises the management's policy, or its implementation, and the general course of affairs within the Charitable Organisation and provides advice to the management.
- (5) The main points of the policy, as well as any other major decisions, are adopted by the board. In principle, the preparation and implementation of those decisions are carried out by the management.

#### **4. SUPERVISORY BOARD RULES THAT APPLY BY ANALOGY**

##### **Standards applying by analogy**

When applying a governance model that is an equivalent alternative to the Supervisory Board model, certain Supervisory Board rules apply by analogy. Rules regarding the board and the Supervisory Board (in the Supervisory Board model) will in that case apply by analogy to executive and non-executive directors (in the one-tier model) and to directors and managing directors (in the duly implemented management board model/management model).

This applies specifically to the following standards, whereby the version for the relevant category obviously applies:

- Standard 5.1.2 on the independent and ethical performance of duties by directors and Supervisory Board members;
- Standard 5.1.3 on, among other things, job profiles, terms of office and assessments, or self-assessments;
- Standard 5.1.4 on information provided by the board to the Supervisory Board;
- Standard 5.1.7 on the Supervisory Board's view on supervision;
- Standard 5.2.1 on the power of disposition;
- Standard 5.3.1 on dealing with conflicts of interest;
- Standard 5.3.2 on accountability regarding conflicts of interest;
- Standard 8.1.3 on the audit of annual reports (please note: for Charitable Organisations that are organised as associations, article 48 (2) of Book 2 DCC continues to apply in full<sup>1</sup>); and

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<sup>1</sup> According to article 48 (2) of Book 2 DCC, a non-commercial association that does not arrange for an audit of its annual accounts must set up an audit committee to examine the annual accounts, unless it has a Supervisory Board. This does not apply to Charitable Organisations in categories D and E,

- Standard 8.2.1 (3) on the publication of information about board members and Supervisory Board members.

#### **Statutory provisions apply by analogy**

In addition, statutory provisions concerning board members and Supervisory Board members also lend themselves to being applied by analogy to executive and non-executive directors (in the one-tier model) and to board members and managing directors (in the duly implemented management board model/management model), such as the rules for dealing with conflicting interests in articles 44/47 of Book 2 DCC (for associations) and articles 291/292a of Book 2 DCC (for foundations). See also Explanatory Memorandum GD-02 – Conflicting interests.

Also relevant in this respect is article 47/292a (11) of Book 2 DCC on the annual information to be provided to the Supervisory Board on strategy, risks and internal control systems. Where these issues are concerned, the role of the board, or entire board, in the one-tier board model and the management board model/management model will often be even more demanding than that of the Supervisory Board in the Supervisory Board model. Charitable Organisations are expected to make and set down in writing adequate internal agreements on how exactly to give effect to this.

### **5. FINAL OBSERVATIONS**

The choice for a particular governance model is up to the Charitable Organisation itself, within the scope provided by the standards. When making that choice, factors such as preferences regarding the allocation of powers and responsibilities, as well as implications in terms of liability, may play a role. It is important for a Charitable Organisation to be provided with proper advice from experts in this field.

Possibly, there are even more models and related implementations that are equivalent to the Supervisory Board model. The regulations set out in the law for the Supervisory Board model and the one-tier board model, as well as the characteristics mentioned in this explanatory memorandum for an ‘appropriate implementation’ of the management board model/management model, in part serve as a frame of reference. This frame of reference may help the CBF to assess whether solutions not explicitly mentioned in the preamble and this explanatory memorandum may nevertheless serve as equivalent alternatives.

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because in those categories the standards prescribe an audit (standard 8.1.3). Charitable Organisations in categories A, B and C with a Supervisory Board model may make use of the aforementioned legal option to waive the audit and the audit committee, an option that does not apply if an equivalent alternative to the Supervisory Board model is used.