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Newsflash 24.07.2018

A revolution in Belgian company law

Belgian Company Law is on the brink of a revolution. On 25 May 2018, the Council of Ministers (*Ministerraad - Conseil des ministres*) approved a draft bill for a completely revised Belgian Code for Companies and Associations. The key words here are simplification, flexibility and Europeanisation.

It is expected that the new Code will be approved by the Belgian Parliament in the fall of this year, as a result of which the first “new style” companies can be incorporated shortly. As from 1 January 2020, the new provisions shall also apply to existing companies.

Below we list a number of important changes:

“Private company” (*besloten vennootschap (BV) – société à responsabilité limitée (SRL)*) without capital is the centre point – A pivotal feature of the revolution will be the Private Company (currently still known as the private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid (BVBA) – société privée à responsabilité limitée (SPRL)*). At present, some smaller and medium-sized enterprises adopt the legal form of a limited liability company (*naamloze vennootschap (NV) – société anonyme (SA)*). After all, the lower minimum share capital requirement of a BVBA/SPRL rarely outweighs the rigid rules that encumber and burden certain financing structures (e.g. warrants and convertible bonds) and flexibility (e.g. with respect to the transfer of shares) in a BVBA/SPRL.

As a new company form whose key characteristic is flexibility, the Private Company is slated to become an excellent tool for starting entrepreneurs in search of a company that is tailor-made for their plans.

The selling argument for a Private Company will be its limited liability without the requirement of a minimum equity contribution. A number of other countries have launched companies with a minimum share capital of one Euro. The Belgian limited company, by contrast, plainly has no capital any longer.

Consequently, existing BVBA's/SPRL's must convert the share capital in their accounts into unavailable equity (to be booked on an “unavailable equity account”) as from 1 January 2020.

To safeguard creditors in a world without share capital, the draft bill imposes stricter requirements for the incorporators as well as a system in which distributions to shareholders are made conditional upon a balance and liquidity test (with an enhanced liability regime applied to the board of directors).

Reduction from 13 to 6 company forms – A sore point of the current Belgian company law is the large number of company forms. The ambition is to drastically reduce this number. Not only will the less frequently used company forms, such as the silent partnership (*stille handelsvennootschap – société interne*) and the (Belgian) economic interest groupings (*economisch samenwerkingsverband - groupement d'intérêt économique*) or the cooperative company with unlimited liability (*coöperatieve vennootschap met onbeperkte aansprakelijkheid – la société coopérative à responsabilité illimitée*) disappear, but even more popular forms such as the temporary partnership (*tijdelijke handelsvennootschap – société momentané*), the agricultural company (*landbouwvennootschap – société agricole*), the social purpose company (*vennootschap met sociaal oogmerk – société à finalité sociale*) and the partnerships limited by shares (*commanditaire vennootschap op aandelen – société en commandite par actions*).

The disappearance of these different company forms goes hand in hand with an adaptation of the company forms that will remain in existence. For example, the temporary partnership will be reformed into a full-fledged partnership (*maatschap – société simple*) and the partnerships limited by shares will adopt the legal form of a limited liability company.

The Limited Liability Company (*naamloze vennootschap – société anonyme*) with a single director and shareholder – An important side-effect of the conversion of a partnership limited by shares into a limited liability company is that the limited liability company can henceforth be governed by a single director. Such a single director will be one of the three future options for the governance of a Limited Liability Company. The other options are the classical system (with a board of directors) and a dual governance on the basis of the German model (with an executive board (*directieraad – conseil de direction*) and a supervisory board (*raad van toezicht – conseil de surveillance*).

At the shareholders' level, having a single shareholder will be sufficient as well. Currently foreign company groups are often surprised when encountering the existing Belgian requirement of at least two shareholders – this will become a thing of the past.

Cap on director's liability – Another important feature is the new rules relating to director's liability. With the clear ambition of improving the insurability of such liability, legal caps will be imposed on the potential liability of directors.

Save for a number of exceptions, the maximum liability of directors will be capped at an amount between 250,000 euros and 12,000,000 euros, depending on the size of the company governed by the directors in question.

Doctrine of the statutory seat instead of the real seat – In the aftermath of a number of evolutions at the European level, the doctrine of the real seat (pursuant to which Belgian company law applies if a company has its principal establishment in Belgium) will be replaced by the doctrine of the statutory seat. Hence, Belgian company law shall apply to a company if it has its statutory seat in Belgium, regardless where its centre of main interests is located. A company having its statutory seat in Belgium can therefore be fully active abroad without being subjected to a change of nationality.

Furthermore, the new code will provide a new procedure for a cross-border change of registered office.

At the start of October 2018, we will organise an afternoon seminar in which we will fully analyse the new company code. Please feel free to contact us if you are interested in participating in this afternoon seminar (or certain modules thereof) or if you already have specific questions about the imminent changes.

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