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Newsflash 15.10.2018

The TCC becomes an enterprise. Practical Consequences and to-do's for 01.11.2018.

While for many years our legislature largely ignored temporary commercial companies, since last year this company form has stumbled from one change of law to another. Often this involves fundamental reforms whose impact on the TCC is nothing more than collateral damage. On rare occasions the changes are specifically written with a TCC in mind.

Situation

Because the legal changes seem to have escaped the notice of many members of temporary commercial companies, below is a brief list of the most important deadlines:

The first modification entered into effect on 1 May 2018. When inserting Book XX on insolvency law into the Economic Law Code, one reworked the definition of an "enterprise". Viewed from the perspective of the insolvency law, since then each "organisation without legal personality" is an enterprise, provided that it has an "intention to distribute profits" (or if simply *in fact* it makes such distributions). Given that by definition a TCC may not have legal personality and must have the distribution of profits as its aim, since then a TCC can form the object of an insolvency proceeding. Thus since 1 May 2018 a TCC can go bankrupt and demand legal protection in the form of a judicial reorganisation (the old "Continuity of Enterprises Act"), under the applicable conditions. (You can read about why this type of insolvency proceeding must have a specific regulation here.)

The second change enters into effect on 1 November 2018, when the Act reforming the business law comes into effect, which (amongst other things) has abolished the distinction between "merchants" and "non-merchants" (as explained here). The mere abolition of that distinction has an immediate impact on the TCC: the fact that the TCC is a commercial company is no longer relevant for the legislature, which has applied this approach logically and thus simply renamed the "temporary commercial company" a "temporary company". In other words, as of 1 November 2018 the "TCC" is becoming a "TC". But it doesn't stop there, because in the same law the enterprise definition from the insolvency law becomes the general criterion throughout the entire business law. In the same way as for insolvency law, the business law also becomes applicable to the temporary company (see below).

For the moment the third change of law is still in the preparatory stage, but the intention is for it to come into effect already in the first half of 2019. At least, that is the ambition for the new Companies and Associations Code. This latest change of law appears to be the most radical for the T(C)C, because the new code would abolish this company form altogether. In its place the shareholders will have to fall back on a "partnership" [maatschap] (which, as you can read here, strongly resembles the current TCC).

New as of November 1st

Even before the temporary (commercial) company disappears the next deadline is November 1st. This is provisionally the reform which places the greatest strains on the T(C)C. The most striking legal changes are:

that its name changes to "temporary company" or "TC" (new art. 2 of the Company Code);

that it must conduct its own bookkeeping (new art. III.82 ELC); This is new. In the Parliamentary preparations for the Accounting Act (now included in Book III ELC) it was already indicated that a TCC must obligatorily have "separate accounts". In the interim, a full-fledged bookkeeping was recommended in the legal doctrine, but earlier it was not made obligatory. That is now the case, however. What this bookkeeping will have to look like is not explained by the legislature. It is however anchored in the law that partners must incorporate the accounts of a TC into their own bookkeeping "according to the proportional integration method". This guideline is taken over from an old opinion of the Belgian Accounting Standards Board (one that nevertheless was tailored specifically for integrated TCC's).

that it must be registered as an enterprise in the Crossroads Bank for Enterprises (new art. III.49 ELC); it is above all this innovation which forces temporary (commercial) companies that are not yet (or only incompletely) registered to act quickly. Nevertheless, the registration duty also gives rise to questions. According to the applicable RD, the company must for example give its "name" and "address" (although a TC cannot do business under a common name and cannot have a registered office). Here the most pragmatic approach would appear to be to report the names of all partners and a (purely administrative) address, such as is already the case for a number of TCC's. Where other companies moreover disclose their bodies as "persons who exercise a position that is subject to publication", many temporary (commercial) companies do not have a business manager. Here the safest path is most likely to communicate the names of the partners as the "founders" or as "partner or member".

that it has to comply with fewer formalities than its partners in order to act in a proceeding (new art. 703, §2, first paragraph of the Judicial Code);

that a general mandatory can actively represent the joint partners in court, and each partner can do so passively (new art. 703, §2, second paragraph of the Judicial Code).

For more information on this topic, you can consult Joost van Riel (the author) and Siegfried Busscher (head of our Private

Construction Law practice group).

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