

## CLIENT ALERT

### Adoption of the New Belgian Companies and Associations Code: What Is Changing?

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The new Companies and Associations Code has been approved by the Belgian Parliament this Thursday, February 28. This Code replaces the current Companies Code as well as the Law on Associations and Foundations and the Law on Professional Associations.

The new Code extensively rewrites the rules regulating companies, associations, and foundations, being more structured and providing more flexibility in their internal organization. One of its key objectives is to modernize the Belgian corporate landscape and make it more attractive to (foreign) investors.

The new Code will enter into force on May 1, 2019.

Crowell & Moring, in collaboration with the Belgian association for in-house lawyers (IBJ / IJE), is organizing a seminar to discuss the reform, with a focus on the BV, between 9:30 and 12:30 on March 27, 2019 at our office in Brussels.

Some highlights of the reform are:

#### ***1. Integration of the rules for associations and foundations into the new Code***

The new Code will apply not only to companies, but also to non-profit organizations and foundations, allowing them to carry out “commercial activities” of all kinds and make profits. However, non-profit organizations and foundations will still be forbidden from distributing profits resulting from their activities (directly or indirectly).

#### ***2. Statutory office to determine applicable law***

The law applicable to a company will be determined by its place of incorporation rather than (as now) by the location of its head office. Belgian company law will thus apply to any company whose registered office is located in Belgium, regardless of where the effective place of management is located.

#### ***3. Reduction in the number of forms of corporation***

A number of corporate forms are being abolished. Only 7 will remain, in addition to the partnership without legal personality (“maatschap”/“société simple”):

- The public limited liability company (NV/SA).
- The private company (BV/SRL).
- The cooperative company (CV/SC).
- The partnership (VOF/SNC).

- The limited partnership (CommV/SComm).
- The European company (SE).
- The European cooperative company (SCE).

The latter two being mainly governed by European law.

Existing companies in a form that is being abolished will have to convert into a remaining form before 2024. Companies that fail to do so will automatically be converted at that time. In addition, from January 1, 2020, mandatory requirements applicable to the most similar remaining form will apply to companies in a form being abolished.

#### ***4. The BV/SRL becomes the “default” form and abolition of the share capital requirement***

The new BV / SRL (which replaces the BVBA / SPRL) is intended to become the “default corporate form” for unlisted companies.

The BV / SRL form will be characterized by a light and flexible regime, without capital requirements, and with the possibility of multiple voting rights, of flexible dividend rights, and enhanced flexibility for share transfers.

This creates options for start-up companies and family-owned businesses, which can now grant additional rights to investors.

The share capital requirement of 18,550 Euro is abolished and replaced by alternative safeguards such as a liquidity-based test restricting distributions.

#### ***5. A more flexible governance structure for the NV / SA***

NV/SA will have the choice of opting for (i) a sole director, (ii) a system whereby the company is governed solely by a board of directors, or (iii) a dual system whereby the company is governed by a board of executives together with a separate supervisory board (each with distinct competencies and composition).

It will also be possible to have a single shareholder, as in the case of BV. Multiple voting rights will be possible in a non-listed NV/SA. Dual voting rights will be possible in a listed NV/SA.

#### ***6. A capped liability for directors***

The liability of directors, including *de facto* directors, will be limited to a specified amount of between 125.000 Euro and 12.000.000 Euro (depending mainly on the turnover and balance sheet of the company). This cap will apply collectively to all directors. The cap will not apply in case of fraud, minor fault of a habitual rather than accidental nature, serious misconduct or certain other exceptions (including unpaid social contributions, corporate income tax or VAT).

This new system is likely to have an impact on the willingness of individuals to act as directors, (particularly as this can be combined with D&O insurance covering the entire capped amount).

Another significant change is the introduction of a specific liability for continuing to engage in loss generating activities, also known as “wrongful trading”.

## 7. Entry into force and transition provisions

The Companies and Associations Code will enter into force on May 1, 2019. Companies incorporated after that date will be governed by the new Code.

Companies already existing on May 1, 2019 will be subject to the new code as from January 1, 2020, but may “*opt-in*” earlier. In the event that they amend their articles of association after January 1, 2020 (with a few exceptions), companies will be required to do so in compliance with the new Code, and articles of association must, in any event, be amended in line with the new Code no later than January 1, 2024.

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