

Belgian Company Law Reform – an investors’ paradise?



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The Belgian Parliament enacted the law introducing the new Belgian Code of Companies and Associations (the **BCCA**), a long-awaited and revolutionary company law reform. The BCCA makes Belgium more attractive—than ever before—as a country to do business.

The Belgian BV/SRL: a head-to-head competitor of the Dutch BV and the English Limited

The concept of **capital** is replaced by “equity”. As a result, both the minimum capital prerequisite for incorporation and the correlation between contribution and social rights disappear as well. As the latter becomes purely “contractual”, it will be possible under the new law to allocate voting rights to certain shareholders (see below) and dividends to others, and even to exempt a shareholder completely from the company’s losses.

The new BV/SRL can issue all types of **securities**, such as warrants and convertible bonds, and it can also be publicly listed: no need for BV/SRL startups to convert themselves into an NV/SA for the purpose of attracting investments. And finally, shares are **freely transferable** if this is permitted by the articles of associations.

A true two-tier management for the NV/SA

The BCCA allows an NV/SA to have a sole director or choose to have a one-tier management system made up of a minimum 3-member board of directors, or a **two-tier system** consisting of a general-meeting-appointed supervisory board and a supervisory-board-appointed management board. This marks the end of excluding foreign investment funds (e.g., from Germany) that can only invest in two-tier companies.

Cap on directors’ liability: a must-have for attracting investors

This **cap** will vary depending on the company’s annual turnover and the average balance sheet total. The cap does not apply in case of fraud, gross negligence, or repetitive minor misconduct. Companies (or their affiliates) will be prohibited from limiting (more) or excluding the liability of their directors and from guaranteeing them indemnification in advance, but a parent company may continue to indemnify the directors of its affiliates, and a company can still take out insurance to cover its directors’ liability.

Multiple voting rights and loyalty shares: a welcoming end to the one-share-one-vote rule

Under the BCCA, non-listed companies can (i) attach **multiple voting rights** to certain shares, without a multiplier limit, and (ii) issue unlimited non-voting shares without obligation to allocate a preferential dividend. This creates the opportunity to either give “positive” veto rights to investors or ensure that founders can retain control longer after capital rounds. It also allows for the voting rights to be modulated depending on the subject matter and renders the use of “STAKs” or foundations superfluous to separate economic and voting/meeting rights. Listed companies, on their part, can issue **loyalty shares** by granting a double-voting right to shareholders that continuously hold registered shares for at least two years. This double-voting right is maintained if a demerger or merger takes place or if the relevant shares are transferred between companies under the same control or between a company and its controlling shareholder.

Interim dividends: greater flexibility

In BV/SRL and NV/SA companies, either the general meeting or the board of directors can distribute the profits from the previous or current financial year in the form of **interim dividends**, and this is subject to compliance with conditions that are less strict than those currently applicable.

Sole Shareholder: simplifying group structures

Both the NV/SA and the BV/SRL can now have **one shareholder** without losing the benefit of the limited liability company form. This simplification will ease the life of group companies by eliminating all formalities relating to the now abandoned requirement of having a second shareholder.

Registered office: aligned with other EU jurisdictions

The BCCA applies to companies that have their **registered office** in Belgium and not their “real seat” (operating office), which was what was stipulated under the current Belgian Companies Code. This novelty aligns the BCCA with the relevant rules in other EU jurisdictions.