

NEW CODE OF COMPANIES AND ASSOCIATIONS

► IN A NUTSHELL ◀

#1

The “flex” no-capital BV / SRL

The centerpiece of the new Belgian Code of Companies and Associations is the new BV (*besloten vennootschap*) / SRL (*société à responsabilité limitée*).

The new BV/SRL will replace the BVBA/SPRL (private limited-liability company), which is currently a relatively rigid company form in terms of capital requirements, organization of the shareholder structure, issuance of securities, transferability of shares and governance.

By contrast ...

The BV/SRL will be a highly flexible company form without any capital requirements and with a far-reaching contractual freedom, whilst still offering to its shareholders the protection of limited liability. But what exactly does this “flex” BV/SRL have in store for us?

Some of the most striking innovations include the following:

- **Abolishment of corporate capital.** Whilst the BVBA/SPRL requires a minimum corporate capital of EUR 18.550, there will be no capital requirements for the new BV/SRL. In fact, it does not have a ‘capital’ at all, it being understood that the founders must ensure that the company is incorporated with sufficient financial means (and must demonstrate this upon

incorporation in a more elaborate financial plan).

- **Flexible allocation of shareholder rights / multiple voting rights.** As the concept of ‘capital’ is abolished, the shareholders’ rights may be contractually determined without restriction. The shareholders’ voting or dividend rights can be freely arranged. The current rule of “one share, one vote” will no longer be mandatory. This will bring great flexibility in issuing shares without voting rights and shares with multiple or conditional voting rights.
- **No restrictions on type of securities.** The BV/SRL will be able to issue shares and bonds, just like the BVBA/SPRL today, but in addition also all other types of securities (such as convertible bonds, subscription rights and certificates).
- **Incorporation by one single shareholder.** Although the BVBA/SPRL can theoretically be incorporated by, and have, one single shareholder, such a constellation may result in the single shareholder becoming jointly liable for the company’s debts. From now on, the BV/SRL can be set up (and held) by one single person without any adverse effect on its limited liability.
- **Free arrangement of share transfers.** In contrast to the BVBA/SPRL, in which the transferability of shares is strictly limited, the BV/SRL will offer the possibility to freely determine the transferability of securities. The BV/SRL’s articles of association may in addition allow for the withdrawal and exclusion of shareholders through the company (using company means).
- **New rules on distributions.** The abolishment of the capital requirements is accompanied by an entirely new set of rules on distributions, intended to assure creditor protection. A double test will apply: (i) a solvency test (by the shareholders), ensuring that the distribution will not cause the company’s equity to become negative and (ii) a liquidity test (by the directors), ensuring that the distribution will not result in the company becoming unable to pay its debts over a period of at least 12 months following the distribution.
- **Flexibility in terms of governance.** The BV/SRL may appoint one or more directors, acting individually or as a board. In contrast to the BVBA/SPRL, the BV/SRL will also be able to delegate the daily management of the company to one or more persons (acting individually, jointly or as a board).
- **Many more other improvements.** The BV/SRL includes many more improvements, such as a more flexible regime for the granting of intermediate dividends, written decision-making by directors, and a simplification of the rules on share buy-backs and financial assistance.

With these features, the new “light vehicle” BV/SRL is destined to turn into Belgium’s new standard limited liability company form.



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