contrast

NEW CODE OF COMPANIES AND ASSOCIATIONS

IN A NUTSHELL

#3
Securities and voting rights *unleashed*

The new Belgian Code of Companies and Associations introduces new rules concerning securities and voting rights.

Today, our company laws generally leave little room for creativity in the allocation of shareholder rights (*e.g*. voting rights), in particular as a result of the "one share, one vote" principle. Also the issuance of securities is often restricted, especially for the private limited liability company (BVBA/SPRL), which can only issue ordinary shares and bonds, but no other securities (*e.g*. preferred shares, subscription rights or convertible bonds).

These restrictions are sometimes burdensome and are no longer adapted to the flexibility that (international) corporate practice demands.

By contrast ...

The new Code opens the door for many new possibilities when it comes to the issuance of securities and the allocation of shareholder (voting) rights. The new rules in this respect will indeed allow for a broad contractual freedom, with the aim of making them better tailored to the needs of the practice.

The most important new possibilities are as follows:

- **No restrictions on type of securities**. As is the case for the NV/SA today, the new BV/SRL will be able to issue all securities that are not forbidden by law. This means that the BV/SRL can now also issue convertible bonds, subscription rights and certificates. Voting rights, however, may only be attached to shares. Please also refer to the first edition of our special "In a Nutshell" newsletters on the new Code.

- **Flexible allocation of shareholder rights / multiple voting rights**. From now on, the shareholders' voting or dividend rights of the (non-listed) BV/SRL and the NV/SA can be freely arranged, as long as at least one share with voting rights is issued. The "one share, one vote" principle remains, but will no longer be mandatory. It will therefore be possible to issue shares with multiple or conditional voting rights and also shares without voting rights (for which the strict conditions that currently apply will be lifted (e.g. mandatory preferential dividend rights)).

- **Introduction of "loyalty" (double) voting right for listed companies**. Listed companies may introduce a double voting right to reward "loyal shareholders", who have held their shares for an uninterrupted period of at least two years (and who have been registered as such in the company's share register). This loyalty voting right should be introduced by an amendment of the articles of association approved by a special majority of two thirds of the votes cast.

- **Customizable conditions of convertible bonds and subscription rights**. Also the conditions under which convertible bonds or subscription rights can be issued are generally made more flexible. For example, convertible bonds will no longer be subject to a maximum duration of 10 years.

- **More stability for voting agreements**. Agreements between shareholders regarding the exercise of their voting rights will become more stable as the validity of such agreements will no longer be subject to an ongoing assessment in light of the company's interest for their entire duration. The corporate interest test will now only be assessed at the time of the entering into of the voting agreement, which will improve the enforceability of such agreements.

- **Free arrangement of share transfers**. As opposed to the current BVBA/SPRL, in which the transferability of shares is strictly limited, the new BV/SRL will allow a free determination of the transferability of securities, similar to the NV/SA. This means that the BV/SRL can be made as "open" or "closed" as desired. Conversely, the transferability of shares in the NV/SA can be limited more easily than is currently the case (*e.g*. also flexibilization of "lock-up" clauses).

- **Securities registers**. In return for the increased flexibility, the new Code aims to ensure transparency, by introducing the obligation to include the rights attached to the shares and other securities and, in some cases, also applicable transfer restrictions in the respective securities register (which can, from now on, also be adopted in electronic form in all company types).

The above introductions further illustrate the new Code's overall aim to modernize Belgium's corporate laws and to increase their flexibility by allowing more contractual freedom. This will provide corporate practice with new tools to create tailor-made equity structures for each situation.

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