

NEW CODE OF COMPANIES AND ASSOCIATIONS

► IN A NUTSHELL ◀

Final countdown to the new Code: a recap on the eve of D-Day

We have highlighted the most important changes of the new Code of Companies and Associations in seven special “In a Nutshell” newsletters which can be consulted on [our website](#).

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

Let us therefore have a final look at the entry into force and transition regime for existing companies and associations.

Are you prepared?

Here is what you need to know:

- **Recap of abolished company forms.** As highlighted in a [previous “In a Nutshell” newsletter](#), a significant number of company forms have not survived the reform. Only 4 basic forms will remain available under the new Code: the partnership (*maatschap/société simple*), the public limited liability company (NV/SA), the private limited liability company (BV/SRL) and the cooperative limited liability company (CV/SC).
- **Incorporation of new entities after 1 May 2019.** As of 1 May 2019, it will no longer be possible to incorporate new entities in the form of an abolished company form.

- **Opt-in for existing entities as of 1 May 2019.** Existing entities can voluntarily elect to become subject to the new Code as of 1 May 2019. This can be done by amending the articles of association and adopting the provisions of the new Code.
- **Application of the new Code as of 1 January 2020.** As of 1 January 2020, the mandatory provisions of the new Code, such as the rules envisaging the protection of creditors, will apply automatically to all new and existing entities (regardless of any conflicting provisions in their articles of association). On 1 January 2020, existing BVBA/SPRLs and CVBA/SCRLs will furthermore become companies without corporate capital. The corporate capital and statutory reserves in these companies will be converted, by operation of the law, into a statutory non-distributable reserve (which can only be released subject to an amendment of the articles of association). Existing entities that have assumed one of the abolished company forms remain subject to the current Companies Code, but will, in addition, as of 1 January 2020 and until their conversion, also be governed by the mandatory provisions of the new Code governing their closest surviving legal form (subject to some exceptions). As of 1 January 2020, also the non-mandatory provisions of the new Code will apply to all existing and new entities (to the extent they do not conflict with their articles of associations).
- **Adjustment of the articles of associations of existing entities by 1 January 2024.** Existing entities that have assumed one of the company forms that remain available, must adapt their articles of association to the new Code by 1 January 2024. They must do so in any event before this date, at the occasion of the first amendment of their articles of association as from 1 January 2020 (except if the modification of the articles of association is the result of the use of authorized capital by the governing body, the exercise of subscription rights or the conversion of convertible bonds).
- **Automatic conversion of existing entities with an abolished company form on 1 January 2024.** Existing entities having assumed one of the abolished company forms will have to convert into one of the surviving forms at the latest by 1 January 2024, and in any event at the occasion of the first amendment of their articles of association as from 1 January 2020. If such conversion has not taken place by 1 January 2024, they will be automatically converted on that date into their closest surviving legal form, as prescribed by the new Code. In that case, the directors are also obliged to convene a general shareholders' meeting in order to amend the articles of association within 6 months. More information in this respect can be found in our [second "In a Nutshell" newsletter on the new Code](#).

- **Enforcement.** Directors may be held personally and jointly liable for any damages suffered by the legal entity or by third parties as result of a non-compliance with the aforementioned obligations.

The new Code provides for a gradual transition regime for existing entities. In order to avoid legal uncertainty as from 1 January 2020, it is however recommended for existing entities to adapt as quickly as possible to the new Code.

Our corporate team is ready and at your service for any questions you may have.



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