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ESTABLISHING A BUSINESS ENTITY IN BELGIUM



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ESTABLISHING A BUSINESS ENTITY IN BELGIUM



“Establishing a Business Entity in Belgium”

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I. INTRODUCTION

(i) Our law firm

& DE BANDT is a law firm with a multidisciplinary approach and a focus on complex litigation. It addresses legal issues within the European economy that are driven by digital innovation, evolving business models, climate sustainability and other significant developments. & DE BANDT's specialization covers key legal areas such as EU law, competition law, regulatory compliance, public procurement, intellectual property, technology and data protection.

(ii) Belgian company law

Belgian company law has been reformed and modernized in 2019 to enhance Belgium's competitiveness compared to other European countries. The Belgian Code for Companies and Associations (BCCA) simplifies and clarifies the applicable rules and introduces more flexibility for Belgian entrepreneurs, who can now incorporate a company structure without a minimum capital requirement (the BV or the CV).

Over the past two decades, Belgium has enacted various regulatory reforms to improve its business environment. In 2003, Belgium established the *guichet d'entreprises/ ondernemingsloket* (i.e. one-stop-shop) and created the Crossroads Bank for Enterprises (CBE), a centralized database and register for companies. In the CBE, each

legal entity has a unique identification number. One-stop shops are private organizations accredited at the federal level and responsible for registering legal entities and business units in the CBE database.

The introduction of the eDepot system in 2005 allowed notaries to electronically file the notarial act and incorporation documents, triggering automatic registration in the digital registry of the Enterprise Court and the CBE database as well as publication in the Belgian Official Gazette.

When a foreign entity considers establishing a business in Belgium, it can either set up a new company with its own legal personality or open a branch office which is not a separate and distinct legal entity from the foreign entity. In the latter case, no directors can be appointed in the Belgian branch office and only a legal representative can represent the foreign entity in Belgium. The foreign entity shall be liable for all acts performed by the branch office.

II. TYPES OF BUSINESS ENTITIES

The following types of companies /partnerships are available:

- **Société anonyme (SA) / naamloze vennootschap (NV):** the *public limited liability company* is more suitable for companies of a certain size, or when raising capital is the main focus. Only one founder is required to set up an NV.
- **Société à responsabilité limitée (SRL) / besloten vennootschap (BV):** the *private limited liability company* is the 'default company form' suitable for both small, medium-sized and large companies. Because there are very few mandatory



requirements, a BV offers a lot of flexibility in setting up a tailor-made company. Only one founder is required to set up a BV and no minimum capital is required.

- **Société coopérative (SC) / coöperatieve vennootschap (CV):** the *cooperative company* must operate in accordance with cooperative standards and pursue a cooperative ideal. This type of company always requires three founders, and no minimum capital is required. The main purpose of the CV is to meet the economic or social needs of its shareholders.
- **Société simple / maatschap:** an *ordinary limited partnership* is a partnership with joint and several liability, in which at least two natural or legal persons collaborate. This type of company is often used for family estate planning purposes. This form is attractive because it is easy to set up, but it has no legal personality and implies more risk due to the personal and unlimited liability. However, a partnership can acquire legal personality and become a general partnership (*Société en nom collectif (SNC) / Vennootschap onder firma (VOF)*) or a limited partnership (*Société en commandite (SComm) / Commanditaire vennootschap (CommV)*), depending on whether all or only certain partners will be jointly and severally liable for the partnership's debts and liabilities. In a limited partnership, only the managing or general partners are jointly and severally liable, as opposed to the silent or limited partners. In both types of partnership, decisions must be taken unanimously, unless the partnership

agreement provides for decisions to be taken by a majority.

The main difference between partnerships (VOF / Comm.V.) and companies with limited liability (BV, CV and NV) is the scope of liability of the partners respectively the shareholders. In a partnership, the partners may be held severally and unlimitedly liable for debts of the company. This is not the case with companies with limited liability, where shareholders are only liable up to the amount of their respective contribution.

The main differences between the BV, CV and NV are highlighted in the chart in annex.

III. BRIEF OVERVIEW OF THE PROCEDURE

(i) Opening a branch office

If a foreign company decides to open a branch office in Belgium, no notarial deed is required since no new legal entity is incorporated.

However, in order to open a branch office, certain documents must be filed with the registry of the Enterprise Court. The type of documents to be filed depends on whether the foreign company is governed by the law of another EU Member State or not.

The branch office must also be registered with the CBE. Such registration includes information about the foreign entity (name, legal form, deed of incorporation, articles of association, etc.) and regarding the branch office (address, activities, legal representatives).

Once this information has been filed, the branch office shall receive an identification number in the CBE. The opening of the branch office shall also be published in the Belgian Official Gazette.



(ii) Incorporating a company

According to the World Bank Survey “Doing Business” (2021), starting a business in Belgium is a straightforward process that should take less than a week. On the platform startmybusiness.be, it is now possible to incorporate an NV, BV or CV with the virtual assistance of a civil-law notary and without the founders having to be present or physically appear before the notary.

For the incorporation of an NV, BV or CV, the intervention of a notary is indeed required to complete the registration procedure and to draw up the notarial deed.

Prior to the incorporation, the founder(s) or someone acting on their behalf (such as the notary) will check the availability of the company name. A financial plan must also be available and contain certain mandatory information. In an NV, at least the minimum capital amount must be deposited on a Belgian account number.

After execution of the notarial deed, the notary will file the deed and request the registration of the company with the CBE in order to obtain an identification number.

Next, the one-stop shop must verify whether the company meets the legal requirements for its intended activity and must finalize registration in the CBE database.

Once incorporated, the company's ultimate beneficial owners (UBOs) must be registered with the UBO register. Finally, the company will need to be registered for VAT and as an employer with the National Social Security Office.

IV. GOVERNANCE, REGULATION AND ONGOING MAINTENANCE

(i) Reporting requirements

In the NV, BV and CV, the management body draws up an annual inventory and prepares the annual accounts, including the balance sheet, the results' account and explanatory notes. An annual shareholders' meeting must be held within six months after the end of the financial year to approve the annual accounts. The annual accounts must then be filed with the National Bank of Belgium within one month after their approval by the shareholders' meeting.

Larger companies and companies which are part of a group that is required to publish consolidated annual accounts are obliged to appoint a statutory auditor. A Belgian company is considered to be a "larger company" if at least two of the following criteria are exceeded during the previous two financial years:

- An annual turnover, VAT excluded, of EUR 11.250.000;
- A minimum of 50 employees or;
- A balance sheet total of EUR 6 million.

The statutory auditor is appointed for a term of three years and must be approved by the Belgian authorities. The company's books must be kept at the company's registered office.

The following documents and information must be filed with the registry of the Enterprise Court within 30 days and, as the case may be, published in the Annexes to the Belgian State Gazette:

- Amendments to the company's articles of association;
- Changes to the company's name or legal form;



- Appointments and resignations of persons authorized to represent the company;
- Appointments and resignations of the legal representative(s) of the Belgian branch office;
- The dissolution of the company, the appointment of liquidators and the scope of their powers and the closing of the liquidation;
- Any bankruptcy, judicial reorganization or similar proceedings affecting the company.

(ii) Requirements for local shareholders/directors

On 1 July 2023, the new Belgian foreign investment (FI) screening regime entered into force. Transactions executed as of that date are subject to a mandatory pre-closing notification to the Belgian Inter-federal Screening Commission. The Belgian FI regime only screens investments by non-EU investors in a Belgian strategic entity in a sensitive sector.

Without prejudice to similar provisions pursuant to European law and/or specific provisions in regulatory sensitive sectors, there are no other general requirements concerning local shareholders or directors under Belgian law.

If a legal entity is appointed as a director, it must appoint a “permanent representative” who is responsible for executing the mandate of the director on behalf of and for the account of the legal entity. The permanent representative must be a natural person and will be subject to the same civil and criminal liability as the legal entity he or she represents.

(iii) Minority shareholders’ rights and protection

Some mechanisms in the BCCA aim to protect minority shareholders:

- The preferential subscription right when new shares are issued;
- The right to initiate a minority claim against one or more directors: the shareholders’ meeting has the power to initiate proceedings on behalf of the company, unless the shareholders’ meeting has already discharged the directors. It is also possible for minority shareholders to initiate proceedings on behalf of the company if they represent at least 10 % of the shares (BV or CV) or 1 % of the voting securities / hold at least EUR 1.25 million of the company’s capital on the date the shareholders’ meeting voted to discharge the directors (NV). Minority shareholders who have validly approved the discharge may not initiate such proceedings;
- The right to convene a general meeting when a minority shareholder has a certain participation interest in the company: shareholders holding, individually or collectively, 10 % of the shares (BV or CV) or 1 % of the share capital (NV) can request the board of directors and the statutory auditor (if any) to call a shareholders’ meeting, with at least the agenda items that these shareholders have requested for this meeting. Shareholders holding, individually or collectively, at least 3 % of the share capital of a listed company have the



right to propose items for the agenda and to table resolutions;

- The right to ask the directors (and the statutory auditor, if any) questions during shareholders' meetings or in writing before the meeting (to be answered at the meeting). The directors or the statutory auditor, as the case may be, are obliged to answer these questions. However, the directors and the statutory auditor may refuse to answer a question if doing so would harm the company's business or would breach their or the company's duty of confidentiality;
- The right to request an expert report: if there are indications that the interests of the company are seriously jeopardised or could be jeopardised, the court may also appoint one or more experts to assess the company's books and accounts and the actions of its corporate bodies. The conditions for requesting the appointment of an expert are the same as for filing a minority claim.

The Belgian Corporate Governance Code of 2020 also provides rules on related party transactions to be applied by listed companies, aimed at protecting minority shareholders.

(iv) Capitalisation obligations

a) If, due to the losses incurred, the net assets of the NV drop below half of the share capital of the company, the shareholders' meeting must meet within no more than two months after the loss has been or should have been established, as the case may be,

in order to deliberate on a winding up of the public limited company.

The board of directors must justify its proposals in a special report.

If the board of directors proposes to continue the activities of the NV, it must set out in its report the measures it aims to implement in order to remedy the financial situation of the company.

If the net assets of the NV have fallen below the minimum capital required, any interested party or the public prosecutor's office can request the dissolution of the company in court.

b) If, due to the losses incurred, the net assets of the BV have become negative or threaten to become negative, the shareholders' meeting must meet within no more than two months after the discovery of the situation in order to deliberate on a winding up of the company. The board of directors must justify its proposals in a special report.

If the board of directors proposes to continue the activities of the limited company, it must set out in its report the measures it aims to implement in order to remedy the financial situation of the company.

Once the board of directors has fulfilled the abovementioned obligations, it is not obliged to convene the shareholders' meeting for the same reason during the 12 months following such convocation.



| | BV | CV | NV |
|-------------------------------|---|---|---|
| Main characteristics | The BV is a legal entity with limited liability. Since 2019, it is possible to provide for the free transfer of shares and to have tailor-made provisions in the articles of association. | The cooperative company aims to meet the needs of its shareholders or third parties and/or to develop their economic and social activities. | The public limited company is a legal entity whose share capital is divided into shares which are, in principle, freely transferable. |
| | Suitable for all businesses, but especially for family-run businesses and SMEs. | Only available for companies with a real cooperative purpose. | Suitable for larger and listed companies. |
| Limited liability | YES | YES | YES |
| INCORPORATION | | | |
| Number of shareholders | At least one person (natural or legal) Unlimited number of shareholders | At least 3 shareholders (individual or legal entity), but no maximum number of shareholders | At least one person (natural or legal) Unlimited number of shareholders |
| Suitable for listing | YES (if the articles of association contain tailored provisions to this effect) | NO | YES |
| Capital requirements | No minimum capital required but sufficient assets | No minimum capital required but sufficient assets | At least 61.500 EUR |
| Types of securities | Shares (with or without right to vote) Bonds Convertible bonds Warrants | Shares (only with right to vote) Bonds | Shares (with or without right to vote) Bonds Convertible bonds Warrants Profit sharing certificates |



| MANAGEMENT | | | |
|------------------|--|--|---|
| Structure | <p>BV is managed by either</p> <ul style="list-style-type: none">- a sole director;- a board of directors (non-collegial or collegial, if provided for in the articles of association). <p>Director(s) can be appointed in the articles of association.</p> | <p>CV is managed by either</p> <ul style="list-style-type: none">- a sole director;- a board of directors (non-collegial or collegial, if provided in the articles of association). <p>Director(s) can be appointed in the articles of association.</p> | <p>There are 2 types of board structures:</p> <ul style="list-style-type: none">- monistic board;- dualistic board. <p>If the monistic board structure is chosen, the NV may be managed by:</p> <ul style="list-style-type: none">- either a collegial board of at least 3 directors, or;- 2 directors if there are fewer than 3 shareholders, or;- if the articles of association so provide, a sole director. <p>The dualistic board structure must be provided for in the articles of association and consists of</p> <ul style="list-style-type: none">- a board of supervision and;- an executive board. <p>The board of supervision is a collegial board of at least 3 members, who may not at the same time be members of the executive board.</p> <p>The executive board is a collegial board of at least 3 members who are appointed by the members of the board of supervision.</p> |



| | | | |
|------------------------------|--|---|--|
| Competence | <p>Every director may perform all acts necessary or useful for the realization of the company's corporate purpose, unless the articles of association provide otherwise or unless the law provides that such acts are the exclusive responsibility of the shareholders' meeting.</p> <p>Director(s) is/are responsible for making major business decisions and overseeing the general affairs of the BV.</p> | <p>Every director may perform all acts necessary or useful for the realization of the company's corporate purpose, unless the articles of association provide otherwise or unless the law provides that such acts are the exclusive responsibility of the shareholders' meeting.</p> | <p>In principle, the board of directors has all the powers that are not reserved to the shareholders' meeting (i.e. residual powers).</p> <p>In the case of a dual structure,</p> <ul style="list-style-type: none"> - the board of supervision is responsible for the general policy and strategy of the NV; - the executive board has full management competence, except for those reserved by the law to the shareholders' meeting and/or the board of supervision. |
| Daily management | The board may appoint one or more persons, who can act alone, jointly or collegially, and who are responsible for the daily management. | The board may appoint one or more persons who can act alone, jointly or collegially, and who are responsible for the daily management. | The director(s) may appoint one or more persons who can act alone, jointly or collegially, to run the day-to-day operations of the company. |
| SHAREHOLDERS' MEETING | | | |
| Competence | <p>In principle, a number of decisions are reserved by law to the shareholders' meeting, such as:</p> <ul style="list-style-type: none"> • The appointment or dismissal of the director(s); • The appointment of the statutory auditor(s); • The approval of the annual accounts; • The discharge of the director(s) and the statutory auditor; | <p>In principle, a number of decisions are reserved by law to the shareholders' meeting, such as:</p> <ul style="list-style-type: none"> • The appointment or dismissal of the director(s); • The appointment of the statutory auditor(s); • The approval of the annual accounts; • The discharge of the director(s) and the statutory auditor; | <p>In principle, a number of decisions are reserved by law to the shareholders' meeting, such as:</p> <ul style="list-style-type: none"> • The appointment or dismissal of the members of the board of directors (if monistic structure) and the members of the board of supervision (if dual structure); • The appointment of the statutory auditor(s); • The approval of the annual accounts; |



| | | | |
|----------------------|--|--|--|
| | <ul style="list-style-type: none">• The initiation of claims by the company against its directors;• A merger or demerger of the company;• The dividend distributions¹;• The acquisition by the company of its own shares³;• The dissolution of the company and;• Any modification to the articles of association. | <ul style="list-style-type: none">• The initiation of claims by the company against its directors;• A merger or demerger of the company;• The dividend distributions;• The dissolution of the company and;• Any modification to the articles of association. | <ul style="list-style-type: none">• The discharge of the directors, the members of the board of supervision and the statutory auditor;• The initiation of claims by the company against its directors• The dividend distributions¹;• A merger or demerger of the company;• A capital increase² or a capital decrease;• The acquisition by the company of its own shares³;• The dissolution of the company and;• Any modification to the articles of association. |
| Voting rights | One share, one vote unless the articles of association provide otherwise. Possibility to issue shares without voting rights. For listed companies, possibility to issue loyalty shares (double voting right). | One share, one vote unless the articles of association provide otherwise. Shares without voting rights are NOT possible. Loyalty shares NOT possible. | One share, one vote unless the articles of association provide otherwise. Possibility to issue shares without voting rights. For listed companies, possibility to issue loyalty shares (double voting right). |

¹ without prejudice to the competence of the board of directors to distribute interim dividends if allowed by the articles of association

² without prejudice to the competence of the board of directors to increase the share capital within the authorized capital

³ without prejudice to the competence of the board of directors in this respect, within the limits set by the general shareholders' meeting



| | | | |
|--------------------------------------|---|---|--|
| Minority shareholders' rights | Shareholders holding at least 10% of the shares have the right to: <ul style="list-style-type: none">- ask a court to appoint experts to inspect the books and accounts of the company;- lodge a minority claim against one or more directors. | Shareholders holding at least 10% of the shares have the right to: <ul style="list-style-type: none">- ask a court to appoint experts to inspect the books and accounts of the company;- lodge a minority claim against one or more directors. | Shareholders holding at least 1% of the voting securities or holding at least €1,25 million of the company's capital on the date the shareholders' meeting voted to discharge the directors, have the right to <ul style="list-style-type: none">- ask a court to appoint experts to inspect the books and accounts of the company;- lodge a minority claim against one or more directors |
| SHARE TRANSFER | | | |
| | Unless otherwise provided for in the articles of association, shares are NOT freely transferable. Shares may only be transferred to another shareholder or to a direct ascendant or descendant of the shareholder. If the articles of association do not provide that the shares are freely transferable, any transfer of shares to a person or company other than the abovementioned must be approved by at least half of the shareholders representing at least 3/4th of the total shares, excluding the shares whose transfer is proposed. | Shares are transferable to other shareholders unless the articles of association provide otherwise. Shares may only be transferred to third parties, if they meet the requirements for becoming a shareholder as set out in the articles of association. | Shares are transferable unless the articles of association, the issuance conditions or shareholders' agreements provide otherwise. |



| PROFIT DISTRIBUTION | | | |
|---|---|--|---|
| Legal reserve | N/A | N/A | 5% of the net profit must be retained until the legal reserve reaches 10% of the capital |
| Distribution to shareholders | Only possible if BV complies with liquidity and solvency requirements. | Only possible if CV complies with liquidity and solvency requirements. | The distribution may not cause the net assets to fall below the amount of the capital. |
| CHANGE OF ASSETS | | | |
| New contribution | Issuance of new shares is an amendment of the articles of association and must be decided by the shareholders' meeting. | The board of directors may decide to issue new shares. | Capital increase is an amendment of the articles of association and must be decided by the shareholders' meeting. |
| New contribution without issuance of new shares | Possible and specifically provided under law. | Possible despite the fact this is currently not specifically provided under law. | N/A |
| New contribution to be decided by the board of directors | Possible if allowed by the articles of association. | This is the rule (see above), unless the articles of association provide that the shareholders' meeting should decide on the issuance of new shares. | Possible within the limits of "authorized capital". |
| WITHDRAWAL AND EXCLUSION OF SHAREHOLDERS AT THE COMPANY'S EXPENSE | | | |
| | The articles of association must explicitly provide that shareholders have the right to withdraw or that a company can exclude shareholders at the company's expense. | Notwithstanding any statutory provision to the contrary, shareholders have the right to withdraw (some restrictions apply for the founders), or the company can exclude some shareholders. | N/A |