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21st Century Company Law in Belgium

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The new Belgian Code of Companies and Associations (BCCA) of 23 March 2019 entered into force on 1 May 2019 (See section 8 for the details.). The BCCA is divided in five parts, and further subdivided in different books. The first part, from book 1 to book 3, contains the general provisions that apply to companies, associations and foundations. Part 2 contains provisions specifically applicable to the different types of companies. Part 3 continues with the provisions that apply to associations and foundations. Part 4 deals with the restructuring and the transformation of the legal form and the last Part 5 contains provisions on the European legal forms.

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1. INTRODUCTION

On 4 April 2019, the new Belgian Code of Companies and Associations (BCCA) of 23 March 2019 was published in the Official Gazette. It entered into force on 1 May 2019.[1] This contribution[2] provides in an overview of the new structure of the Code and the basic concepts as well as the important changes that apply to all legal entities. This includes, among other things, the limitation of directors' liability and the transition from the real seat towards the statutory seat. The third section studies the new private limited liability company, the BV, for which the capital requirement has been abolished. Subsequently, sections 4 to 6 discuss the changes that apply to (the issuance of) shares and other securities, the management, and the dissolution and liquidation of the company. In the last section, the rules of entering into force and a short conclusion is provided.

2. STRUCTURE OF THE CODE AND MAIN CONCEPTS

The BCCA is divided in five parts, and further subdivided in different books. The first part, from book 1 to book 3, contains the general provisions that apply to companies, associations and foundations. Part 2 contains provisions specifically applicable to the different types of companies. Part 3 continues with the provisions that apply to associations and foundations. Part 4 deals with the restructuring and the transformation of the legal form and the last Part 5 contains provisions on the European legal forms.

The existing list of different types of companies is significantly shortened. The remaining company forms, and in particular the private company, offer flexibility and should guarantee that in their articles of association the specific features of the abolished company forms can be incorporated. In addition to the European legal forms, the SE, the SCE and the EEIG, there are essentially four basic remaining forms of companies: the partnership, the private company (BV), the public limited company (NV) and the cooperative company (CV).

The BCCA starts with a new definition of the term 'company'. The definition reads: '*A company is established by a legal act of one or more persons, called partners, who make a contribution. It has equity and must develop one or more specific activities. One of her goals is to provide, either directly or indirectly, an equity gain for her partners*'.[3] This new definition clarifies that a company can be established by one person, who can either be a natural or a legal person. There remain exceptions as a partnership presupposes at least two parties and a cooperative company requires three founders, in compliance with the cooperative ideology. These two exceptions lead to the finding that the sole founder is only applicable in case a private or a public limited liability company is established. Nevertheless, this change is particularly welcome for groups of companies, which formerly artificially had two or more shareholders for each company in their group of companies.

Second, the definition states that partners provide in a contribution (in cash or in kind). However, the minimum capital requirement has been abolished for private companies. Third, the company must have as one of its goals the provision of gains for the partners. This criterion is essential to distinguish companies from associations in the Belgian law. Associations can make profit but cannot distribute the benefits (in)directly to the members of the association. The term 'indirect benefit' is defined as '*any transaction that causes the assets of an association or foundation to decrease or its liabilities to increase and for which it either receives no consideration or only a consideration that is apparently too low in relation to the*

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1 *See* s. 8 for the details.

2 This article is based on K. Marescεau & C. Van der Elst, *Het Belgische Wetboek van Vennootschappen en Verenigingen: Een Verkenning*, TVOB 2020, in press.

3 Article 1:1 BCCA.

Van Der Elst, Christoph. '21st Century Company Law in Belgium'. *European Company Law Journal* 17, no. 2 (2020): 25–36.

value of its performance delivered'.[4] A classic example was the lease agreement in which the association, as a tenant, rents a building from one of its members for a rent that is higher than the market rent. Fourth, the outdated distinction in commercial and civil activities, like those of attorneys-at-law, resulting in commercial and civil companies, is abrogated.

The cooperative company can only be used in special circumstances. Article 350 BCCA defines the cooperative society as '*the company that is composed of a variable number of partners providing in a variable contribution*' and the company's main purpose must be the meeting of any kind of needs of the shareholders. Formerly, the flexible entry and exit arrangements, together with a number of other flexible options (including multiple voting rights), made this form of company attractive, not only for companies in the traditional cooperative sector, but also for other sectors, such as the so called liberal professions like accountants, auditors, attorneys-at-law etc. The BCCA wants to put an end to this 'improper' use of this company form adding the requirement of meeting a need of the shareholders. The question arises what this new obligation effectively adds. However, the legislator considers this purpose pivotal: the cooperative company can even be dissolved in the event of non-compliance.[5]

3. COMMON PRINCIPLES APPLICABLE ON ALL LEGAL ENTITIES

3.1. Modern Communication Tools

The BCCA guides the Belgian company partially in the twenty-first century allowing the use of modern communication tools. The BCCA introduces the option for a legal person to include an official email address and an official website in its articles of association. Shareholders, members or holders of securities in the company can write to the legal person at this e-mail address and may thereby assume that the legal person has received their message. On the other hand, shareholders or members and other corporate incumbents of the legal entity (such as directors) can provide their e-mail address, and request that all communication takes place via this e-mail address. The BCCA also allows that the official website of a legal entity can be used for the disclosure of certain types of information.

3.2. Permanent Representation of a Legal Entity

Article 61, §2 of the former Belgian Company Code provided in an obligation for legal persons to appoint a permanent representative-natural person if they have been appointed as a director, manager or member of the management committee, of the management board or of the supervisory board in a company.[6] That designated natural person was charged with the execution of the mandate in the name and for the account of the legal person. This representation system is largely copied in the BCCA and its field of application is broadened to all legal entities, and from now on also applies to non-executive directors of the not for profit organizations and the foundation. The permanent representative-natural person is subject to the same conditions as the director-legal person and jointly and severally liable as if she had carried out the relevant mandate in her own name and for her own account. It can be qualified as the principle of transparency of the director-legal person. From this principle can be derived, for example, that the permanent representative must meet the requirements of independence, if the legal entity is qualified as independent director.

3.3. Directors' Liability and the Circle of Liable Persons

The BCCA includes a general liability rule for mistakes committed in the exercise of the function of a director, which essentially is inspired by the former articles 527 and 528 of the Companies Code. The BCCA states that directors, managers, daily directors, members of management boards or supervisory boards are only liable '*for decisions, actions or behavior that are apparently outside the margin within which normally prudent and careful directors, placed in the same circumstances, could reasonably disagree*'. It is obvious that this liability rule will give rise to a great deal of discussion in particular regarding the meaning of what is 'apparently outside the margin' of normal practice.[7]

The liability does not only apply to all members of the governing bodies, including the daily director but also, according to article 2:56 BCCA to de facto directors, which are those persons of which it is shown that they have governing power with regard to the legal person.

3.4. Individual versus Joint and Several Liability

The BCCA also clarifies the issue of the individual versus joint and several liability of directors in the hypothesis in which the legal person has several directors. In this context, a distinction is made whether the governing body constitutes a college:

- If the governing body is a college, the members are jointly and severally liable for the decisions and or shortcomings. It does not matter whether the mistake consists of a normal management error or an infringement of the company code or the articles of association. In all cases, the liability for the members of the college is jointly and severally.
- If the administrative body does not constitute a college, then each director is only liable insofar as she can be blamed for an

4 Article 1:4 BCCA.
5 *See* the Explanatory Memorandum to the Bill introducing the Code of Companies and Associations and containing various provisions, *Parl. St.* Kamer 2017–18, no. 3119/1, 15.
6 H. Braeckmans & R. Houben, *Handboek Vennootschapsrecht*, Antwerpen, Intersentia, 375–381 (2012) (met verdere verwijzingen); M. Wauters, *De bestuurder-rechtspersoon en zijn vaste vertegenwoordiger*, in *Nieuw vennootschapsrecht 2002-De wet corporate governance* 13–105 (Kalmthout, Biblo 2003).
7 As it is the case in the Netherlands. *See* e.g. B. Assink, *Compendium Ondernemingsrecht* 1052–1093 (Deventer: Kluwer 2013).

error. However, if the error consists in the violation of a provision of the BCCA or the articles of association, the members of the administrative body are jointly and severally liable for all damage resulting from this infringement.

In case there is a reason for joint and several liability, a director can be excluded from that liability. This requires, first of all, that she did not personally participate in the mistake (for example because she was legitimately absent from the meeting that took the relevant decision). Next, the director must have reported the alleged error to the other directors.

3.5. Limitation of the Maximum Director's Liability

A, at first glance, important innovation is the limitation of the amount for which a director can be held liable. As far as I know, this limitation is relatively unique in the world of directors' liabilities. The limitation of liability is provided for each (daily) director, manager, member of the management board or supervisory board and applies in principle to all different types of liability, whether it relates to third parties or the company and whether it is of a contractual or extra-contractual nature.

The maximum director's liability depends on the size of the controlled legal entity, which is determined in function of the turnover and the balance sheet total of that legal entity.[8] The larger the controlled legal entity is, the larger the potential liability of the director must be. However, there is no explanation as to why these thresholds have been chosen. The thresholds are as follows:

- EUR 125,000 for directors of legal entities who have an average turnover of less than (indexed) EUR 350,000 (excluding VAT) in the three previous financial years and whose average balance sheet over the same period did not exceed (indexed) EUR 175,000;
- EUR 250,000 for directors of legal entities outside the scope of the first class and with an average turnover of less than (indexed) EUR 700,000 (excluding VAT) and whose average balance sheet over the same period was not higher than (indexed) EUR 350,000;
- EUR 1,000,000 for directors of legal entities outside the scope of the first two classes and that do not exceed more than one of the following criteria in the three previous financial years: (1) an average annual turnover (excluding VAT) of (indexed) EUR 9,000,000 and (2) an average balance sheet total of (indexed) EUR 4,500,000;
- EUR 3 million for directors of legal entities outside the scope of the first three classes and which are not exceeding the criteria of the next class; and
- EUR 12,000,000 for directors of public interest entities and legal entities that in any of the three financial years exceed: (1) an average balance sheet total of (indexed) EUR 43,000,000, and (2) an average annual turnover (excluding VAT) of (indexed) EUR 50,000,000.

The above maximum amounts apply to all directors jointly. Therefore, if several directors are held liable for the same mistake, they will mutually benefit from the liability limitation. Moreover, the maximum amounts apply per fact or the whole of facts that can give rise to liability, regardless of the number of claimants or claims. If there are several claimants who jointly or separately institute a claim for liability for the same fact, the aforementioned limitation of liability is applied.

The limitation of the liability is subject to a number of (important) exceptions, in which case the director is liable for all the damages. The most important exceptions are mistakes that usually occurred rather than accidentally, the serious error, the fraudulent intent or with the intention to harm, late or no payment of taxes, late or no payment of social security payments and the like.[9]

The exceptions lead to the finding that the limitation of director's liability is in many cases symbolic. This applies in particular to the exception in the case of (1) the minor error that usually occurs rather than accidentally and (2) the serious error. These concepts are inspired by the Belgian liability rules of employees but in the context of the management of companies must be considered less appropriate. As discussed, directors can only be held liable if they have committed an error that would not have been committed by normally prudent and careful directors placed in the same circumstances. The concept of the 'marginal review' of which courts will make use of for assessing the liability of directors, thus essentially implies a certain degree of gravity of the error, meaning that in many circumstances the mistake must be considered a 'serious error' to give rise to any kind of directors' liability. It necessarily means that the limitation of liability is excluded. Accordingly, the repeated minor error will be assessed.

Any kind of contractual limitation of director's liability is to be considered null and void. The prohibition results in the non-permissibility of so-called '*hold harmless*' arrangements that currently exist, mainly in listed companies. However, it remains permitted that the legal entity insures its directors at its expense. The insurance does not deprive shareholders or third parties of their option to receive financial compensation in the event of management errors.

3.6. International Company Law

The BCCA abandons the current 'real seat theory' and refers to the location of the registered office of companies in order to determine the applicable national company law. Moreover, shareholders of the company can, by means of an amendment of the articles of association which requires a supermajority vote of 80%, relocate the

8 Article 2:57 BCCA.
9 *See* for the full list of exceptions Art. 2:57, §2 BCCA.

registered office, and consequently the company's applicable national company law. If this decision is taken, it is also required that the interests of the creditors are taken into account. The creditors of a 'moving company' are given the opportunity of demanding specific guarantees and securities similarly to those requests known in the context of the capital reduction. Thus, the Belgian international private law regime for companies is in line with the case law of the Court of Justice with regard to the freedom of establishment.

It must be noted that this freedom of choice has no spill-over effect on the other areas of law. For example, tax law and insolvency law consider the location of the real seat to determine the applicable law. The same applies to, among other things, social law (place of employment) and environmental law (location of the factory). The freedom of choice only relates to the company's organizational law: how is the company founded and dissolved, how is it represented in legal transactions, what *organizational law* measures should it take to protect *stakeholders* such as creditors.

4. THE EQUITY PRIVATE LIMITED LIABILITY COMPANY

4.1. From Capital to Equity

As stated above, the BV is at the centre of the Belgian corporate law reform. The Belgian legislator abolished the concept of 'capital' for this type of company. 'Capital' in the corporate law sense is essentially the amount, which can be found on the liabilities side of the balance sheet, which indicates which part of the company's assets is not eligible for distribution, except through a capital reduction procedure. The minimum capital obligation must ensure that the security buffer for creditors has a certain minimum size. However, the final impact on creditors is negligible, since the amounts of the minimum capital are particularly limited, the capital offers no protection against corporate losses and the threshold does not prevent fraudulent start-ups.

From 1 May 2019, the BV must have, instead of a minimum capital, *sufficient initial equity* to realize the planned activities over a period of two years. Subordinated funds (credits) that are made available to the company by the founders may also be taken into account for the assessment of the availability of sufficient equity. The founders must establish a financial plan that shows that the activities can be financed with the contributions. More precisely, the financial plan must contain: (1) a precise description of the proposed activity, (2) an overview of all sources of financing at incorporation date, including the securities provided in that regard, (3), an opening balance sheet and a projected balance sheet after twelve and twenty-four months, (4) a projected income statement after twelve and twenty-four months, (5) a budget of the expected income and expenditure for a period of at least two years after its establishment, and (6) a description of the assumptions used in estimating expected sales and profitability. Experts can help the founders with the establishment of the financial plan but assistance is not mandatory. In case an external expert is involved, the financial plan must identify the consultant. The mandatory duty to establish a financial plan already existed in Belgium since the late 1970s, but, with one exception,[10] the founders of the company were free to decide what kind of information they included in this plan. As of now, the prescribed content of the financial plan is also applicable in case the founders establish a public limited liability company. The financial plan must not be made public and must only be kept by the notary who has assisted in the establishment of the company. The content of the financial plan will only play a role if the company is declared bankrupt within three years after its incorporation. The court may hold the founders liable for part or all of the company's net liability if it comes to the conclusion that the initial equity of the company at its incorporation was manifestly insufficient for the normal exercise of the intended activity in respect of least two years.

There seems to be a Belgian consensus that the financial plan is a useful tool to combat frivolous establishments, even though no or hardly any other countries have adopted this approach. The question arises, however, whether this substantial increase in substantive requirements of the financial plan, which in effect increases the costs of incorporation, does not exceed the benefits of the expected decline in the number of frivolous establishments.

While the notion of capital is abolished, the rules of contribution to the company by the founders remain practically unchanged. Contributions in kind must in principle be valued and checked, and cash contributions must be deposited into a account opened in the name of the company. What does change is the contribution of future services in the BV (but not in the NV). As of now, it is allowed to contribute future services to the company and be compensated in shares. Furthermore, the so-called rules on quasi-contribution[11] are abolished for the BV. It is assumed that the procedure for the settlement of conflicts of interest entails sufficient guarantees for the creditors of the BV. These relaxations are not possible for the NV, due to the European Company Directives.

4.2. Distributions to the Shareholders

The abolishment of the capital rules for the BV has a significant impact on the profit distribution rules. Any distribution must be submitted to two tests: a balance sheet test and a liquidity test. These tests are being applied not only to the payment of dividends, but also in the context of the repayment of contributions (the former

10 Since 2010, for a specific kind of private limited liability company, a financial plan with a similar content had to be prepared by the founders.

11 When a founder or shareholder within the first two years of establishment of the company transfers any asset to the company for an amount which is higher than 10% of the capital, a specific procedure had to be applied (former Arts 220 to 222 Companies Act).

capital reduction), the purchase of treasury shares and the provision of financial assistance. The distribution restrictions must also be applied to the payment of an exit in the new exit procedure.

4.2.1. *Direct Distribution of Assets*

In light of the abolition of the capital concept, both transactions, profit distribution and return of contributions are regulated in the same way in the BCCA for the BV. The return of contributions no longer implies an amendment to the articles of association, whereby creditors enjoy a right to object, but it is considered a mere distribution of assets that can be implemented if the balance sheet test and the liquidity test are met.

Only if the balance sheet test (to be carried out by the general meeting) and the liquidity test (to be carried out by the management body) are passed simultaneously, the BV can continue with the distribution. Important to note is that even if the general meeting decides to make a distribution within the limits of the balance sheet test, a separate, autonomous responsibility lies with the management body to check whether the distribution proposed by the shareholders may take place on the basis of an investigation if, after the distribution, the company will reasonably be able to continue to pay its debts as they expire, which is primarily a question of liquidity.

The balance sheet test is very similar to the current net asset test. No payment may be made if the shareholders' equity of the company is negative or if the payment would make it negative. An important innovation in this regard is the power to distribute profit of the current financial year. One has no longer to wait until six months have passed since the end of the previous financial year and there is no minimum period of three months to pass between each interim dividend.[12] These relaxations also apply to the NV.

The balance sheet test is inextricably linked to the second test, the so-called 'liquidity test'. The BCCA stipulates that the decision of the general meeting to distribute profit within the framework of the balance sheet test will only take effect after the management body has established that after the distribution the company will continue to be able to pay its debts as they become due and payable on a period of at least twelve months from the date of payment. The twelve-month period is a minimum period, which incidentally coincides with the timeframe that the board must already take into account when testing the continuity hypothesis. Since this is a minimum period, the board must in any case also take into account the events of which it is already aware and which can have a significant impact on the liquidity position of the company in the future. One can think of the expiry date of a major loan that takes place eighteen months after the payment is made.

The decision of the governing body in the context of the liquidity test is justified in a report that must not be made public and neither is a sanctioning system provided. The purpose of this report is threefold: (1) it encourages the management body to exercise due diligence in conducting the liquidity test, (2) it allows lenders to ensure that the liquidity is not jeopardized and (3) it gives the management body the opportunity to compile evidence in case the legal validity of the distribution is subsequently challenged.

No legal obligations are imposed on the content of the board's report. The concrete tests that are carried out are left to the discretion of the governing body. In companies with a sufficiently high liquidity, the liquidity test can be simple. A simple comparison between the current assets of the company less inventories and short-term debts can suffice. The less liquidity there is in the company, the more diligent the directors must be and the more elaborated their cash flow analysis must be. The BCCA does require that in the companies in which an external auditor has been appointed, the latter must control the accounting and financial data of the board's report, but she has no duty to provide in a judgment of the (adequacy of the) liquidity test.

At first glance, there may be the impression that the liquidity test is an important novelty in the BCCA. However, such a test has long been formally part of the law of Anglo-American legal culture, and is actually nothing new in Belgium either: based on the general duty of care and the general contractual governing duty, the governing body had to assess the distributions in light of the assets of the company.[13] The scope of the new legislation is, however, limited to BV, as a compensatory measure for the abolition of capital. Only the management body of the BV has the legal obligation to elaborate the liquidity test in a management report.

An important innovation of the BCCA relates to the right of the BV to reclaim a distribution that was executed contrary to the balance sheet or liquidity test, even if those shareholders are acting in good faith. The latter is conceptually a fundamental change to the old company law, which required bad faith of the shareholders.[14] In practice, however, the difference is limited, since in private limited companies the beneficiary shareholders often know the nature of the distribution (and as a major shareholder or director are directly involved). Furthermore, the directors who have made a payment in violation of the liquidity test are liable to the company and third parties for all damages if it is established that they knew (bad faith) or should have known in light of the circumstances when taking the decision to make a distribution.

4.2.2. *Indirect Distribution of Assets*

The balance sheet test and the liquidity test also have their effect in the context of the indirect distributions of company assets, and

12 For an assessment of the former system *see* N. Cooremen and updated by S. Claeys, *Commentaar bij artikel 618 W.Venn*, in *Duiding Vennootschappen 2017*, 1003–1006 (D. Bruloot, K. Byttebier, J. Cerfontaine, H. De Wulf & K. Maresceau eds, Brussel: Larcier 2017).

13 R. Tas, *Winstuitkering, kapitaalvermindering en -verlies in NV en BVBA* 296–297 (Kalmthout: Biblo 2003).

14 The bad faith requirement is still applicable in the NV in accordance with Art. 18 of Directive 2012/30/EU.

more specifically with regard to the purchase of treasury shares, financial assistance and the exit of shareholders. After all, each of these transactions has the effect of transferring assets from the company to the shareholders (or threatening to take place in the event of financial assistance).

The acquisition of treasury shares is adjusted given the abolishment of the capital concept. The entire process regarding the purchase of treasury shares has been simplified, but it remains largely in line with the provisions of the old company law. Among other things, the following conditions must be met: (1) the amount allocated to the acquisition must be eligible for payment (referring to the balance sheet test and the liquidity test), (2) the transaction may only relate to fully paid-up shares, (3) the principle of equal treatment of all shareholders must be considered, unless it is unanimously decided differently and (4) unavailable reserves must be established for the amount allocated for the distribution, as long as the company keeps the repurchased shares in portfolio.

Innovative in this BCCA acquisition procedure is the abolition of the rule that only 20% of the shares (or capital) may be purchased, a change that the BCCA also provides for the NV. The only limitation in this regard concerns the financing capacities of the company.

To protect the interests of creditors, the BCCA retains the financial assistance scheme: in principle, it is permitted to provide financial assistance to the person who wishes to take over the company or otherwise wishes to acquire shares of the company. The criteria that this financial assistance must meet remain essentially the same. The most important limitation is that the transaction may only be carried out with eligible funds, to be determined via the balance sheet test and the liquidity test.

The limitation of pledging of own shares has been deleted, in view of its ineffectiveness, so that the pledging of own shares is only subject to the conflict of interest rules and the financial assistance rules.

4.2.3. *Corporate Exit*

Where an exit of a shareholder charged to the equity of the company under the old corporate law was only possible in the cooperative company, within the limits of the variable capital, the new BCCA provides in this facility for the shareholders of the BV if and insofar as the statutes of the BV provides this attractive option. This exit can also serve as an alternative to the dispute resolution for which the intervention of the court is required.

The articles of association of the BV can freely determine the modalities of the exit of the shareholder. In the absence of other provisions in the articles of association, the supplementary arrangement scheme will be applicable: (1) shareholders can only exit during the first six months of the financial year, (2) all of the shares of the shareholder must be cancelled, (3) the exit only takes effect on the last day of the sixth month of the financial year and (4) the exit must be paid no later than one month thereafter. Regarding the value of the shares, the BCCA starts from the basic principle that the value of the share is equal to the amount of the paid-up contribution, with a maximum of the net asset value of the shares that follows from the last approved annual accounts.

Since the payment comes from the corporate assets, the BCCA also prescribes that the exit is only permitted to the extent that the aforementioned balance sheet test and liquidity test are applied. If the company has insufficient equity available for the payment, the payment will be suspended. The postponed payment must be executed before any other payment to the remaining shareholders is taken place. The shares that the company acquired must be cancelled. Since the cancellation of shares always implies an amendment of the articles of association, the exit and the resulting amendments to the articles of association must be passed by authentic deed. This does not require a decision of the general meeting, but a mere adoption by the governing body in front of the notary. With this deed of adoption, however, the governing body can wait until the end of the financial year, in order to have all exits combined in one deed. The aim is to reduce the costs for companies in the event that several exits takes place during one financial year.

In addition to the exit, the articles of association of a BV may also freely determine that the company may exclude a shareholder for a legal reason or for another reason stated in the articles of association. The procedure is based on the former regulation of the exclusion of a shareholder from a cooperative company.

In a nutshell, it boils down to the following. Only the general meeting of shareholders is authorized to take the decision of an exclusion. Thereto, the reasoned proposal for exclusion must be communicated to the relevant shareholder, who has the right to submit its comments in writing to the general meeting within a period of one month after the announcement. If the shareholder so requests, she must be heard by the general meeting. If the general meeting decides to exclude the shareholder, it must give reasons for its decision. This decision must be communicated to the disqualified shareholder within fifteen days after the decision of the general meeting. Unless the articles of association provide otherwise, the excluded shareholder is entitled to the payment of the value of the shares as determined in the BCCA. It should be noted that an exclusion can also be requested during the first two years after incorporation.

Finally, the BCCA provides for an optional scheme for a 'legal' exclusion. More specifically, the articles of association of a BV may stipulate that in the event of death, bankruptcy, apparent inability, liquidation or declaration of incapacity, a shareholder is deemed to leave the company. In such a case, the shareholder or, if applicable, its heirs, creditors or representatives are entitled to a payment of the value of the shares, which is calculated in the same way as with the ordinary withdrawal from the corporate equity.

4.2.4. *Loss of Equity*

The abolishment of the notion of 'capital' has not only consequences in the context of the (direct and indirect) distributions of corporate assets. The disappearance of this notion also requires a different interpretation of the so-called loss of capital procedure for the BV. Where the former rules of articles 332 and 333 of the Companies Code made use of the share capital to determine the thresholds for starting the loss of capital procedure, the BCCA relates financial difficulties to the balance sheet test and the liquidity test to determine whether the governing body must convene the general meeting to deliberate on the company's future. More specifically, the management body must convene the general meeting of shareholders after it has established, or should have established, that the net assets are likely to become or have become negative (balance sheet test). This convocation of the meeting is also mandatory if the management body determines that it is no longer certain that, in line with developments that can reasonably be expected, the company will be able to pay its debts as they become due in the next twelve months (liquidity test).

In addition to these redefined thresholds, the loss of equity procedure is more or less similar in terms of content to the former loss of capital procedure.[15] For example, the management body must prepare a special report and the general meeting must be given the opportunity to deliberate and decide on the dissolution of the company or on the measures announced in the agenda to safeguard the continuity of the company. In the event of a violation of the rules, the governing body can be held liable, whereby a rebuttable presumption of causality is assumed.

Finally, third parties lose the right to start a procedure for the dissolution of the company for loss of capital, which was available in the former Companies Code (article 333).

5. SHARES AND OTHER SECURITIES IN THE BV AND NV

5.1. One Share One Vote and Multiple Voting Rights

The BCCA gives all companies, including the BV, the virtually unlimited freedom to create new kinds of securities as long as the characteristics of the securities do not conflict with mandatory legal provisions. For the NV the modernization is limited to the introduction of the multiple voting rights and the abolishment of the restrictions on the issuance of non-voting shares. With regard to the latter, there is no longer any mandatory compensation by means of a preferential dividend and the number of cases in which non-voting shares will have mandatory voting rights is limited.

Since the concept of capital in the BV disappeared and therefore no longer have any relationship with the notion of capital, there remains no link between the value of the contribution and the rights attached to the shares. The rule that equal rights are attached to all shares is therefore removed in the BV. Each share now gives the right to a number of votes granted to this share in the articles of association. The default rule, however, remains that each share has one vote and that each share gives the right to an equal share in the profit and in the settlement. Furthermore, the company must issue at least one share and must have at least one share with a voting right, avoiding 'shareholderless'/'no voting rights' companies eroding the function of the general meeting vis-à-vis the board. Otherwise, all forms of multiple voting rights (without limitation in the number of votes) are possible, preferential dividends are possible, and shares without voting rights do not necessarily have to receive a preferential dividend. There is no longer a need for the introduction of profit-sharing certificates in the BV. The BV can create such securities, but can simply call them shares.

Although the principle remains that shares with equal value are entitled to one vote, the articles of association can deviate from this default rule. It is possible to issue shares with multiple voting rights. Any multiple is possible as there were no abuses found for the former cooperative companies, which allowed shares with multiple voting rights. Instead of the traditional multiple voting right, shares can also be given a veto right against certain types of decisions. Many variations are conceivable.

However, in listed companies only double voting rights are possible, and moreover only for those shares that belong to the same shareholder without interruption for at least two years. These must be fully paid-up registered shares. The introduction of the double voting right requires an amendment of the articles of association. This loyalty voting right is attached to the person of the shareholder rather than to the shares. This system resembles the former French system.[16] The Belgian regime, however, is different from the current French model, since the general meeting has the choice to amend the articles of association (opt-in), while in a French listed company, since 2014, the loyal shareholder automatically receives the double voting right (unless the double voting right is excluded in the articles of association; opt-out). The current empirical research does not provide convincing evidence that deviations from the principle of 'one share, one vote' are good or bad,[17] but it seems rather peculiar that the BCCA offers both the BV and unlisted NV many options, also offers the listed NV the right to issue an unlimited number of non-voting shares but provide in a limitation of double voting rights for 'loyal' shareholders of listed companies.

5.2. Bonds and Subscription Rights

Belgium is familiar with a general meeting of bondholders. Organizing bondholder meetings is still possible but the BCCA

15 K. Maresceau, *Commentaar bij artikel 332 W.Venn*, in *Duiding Vennootschappen 2017*, 367–371 (D. Bruloot, K. Byttebier, J. Cerfontaine, H. De Wulf & K. Maresceau eds, Brussel: Larcier 2017).

16 C. Adline Herbain, *Le droit de vote double comme instrument d'égalité des actionnaires, un paradoxe à la française*, TRV-RPS 128 (2017).

17 *See* for an overview of the discussions, http://www.ecgi.org/osov/final_report.php.

offers room for alternatives. It allows for private negotiations outside this general meeting, and this meeting is not considered a body of the company.[18]

The mandatory private nature of the BV disappeared and consequently the BV can, just like the NV, issue convertible bonds and bonds with a warrant or subscription right. Such warrants or subscription rights can also be issued separately without being linked to a bond. The former relevant rules are largely retained in the BCCA.

5.3. Issuance of New Shares

The issue of new shares remains a decision that must be taken by the general meeting in accordance with the rules of the amendment of the articles of association. However, the BCCA also makes it possible for the BV to introduce a clause of 'permitted capital', whereby the general meeting authorizes the board for a maximum of five years to issue additional shares. In that case, the board is bound by the limits established by the general meeting or by the founders when the authorization has been given in the deed of incorporation.

The former company law of the NV already contained the requirement for directors to justify an issuance of the shares in a report if this issuance takes place at the price below the capital value of the existing shares. The report had to be disclosed (see Article 582 of the Companies Code). This procedure protected the incumbent shareholders against the dilution of their stake. However, no similar rule existed in case of an issuance at a price higher than the capital value. For this reason, the BCCA introduces the obligation for both the BV and the NV for the management body to draw up a report for *each* issuance of new shares against new contributions. In companies, which have elected a registered auditor, the latter must report on whether the numbers in this management report are '*reliable and sufficient to inform the general meeting voting on the proposal*'.

5.4. The Transfer of the Shares

Formerly, there existed very strict rules for transferring shares of a BVBA, which could only be strengthened. The restrictions still exist for the BV, but only as default rules. It is even envisaged that the BV may list its shares on a stock market. In such a case, the BV can issue dematerialized shares in order to ensure the smooth tradability of the shares.

In the NV, the free transferability of shares is retained and the regulation regarding contractual or statutory transfer restrictions remained almost unchanged. From now on, conventional transfer restrictions must be justified by a legitimate interest, and no longer '*be justified in the interest of the company*'. Inalienability of the shares can be determined for an indefinite period but it can be terminated at any time, subject to a reasonable notice period. Furthermore, the transfer of the shares in breach of a statutory transfer restrictions is not enforceable, neither against the company, nor against third parties. This rule applies both in the BV and in the NV and must protect the interests of the company and the shareholders.

In the former BVBA it was highly controversial who has to pay up when a share is transferred before it was fully paid. The BCCA explains that when shares that are not fully paid up, are transferred, both the transferor and the transferee are jointly and severally liable to the company and third parties. In their internal relationship, the rule applies that the transferor (seller) who is called to account for the full payment can take recourse against the transferee (buyer), unless otherwise agreed.

A register must be kept for each type of security at the registered office of the company. This register must provide in more information than formerly was the case. In addition to the details of the shareholder's identity, the deposits made and the transfers made, the share register must from now on also state the statutory and contractual transfer restrictions, as well as the voting rights and profit rights attached to each share and their share in the settlement. This reinforcement is motivated by the desire – in view of the increased flexibility – to clearly inform (future) shareholders about the rights attached to the shares and any applicable transfer restrictions. The securities register can be kept in electronic form. The government can thereby impose specific conditions as well as determine the modalities of its storage and accessibility. It is unclear and rather doubtful whether this offers the possibility of using modern technologies such as *distributed ledgers* ('blockchain') for keeping a register and trading in different categories of securities. It is recommended that the legal framework facilitates the use of a distributed ledger and creates a framework like in France.[19] This is all the more important because the share register is gaining in importance.[20]

6. DISPUTE SETTLEMENT

Attorneys-at-law must be aware of the new rules for dispute settlement (forced exit and exclusion). This settlement regime applies to both the BV and NV but the listed companies are excluded. The framework must be distinguished from that for exiting the company (see section 3.2.3). The dispute settlement regime requires a court order and the price of the shares will be paid by the purchaser of the shares, and not by the company.

In addition to a series of small, more technical improvements, two major changes are particularly important. Firstly, the discussion

18 K. Maresceau & D. Roelens, *De algemene vergadering van obligatiehouders*, in *De obligatielening* 221–306 (D. Bruloot & K. Maresceau eds, Antwerpen: Intersentia 2017).
19 C. Van der Elst & A. Lafarre, *Blockchain and Smart Contracting for the Shareholder Community*, Eur. Bus. Org. L. Rev. 111–137 (2019).
20 Explanatory Memorandum to the Bill to introduce the Companies and Associations Code and containing various provisions, *Parl. St.* Kamer 2017–18, nr. 3119/1, 142.

about the referential date is resolved.[21] This referential date is the date to be taken into account when valuing the shares to be transferred. According to the case law of the supreme court, the referential date must be as close as possible to the court ruling that establishes the existence of a well-founded reason for the forced exit. However, this approach has the important disadvantage that it does not abstract of the circumstances that have arisen since the dispute and had an impact on the value of the shares. Such an approach is therefore often very disadvantageous for the exiting shareholder. The BCCA ends this discussion by, on the one hand, maintaining the starting point (valuation at the time of the judgment), but on the other hand provide the court with the discretionary power to increase or decrease the price if the valuation at the time of the ruling provides in a manifestly unreasonable result.

The second major problem of the dispute settlement system to which BCCA seeks to answer is related to the so-called related claims. Under the old law, the court had no power to consider these claims and, therefore, parallel proceedings had to be conducted. This was not only inefficient, it was also one of the reasons why the discussion regarding the referential date was bitter as the court could not award any damages (for example, for abusive majority behaviour) to the exiting shareholder in addition to the purchase price of his shares. From now on, the BCCA states that the court ruling may also settle all related claims, provided that these claims relate to the financial relations between the parties and the company or its affiliated companies. In addition, the court may also rule on non-compete clauses that could bind the excluded shareholder towards the company and can make part of the price dependent on the acceptance of a non-compete obligation (or of stricter terms of an existing clause).

7. THE BOARD OF THE BV AND NV

7.1. Appointment and Dismissal

The BCCA explicitly confirms the prerogative of the general meeting for the appointment and the dismissal of the members of the governing body, as well as the conditions for the election and dismissal of the directors. This provision is new but de facto confirms what already was applied previously. As such, the general meeting decides, among other things, on the remuneration to be paid to the members of the board of directors (including the amount thereof), any insurance contributions paid by the company (liability, pension accrual, illness, accidents and death), the benefits in kind (transport, means of communication), etc. These powers cannot be transferred to any other company organ. Obviously, the general rule does not affect the other specific provisions of the BCCA, like special rules on remuneration of directors for listed companies.

The scope of application of the aforementioned rule is limited to the appointment and dismissal of the members of board of directors. Other special assignments that are entrusted to a director, like the daily management and other executive management duties are not envisaged. Based on the residual powers of the board, this board determines the modalities under which these special assignments are granted, exercised and terminated, except if the articles of association of the company provide in other modalities.

The normal majority rules apply to the appointment and dismissal of non-statutory managers/directors, unless the articles of association provide in a specific procedure. If the members of the governing body have been appointed in the articles of association, or if the articles of association contain special provisions regarding the dismissal of those members, then these rules bind the general meeting, unless a statutory majority can be achieved at the relevant general meeting.

The BCCA overruled the public policy nature of the so called *ad nutum* dismissal of directors of the NV. The *ad nutum* dismissal remains the *default* arrangement, but the articles of association or the contract with the director can provide differently. In this way, it is possible to grant a director a termination term or provide in a compensation scheme in case the general meeting dismisses the director. This new regime also allows for a stronger, more credible position of independent directors in companies with a majority shareholder.

7.2. Internal Regulations

The BCCA contains a scheme for providing legal validity to the so-called ‘internal regulations’ of the board. Such regulations often establish the operating rules of the board of directors and other corporate bodies and provide for general principles regarding, inter alia, the delegation of powers. Those internal regulations are valid, although with certain limits and some conditions must be complied with. The articles of association must empower the board for establishing those internal regulations.[22] Furthermore, the BCCA stipulates that the internal regulations may not contain provisions (1) that are contrary to the mandatory provisions of the BCCA or the articles of association, (2) on matters for which the BCCA requires a statutory provision, and (3) on matters that touch on the rights of the shareholders, the powers of the organs or the organization and the functioning of the general meeting.

The internal rules cannot have external effect. Only if it can be demonstrated that the third party was aware of the content of the internal regulations, and therefore did not act in good faith, the company can enforce the internal regulations against the third party. In order to avoid any discussion in this regard, the

21 R. Tas & W. Van Gaver, *De geschillenregeling: actuele highlights uit een evergreen*, in *Themis 89 (Vennootschaps- en financieel recht)* 115–123 (Brugge, Die Keure 2014).
22 The articles of association can assign this power to the general meeting too.

explanatory memorandum to the BCCA confirms that shareholders cannot be considered as third parties.[23]

7.3. Governance Models

The governance models of the BV remained largely unaltered. The BV can elect, just like the former BVBA, statutory or non-statutory managers, from now on qualified as directors, who can either act alone or act *in college*.

The BCCA offers more flexibility for governing the NV. One of the major innovations for the NV concerns the introduction of the governance arrangement with a sole director. This governance model incorporates one of the essential characteristics of the partnership limited by shares (Comm.VA), a corporate form that is abolished. As a result, BCCA offer three basic governance models for the NV, namely: (1) the (pure) one-tier board, (2) the sole director and (3) the (pure) two-tier board structure with a supervisory board and a management board.

The one-tier board structure is the traditional governance scheme in which the NV is managed by a board of directors that is composed of at least three members. If, and as long as, the company has less than three shareholders, the board of directors may consist, just like today, of two directors. In the latter case, any provision granting a decisive vote to a member of the board of directors loses its effect. Some of the minor amendments of the BCCA is that a membership of the board can be extended indefinitely and that a board membership lasts until the ordinary general meeting in the financial year in which it expires according to the appointment decision. However, an important change is the abolishment of the executive *committee.* If a company prefers a system within which an important part of the board powers is delegated to a committee, it has to revert to the two-tier board structure. It is in two different ways different from the previous model: there is a prohibition to be a member of both boards and the management board has exclusive powers (*cf. infra*).

It should be noted that the prohibition to be a member of both the supervisory board and the management board is not applicable in case there is a *lex specialis.* One should mainly think of the Banking Act and the Act on insurance and reinsurance undertakings, which mandatorily provides that the members of the executive board also serve on the board of directors.[24]

Each NV can opt for a sole directorship. The sole director can be a natural person, but also a legal entity, in which case a permanent representative must be designated (cf. *supra* section 2.2). There is one exception to this freedom of choice for a natural person as sole director. In listed companies and companies in which the law requires a bipartite board (such as in financial institutions), that sole director must be a public limited company, which itself has a board of directors. In that case, the specific composition rules must be applied at the level of the latter board of directors. Thus, among other things, the gender quota and the committees required by law for listed companies are applied at the level of the director-legal entity.

The sole director may be appointed in the articles of association. The articles of association may also provide for a successor for the sole director. Although the system of the only director is based on the management model of the (abolished) partnership limited by shares (Comm.VA), an important difference exists. The sole director can be, but does not have to be, unlimitedly responsible for the commitments of the company. Practice has shown that the unlimited liability of the sole director in the former partnership was all too often symbolic, because the sole director could take the form of a limited liability legal entity.

The sole director can be provided with extensive powers. The articles of association may provide that the approval of the sole director is required for every amendment to the articles of association, for each distribution to the shareholders, or for her resignation. However, there is an important limitation. The general meeting can always end the office of the sole director without her approval, in accordance with the attendance and majority requirements for amending the articles of association, if there are legal reasons for the dismissal. In addition, an instrument based on the minority claim is also provided to minority shareholders who are confronted with a sole director protected by the majority. Shareholders with voting rights representing 10% of the capital or 3% in a listed company can appoint an ad hoc proxy who can demand the dismissal of the sole director for legal reasons. This specific shareholder right should provide in an equilibrium between self-control and anchoring powers.

The NVs can also opt for a two-tier board structure with a supervisory board and a management board. The supervisory board is a collegial body composed of at least three members. The members of the supervisory board may natural or legal persons but it is not allowed to be a member of both boards of the same company. The members of the supervisory board are appointed by the general meeting. The supervisory board is exclusively competent for the supervision of the management board, for the general policy and strategy of the company, and for all matters that belong exclusively to the board of directors in the one-tier board system, such as the convening of the general meeting of shareholders and setting the agenda of the meeting, the preparation of the annual report, the use of the authorized capital, the purchase and sale of treasury shares etc. The decision on the discharge of the members of the management board is an exclusive power of the supervisory board, as well as the power to file a corporate claim against the management

23 Explanatory Memorandum to the Bill to introduce the Companies and Associations Code and containing various provisions, *Parl. St.* Kamer 2017–18, nr. 3119/1, 75.

24 *See* more specifically Wet van 25 Apr. 2014 op het statuut en het toezicht op kredietinstellingen en beursvennootschappen, *BS* 7 mei 2014 en Wet van 13 maart 2016 op het statuut van en het toezicht op de verzekerings- of herverzekeringsondernemingen, *BS* 23 maart 2016 (ed. 1), err. *BS* 8 Apr. 2016.

board. For the exercise of these exclusive powers, the supervisory board also has external representation powers, and it can delegate those powers to one or more of its members.

The management board is also a mandatory collegial body composed of at least three members.[25] The supervisory board appoints the members of the management board. The former board determines the remuneration of the management board. The special rules regarding remuneration in listed companies also apply to the members of the management board.

The management board is competent for all matters not reserved to the supervisory board. The management board is therefore exclusively competent for the operational functioning of the company and has the residual powers. If the company opts for a two-tier board, the management board derives its powers from the law itself and not from the transfer of powers nor of any delegation of powers. Limitations of the powers of the management board in the articles of association are in principle not enforceable against third parties, unless the third party was aware of this limitation or, in light of the circumstances, the third party could not have been unaware of the limitation. The publication of the limitations in the articles of association does not constitute sufficient proof of this knowledge.

In order to enable the supervisory board to perform its supervisory duties properly, to estimate correctly its own liability and to prepare the annual report, the BCCA provides for a mandatory flow of information from the management board to the supervisory board. The management board must provide, on a regular basis, the necessary information to the supervisory board. The supervisory board can also request information from the management board. More specifically, the management board must report to the supervisory board at least once a year of the general strategic policy, the general and financial ratios and the management and control systems of the company.[26] The management board must also make sure to provide the necessary information that the supervisory board must include in the annual report in a timely manner.

The BCCA also provides in a day-to-day management function that can be organized in a daily management board that can act individually or as a college. Whilst formerly only available for the NV, the BCCA provides this day-to-day management function also for the BV. In a NV, it is either the board of directors in a one-tier system or the management board in a two-tier system that appoints the day-to-day management.

7.4. Conflicts of Interest

The BCCA maintains the conflicts of interest procedures of the former Companies Code. However, there are a few changes. For example, in the BV with a collegial administrative body, in the BV with several competing directors and in the NV with a one-tier board of directors, a director who is confronted with a proprietary interest that conflicts with the interest of the company must abstain from taking part in the deliberation as well as in the decision taking process of the decision or transaction to which the conflict relates. If all members of the board experience a conflict of interest, the general meeting must approve the decision or transaction. The latter procedure is also applicable in case the BV or NV is governed by a sole director.

In a company with a two-tier board, a conflict of interest at the level of the management board results in the transfer of the decision to the supervisory board. If a member of the supervisory board, in turn, experience a conflict of interest the board member should abstain from taking part in the deliberation as well as in the decision taking process of the decision or transaction to which the conflict relates. If all the members of the supervisory board have a conflict of interest, the decision or transaction is scheduled as an agenda item of the general meeting for approval. The decision of the general meeting must be taken before the transaction can be executed.

Another novelty is that any interested party can start a procedure to annul the decision that has been taken if the conflict of interest procedure has not been appropriately applied. Formerly this annulment procedure could only be started by the company itself, which was unlikely to happen.

8. DISSOLUTION AND LIQUIDATION

Book 2 of the BCCA bundles the procedures that are applicable in case of the voluntary dissolution, the dissolution as a result of a fact or event described by the code of companies, and the judicial dissolution of companies. Those procedures are largely similar to the procedures in the former Companies Code. The amendments are related to clarifications or uncertainties that previously existed.

With regard to the liquidation of companies, three changes should be mentioned:

- A first important change concerns the judicial homologation of the appointment of the liquidator and the approval by the court of the distribution plan. These judicial interventions, which often cause delays, are only maintained for liquidations that show deficiencies. This is justified because there is only a risk of creditors being disadvantaged in the event of a deficit settlement.
- The second major change is that the process of dissolution and liquidation in one deed is also open to companies of which not all the debts of third parties have been reimbursed, nor have the necessary funds been consigned. The application of this procedure requires that the unpaid creditors (including shareholders, if any) have confirmed that they agree with the application of

25 The question arises as to why in a one-tier board structured NV one director is sufficient, while a NV with a two-tier board, each board must be composed of at least three directors.

26 Comparable to Book 2:141 Dutch Civil Code.

this procedure. The registered auditor or external accountant must refer to the written consent of the creditors in the conclusions of her report on the closure of the liquidation.

– The third change concerns the introduction of a specific kind of shareholder liability with regard to the 'forgotten liability'. To the extent that shareholders have received any consideration from the liquidation of the company, they are liable for unpaid corporate debts up to this consideration. In an ordinary liquidation procedure, this liability only exists for unpaid corporate debts for which a sufficient amount has not been consigned, if the shareholders were actually aware (subjective bad faith) or should have known (objective bad faith) of the existence of such debts. In case the dissolution and liquidation takes place in one deed, the criterion of bad faith is not applicable. This increased liability is justified because the dissolution and liquidation in one deed offers fewer guarantees to the company creditors. The liability of the shareholders of the BV and the NV is limited to the net asset the shareholders received. A similar system is provided for assets that emerge afterwards (so-called 'forgotten asset'). In that case, the unpaid creditors are granted the right to claim the reopening of the liquidation. In order to prevent the creditors from having to involve each of the shareholders in the proceedings, the BCCA stipulates that upon reopening of the liquidation, the company may regain, if necessary, legal personality and it becomes the legal owner of the forgotten asset.

9. ENTRY INTO FORCE AND CONCLUSION

The BCCA entered into force on 1 May 2019 for newly established companies. For companies that have been established prior to 1 May 2019 the BCCA applies since 1 January 2020. If the articles of association are in conflict with the mandatory provisions of the BCCA, they are considered unwritten. Companies have until 1 January 2024 to adjust the articles of association. However, the legal obligation to bring the articles of association in line with the BCCA emerges as soon as any amendment of the articles of association is scheduled. The new rules regarding the dispute settlement took immediate effect as of 1 May 2019.

The abolished forms of companies are provided with a transition period of five years to convert. As long as this has not been done, they will continue to be governed by the old Companies Code, with the exception, however, that the mandatory provisions from the BCCA, which relate to the legal form that best corresponds to the abolished form, must be applied. After this transition period, the company is legally converted into a surviving legal form determined by the BCCA and the company must bring its articles of association in accordance with the requirements of the particular legal form within six months of that date. The governing body is responsible for taking the necessary steps.

The BCCA significantly reforms Belgian company and association law. The reform was vital. After all, many Belgian rules lagged considerably behind those in neighbouring countries. The new legislation looks modern and the first data indicate that this leads to an increase in the number of companies being established, and founders immediately make use of the flexibility that the BV is offering.[27] However, the reform comes with considerable costs as many thousands of companies have to convert in a new company type and almost all companies must amend the articles of association. Further, due to the premature resignation of the government, the legislative process had to speed up the reform process, lowering the quality of some parts of the BCCA. Consequently, a new law amending many articles of the BCCA is currently being debated in Parliament.[28]

27 *See* for an overview C. Van der Elst, *De invloed van het nieuwe wetboek van vennootschappen en verenigingen op het vermogen, de aandelenstructuur en de aandelenoverdracht van BV's: een empirisch onderzoek*, TRV/RPS 2020, in press.

28 *See* Bill transposing Directive (EU) 2017/828 and regarding rules for companies and associations, *Parl. St.* Kamer 2019–20, nr. 553/1, 475 p.