

NEW CODE OF COMPANIES AND ASSOCIATIONS

► IN A NUTSHELL ◀

#2

Less company forms *à la carte*

The new Code of Companies and Associations brings along a significant reduction of available company forms. Our legal landscape today consists of not less than 17 company forms, making it sometimes difficult to see the forest through the trees.

By contrast ...

The new Code reduces the number of company forms to 4 basic forms: 1 company form for the contractual company types and 3 company forms with legal personality and limited liability. Of course, the European company forms (the European Company (SE), the European Cooperative Company (SCE) and the European Economic Interest Grouping (EEIG)) also remain available.

In addition, the not-for-profit entities (the non-profit association (VZW/ASBL), the international association (IVZW/AISBL) and the foundation (*stichting/fondation*)) are now also included in and governed by the new Code.

A substantial number of existing company forms have not made it through the reform and will thus no longer be available. However, the surviving company forms made available by the new Code provide for plenty of flexibility, which will generally allow companies that have assumed an abolished company form to convert into a new company form, while substantially maintaining their basic corporate features.

Let us draw up the balance.

- **Abolished company forms.** With the new Code, we are saying farewell to the following entities:
 - the limited partnership with share capital (Comm.VA/SCA);
 - the cooperative company with unlimited liability (CVOA/SCRI);
 - the start-up private limited liability company (S-BVBA/SPRL-S);
 - the private limited liability company with one shareholder (EBVBA/SPRLU);
 - the company with a social purpose (VSO/SFS);
 - the (Belgian) economic interest grouping (ESV/ GIE);
 - the agricultural company (LV/SAGR);
 - the temporary or silent company (*tijdelijke/stille handelsvennootschap – société momentanée/interne*); and
 - the professional association (*beroepsvereniging/union professionnelle*).

- **Partnership as remaining basic contractual company type.** For the purely contractual company types, the partnership (*maatschap/société simple*) will be the only basic company form (which can also be temporary or silent). A partnership can also choose to adopt legal personality and then assume the form of a general partnership (VOF/SNC) or limited partnership (Comm.V/SCS), which company types therefore remain available as variants of the partnership.

- **Remaining limited liability company forms.** 3 basic limited liability company forms will remain available:
 - The (new) private limited liability company (BV/SRL), which is the centerpiece of the reform (please also refer to the first edition of our special “In a Nutshell” newsletters on the new Code (<https://www.contrast-law.be/en/documents/new-code-of-companies-and-associations-in-a-nutshell>)).
 - The public limited liability company (NV/SA), which is to a large extent maintained but will also be made more flexible, both in terms of capital structure and governance.
 - The cooperative limited liability company (CV/SC), which is also preserved but which shall henceforth be available only for companies pursuing “genuine cooperative” purposes (as opposed to the current situation whereby this company form, because of its flexible nature, is used for a wide variety of other activities, *e.g.* as an investment vehicle or by professional service firms).

- **Flexibility.** The substantial reduction of available company forms is counterbalanced by increased flexibility. The remaining company forms indeed provide considerable room for contractual modulation and customization. As such, many of the abolished company forms can be recovered through these basic forms. For example, the NV/SA can henceforth be governed by a sole director appointed in the articles of association (who may also choose to accept joint liability for company debts) and can therefore be customized so as to include the basic features of the abolished Comm.VA/SCA. On the other hand, the new “flex” BV/SRL may serve as a perfect substitute for many existing cooperative companies that do not pursue a “genuine cooperative” purpose (as will be required for the new CV/SC).

- **Recognitions.** Other abolished company forms can make a comeback through a new system of governmental recognition. By way of example, the agricultural company (LV/SAGR) will cease to exist as a separate company form, but can be re-instated through a governmental recognition as an agricultural enterprise (for a company incorporated as one of the remaining company types). The same goes for the company with a social purpose (VSO/SFS), which will be replaced by the cooperative company (CV/SC) recognized as a social enterprise. Also the existing possibility for cooperative companies to apply for recognition as a member of the National Cooperation Council remains in place.

- **Incorporation of new entities after 1 May 2019.** As from the entry into force of the new Code on 1 May 2019, it will no longer be possible to incorporate new entities in the form of any of the abolished company forms.

- **Next steps for existing entities of which the legal form will be abolished.** Existing entities that assumed one of the abolished company forms will have to convert into one of the surviving forms at the latest by 1 January 2024, and in any event at the occasion of the first amendment of their articles of association as from 1 January 2020. If such conversion has not taken place by 1 January 2024, they will be automatically converted on that date into their closest surviving legal form, as prescribed by the new code. This means that:
 - a Comm.VA/SCA will be converted into a NV/SA with a sole director;
 - a LV/SAGR will be converted into a VOF/SNC, or a Comm.V./SCS (if there are silent shareholders);
 - an ESC/GIE will be converted into a VOF/SNC;
 - a CVOA/SCRI will be converted into a VOF/SNC; and
 - a CVBA/SCRL that does not meet the requirements of a cooperative company will be converted into a BV/SRL.

The reform is a key example of the new Code's overall aim to simplify our corporate laws and make them more user-friendly. In addition, it illustrates the Code's aim for greater flexibility and contract freedom, allowing entities to adopt tailor-made articles of association that accommodate their specific needs.



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