

New companies and associations Code – What impact for the Belgian international non-profit associations?



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I. Introduction

A. Legislative process

- Reform of:
 - **Companies Code** of May 7, 1999 (hereafter: “CC”);
and
 - **Law of June 27, 1921** regarding non-profit associations, foundations, European political parties and European political foundations (hereafter: “Law”)

- ➔ **Draft bill** introducing the companies and associations Code and containing various provisions

I. Introduction

A. Legislative process

- Where do we stand in the legislative process?
- On **June 4, 2018**: **draft bill** filed with the Belgian Chamber of Representative
- **Since June 6, 2018**: discussion within the **parliamentary commission on commercial and economic law**:
 - Proposals of amendments have been filed
 - The draft bill has been refered a second time to the Council of State for opinion
- Political intent:
 - The draft bill should **passed before the end of the year**
 - The new companies and associations Code should **enter into force as from January 1st, 2019**

II. Structure of the CAC

- **New structure: CAC is divided in 4 parts and 14 books:**

- 1) **General provisions (books 1 to 3);**
- 2) **The companies (books 4 to 8);**
- 3) **The associations and foundations (books 9 to 11);**
- 4) **Restructuration and transformation (books 12 to 14).**

Article number for each book (e.g. Part 3 – The associations and foundations, book 10 – INPA, Chapter 1st – Introductory provisions, art. 10:1.)

II. Structure of the CAC

- The government is attempting to:
 - Harmonise the rules applying to the companies and non-profit legal entities (Part 1. – General provisions); and
 - End the debates among legal scholars

III. New general principles and rules

- A. Companies vs. non-profit legal entities
- B. Mandatory provisions in the AoA
- C. Website and electronical communications
- D. Management and representation
- E. Liability
- F. Internal regulations
- G. Statute of limitation
- H. International private law

III. New general principles and rules

A. Companies vs. non-profit legal entities

CC/Law	CAC
<p>PURPOSE</p> <p><u>Companies</u>: procure to shareholders a direct or indirect patrimonial profit</p> <p><u>A&F</u>: disinterested purpose/non-profit purpose + shall not strive to procure a material gain to its members</p>	<p>PURPOSE</p> <p><u>Companies</u>: distribute or provide to its shareholders a direct or indirect patrimonial advantage</p> <p><u>A&F</u>: cannot distribute or provide directly or indirectly any patrimonial advantage to its founders, members, or directors neither to any other person, except for the disinterested purpose determined in the AoA. Non compliance = nullity</p>
<p>AUTORISED ACTIVITIES</p> <p><u>Companies</u>: exercise one or several activities determined in the AoA</p> <p><u>A&F</u>: which does not carry out industrial or commercial activities</p>	

III. New general principles and rules

A. Companies vs. non-profit legal entities

- « Direct and indirect distribution of profits / patrimonial advantage »
 - Direct distributions = patrimonial transfers equal to dividends in a company
 - Indirect distributions = any patrimonial benefits granted to the members, the directors, etc. of the organisation without any consideration or sufficient consideration with respect to the normal market conditions (e.g. lease granted to the INPA for an unreasonable rent – consultancy agreement with abnormal fees)

EXCEPTION: distributions = object of the A/F

➔ New case law

III. New general principles and rules

B. Mandatory provisions in the AoA

- Minimum mandatory provisions in the AoA → some changes:
 - Region where the registered seat is located
 - Founding members
 - Address of the registered seat = optional

III. New general principles and rules

C. Website and electronical communications

- AoA → email address = official email address
- AoA → website
- Communications between the A/F and its members/directors/statutory auditors can be done via email

III. New general principles and rules

D. Management and representation

- GA's exclusive power = to determine the conditions – in particular the financial conditions – under which the mandate of a director is granted, exercised and terminated
- Election of domicile at the registered office of the A/F
- Permanent representative (+ alternate permanent representative)

III. New general principles and rules

E. Liability

- Joint and several liability if the management of the A/F is organised as a college (exception: did not take part and denounce)
- Capped liability:
 - 250,000 EUR → 12 million EUR
 - 3 last financial years
 - Turnover + total of the assets
 - No cap in 4 specific cases
 - Forbidden: clauses exonerating the liability and guarantee clauses

III. New general principles and rules

F. Internal regulations

- If the AoA allow it, the management body can draft internal regulations
- The internal regulations cannot contain provisions:
 - 1) Contrary to mandatory legal provisions or to the AoA;
 - 2) Regarding the matters which according to the CAC shall be governed by the AoA;
 - 3) Related to the members' right, the powers of the bodies or the organisation and the functioning of the GA.

The internal regulations and any amendments thereto shall be communicated to the members

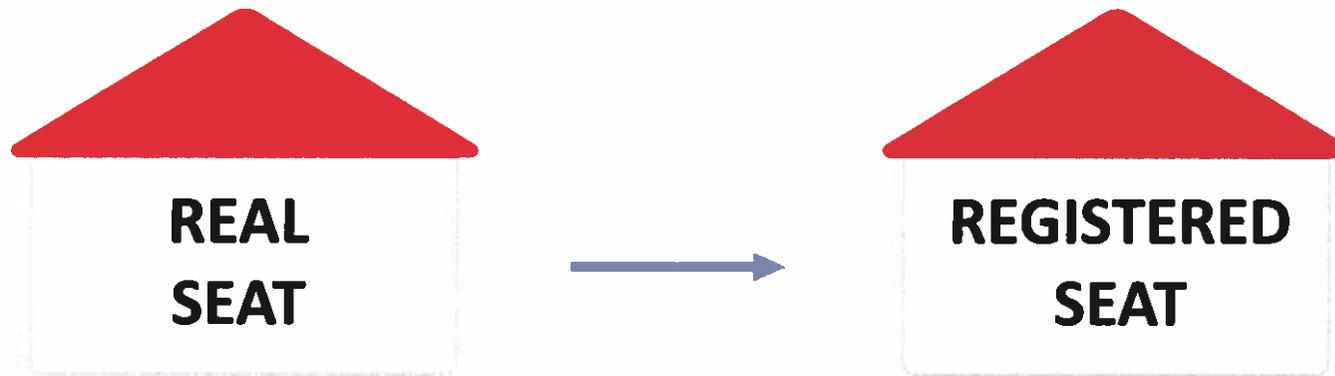
III. New general principles and rules

G. Statute of limitation

Law	CAC
<p>Nothing provided for</p> <p>→ Period of limitation of ordinary law = 10 YEARS</p>	<p>5 YEARS :</p> <ul style="list-style-type: none">- Claims against the directors, persons in charge of the daily management, statutory auditor, liquidators, the permanent representative of a legal entity, or any other person who actually had the power to manage the A/F, for actions committed in the framework of their mandate – as from the facts or the discovery of the facts;- Claims against the liquidators – as from the publication of the end of the liquidation;- Claims of the creditors – as from the publication of the decision regarding the allocation of the net asset.

III. New general principles and rules

H. International private law



A&F will be governed by the CAC only if they have they registered seat in Belgium

IV. INPA

- GA powers:
 - 1) The appointment and the revocation of the statutory auditor and the determination of its/his/her remuneration;
 - 2) The approval of the annual accounts and the budget;
 - 3) Any other case when the AoA require it.

- + To determine the conditions – in particular the financial conditions – under which the mandate of a director is granted, exercised and terminated

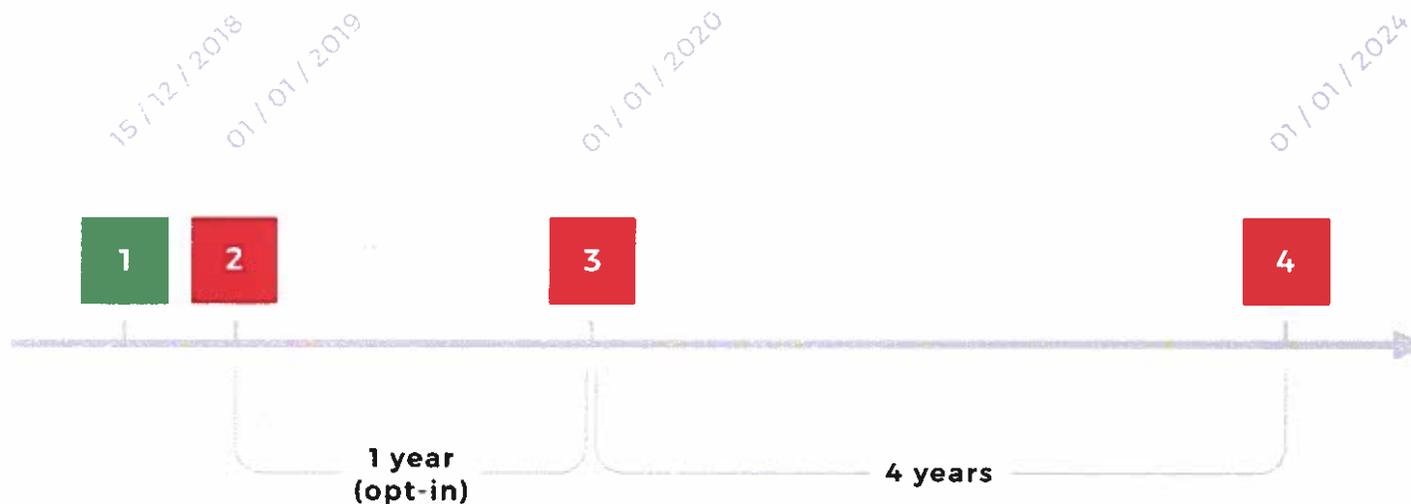
V. Restructurations and transformations

- Restructurations:
 - Merger and demerger of associations and foundations
 - Contribution for free of universal assets and liabilities or branch of activities – application by analogy of the rules applying to the companies
- Transformation:
 - Next version of the CAC = amendments by House of Representatives → Cross-border transformation → A&F?
 - Company → NPA
 - NPA → cooperative company approved as social enterprise
 - NPA → **INPA** + **INPA** → NPA
 - FP → FUP

VI. Entry into force

- 1) Newly incorporated A/F: **January 1st, 2019**
- 2) Existing A/F: **January 1st, 2020** (i.e. the mandatory provisions will be applicable)
 - **Exception: Opt-in:** as from January 1st, 2019, the existing A/F can choose to already comply with the new provisions of the CAC by amending their AoA
- 3) Deadline for existing A/F to make their AoA fully compliant with the CAC: **January 1st, 2024**
- 4) Sanction: directors' liability

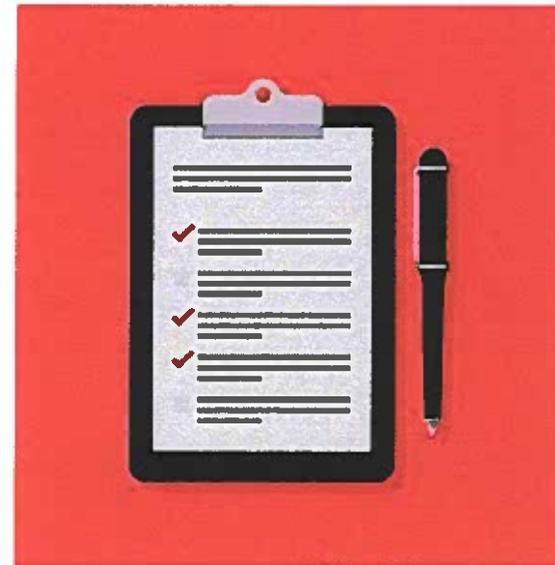
VI. Entry into force



- 1 = Publication in the Belgian Official Gazette
- 2 = Entry into force for new A/F, i.e. no constitution under a legal form having disappeared
- 3 = Entry into force for existing A/F, i.e. the mandatory provisions start applying to existing A/F
- 4 = End of the transitory period for existing A/F

VII. In practice, what should CEC do?

- **Amendment of the Constitution** – 1 to 4 years after the entry into force of the CAC
- **VAT** – Commercial activities
→ Assessment to determine VAT status of CEC
- **Tax** – Commercial activities
- **Insurances** – Is CEC still correctly covered?



VII. In practice, what should CEC do?

- **Examples of amendments to the Constitution of CEC:**
 - Founding members (new article)
 - Purpose and activities clause (e.g. articles 2.1 and 2.2)
 - Reference to the Law (e.g. articles 1(2) and 16(2))
 - Scope of the Standing Orders of the Conference
 - Email address and website

VIII. Conclusion

Small changes	Big changes
<ul style="list-style-type: none">• Establishment of current doctrinal principles/rules• Fill in the gaps of the Law• Harmonisation companies/(I)NPAs/foundations	<ul style="list-style-type: none">• Commercial activities• Registered seat• Restructurations and transformations

VIII. Q&A



Thank you



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