

What are the key changes for cooperative companies under the new Belgian Code of Companies and Associations?



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Limited to 'true' cooperatives

Return to the cooperative heritage

The cooperative company was defined in the current/former BCC as “*a company composed of a variable number of members with variable contributions*”. In other words: the basic feature of the cooperative company under the BCC is the variable number of shareholders with contributions that may (easily) vary from time to time.

Traditionally, the legal form of the cooperative company was used for entities whose main purpose was to satisfy their members' needs for an attractive price (traditionally by way of rebates to members), rather than for the purpose of generating returns on capital investments (by way of dividend distributions or otherwise). Over time, taking into account the diversity of activities/sectors within the cooperative movement, Belgian company law has come to accept the cooperative company as a very flexible form of company, for instance in relation to accession and exit regimes and governance, which is used in a wide variety of economic sectors.

This flexibility has attracted companies from outside the traditional 'cooperative' movement. New entities opted for the legal form of the cooperative company in order to establish particular governance regimes, flexible entering and exit options, or other particularities that were only available (with limited liability) via the flexibility offered by the cooperative company.

Now, in the framework of the BCCA, the Belgian legislator wishes to exclude those entities that do not have an actual cooperative purpose, but rather opted for this legal form merely for the use of its flexible regime. The BCCA therefore returns to the original cooperative focus. The new

definition focuses on the satisfaction of shareholders' or interested third parties' needs and the development of their economic and social activities.

The new definition, read together with the parliamentary works in which reference is made to the cooperative principles as set-out by the International Co-operative Alliance, shows the intention of the legislator to reserve the cooperative company legal form for 'true' cooperatives. The new definition is also more in line with the definition and philosophy of the European law cooperative company.

Giving teeth to the new definition

It should be noted, however, that the wording of the definition in the BCCA is somewhat ambiguous, and in a strict reading one may argue that there will still be many entities without a 'true' cooperative purpose that will fit the definition (such as, for example, professional associations).

However, since any shareholder, interested third party or the public prosecutor will be able to request a court to dissolve a company that does not comply with the new definition, it might be risky trying to stretch the limits of the definition too far.

Mandatory conversions

The cooperative companies with limited liability (*CVBA / SCRL*) that do not fit the new definition of a 'true' cooperative and all cooperative companies with unlimited liability (*CVOA / SCRI*) must convert to another form by 1 January 2024. On 1 January 2024, the entities that did not convert will be transformed automatically to a *VOF / SNC* (for the *CVOA / SCRI*) or *BV / SRL* (for the *CVBA / SCRL*).

Till the voluntary or automatic conversion, the provisions of the BCC remain applicable, except, as from 1 January 2020, for those that conflict with mandatory provisions of the new BCCA.

For more information on the conversion of entities to another legal form, please [click here](#).

Main changes in terms of governance

Under the BCC, the governance of a cooperative company could be freely defined and shaped to the company's needs, and any sort of statutory descriptions and/or restrictions with respect to governance and representation were enforceable *vis-à-vis* third parties. This means that under

the BCC, it is possible to freely determine the powers of the general assembly and management body, to install a daily management body (such as a chief executive officer) or additional committees (such as a shareholder committee), and to define the corresponding powers (both in terms of decision-making as with respect to representation *vis-à-vis* third parties).

The BCCA will, to a certain extent, limit the flexibility that cooperative companies now have in terms of governance. On the other hand, the legislator has also introduced further flexibilities in certain areas.

Under the BCC, one could freely determine the powers of the general assembly in the articles of association. Now, under the BCCA the general assembly's powers are, by default, limited to the powers given to it by the BCCA, such as approval of the annual accounts and appointment, resignation, and conditions on remuneration of directors.

It is possible to extend the powers of the general assembly. However, as opposed to the BCC, the BCCA stipulates that such extensions of powers of the general assembly will only have internal value. Therefore, the extension of powers shall not be enforceable *vis-à-vis* third parties, unless the company proves that the third party involved was aware of this extension of powers, or could not have been unaware of it considering the circumstances.

A similar principle applies to the management body. Under the BCCA it will still be possible to limit the powers of the management body in the articles of association (e.g. by way of delegation to another committee). However, as opposed to the BCC, the BCCA stipulates that such limitations to the powers of the management body will only have internal value and are therefore not enforceable *vis-à-vis* third parties.

In the absence of provisions to the contrary, it appears that creating additional committees is not prohibited under the BCCA. The management body could 'delegate' certain powers to certain committees, but will remain ultimately responsible. Powers granted by the management body to these other committees that qualify as (qualitative or quantitative) limitations to the powers of that management body, will only have internal value and will not be enforceable *vis-à-vis* third parties.

Internal regulations

Under the BCCA, internal regulations in a co-operative company can (only) be adopted under the following conditions:

- The possibility of internal regulations must be provided in the articles of association.
- Internal regulations (and any amendment thereof) must be approved by the general

assembly, deciding with quorum and majority rules for an amendment to the articles of association.

- Internal regulations can cover all subjects relating to the rights of shareholders and the functioning of the company, such as the rules on director appointment procedures, handling of conflicts of interest, financing of the company, organisation of Board and/or shareholders' meetings, etc., as long as these rules do not contravene imperative legal provisions or the articles of association.
- The internal regulations and any amendments thereof must be communicated to the shareholders.
- The articles of association must contain a reference to the (last approved) version of the internal regulations. The management is authorized to amend the articles of association in this respect, and to make these changes public.

Conflicts of interest

The BCC did not foresee any express rule that directors in a cooperative company must abstain from voting (or observe other rules of conduct) if they have an interest of a financial or other nature conflicting with a decision of the board of directors.

Under the BCCA, it is expressly stated that financially conflicted directors may no longer participate in the deliberations or voting. If all directors were to be conflicted, the decision must be presented to the general assembly for approval.

The BCCA refers to interests of a financial nature. A purely functional conflict of interest does therefore not fall within the scope of these rules. Of course, the articles of association or the internal regulations can extend the scope to other than financial conflicts.