

How Silent Is the Silent Partnership



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The silent partnership does not exist as a distinct corporate form in the new Code of Companies and Associations (CCA). This type of entity is now a variation on the general partnership. A general partnership must have at least two partners, who are jointly and personally liable for all obligations and debts of the partnership (Art. 4:14 CCA).

If the involvement of a partner in the business is not disclosed, this person is known as a silent partner. A silent partner's liability is limited to the value of the partner's contribution to the business, as defined in the partnership agreement. It should be noted, however, that the status of a silent partner can change if the partner is, at any time, openly involved in running the business. In this case, the (formerly) silent partner will be jointly and personally liable with the general partners, including for old obligations of the partnership.

A silent partnership can have more general partners or more silent partners. It is of course required that there be at least one general partner who runs the business and one partner who remains behind the scenes in order for the partnership to be considered a silent one. A silent partnership does not have legal personality. If the partners wish to form a legal entity, they must incorporate a société en commandite/commanditaire vennootschap (Art. 4:22 CCA). In this type of company, the silent partner (associé commandité or commanditaire vennoot) is formally prohibited from participating in the management of the company.

The partnership agreement can be concluded orally and exists as from the time two partners agree to work together to run a business and share the profits. There are no publication formalities. The rights and obligations of the partners are derived from their agreement. In the case of a silent partnership, it is advisable that the partnership agreement clearly define the contribution, rights and obligations of the silent partner. If the partnership takes the form of a société en commandite/commanditaire vennootschap, its establishment must be made public by means of a filing with the clerk's office of the business court and publication in the annexes to the

Moniteur belge/Belgisch Staatsblad. The company has legal personality as from the time of this filing.

A partnership, regardless of whether it has legal personality, must register and file certain information with the Crossroads Enterprise Database (Banque Carrefour des Entreprises/Kruispuntbank van Ondernemingen)(CED). The names of the general partners need not be registered, even though they are jointly responsible for running the business and liable for the obligations resulting therefrom (Art. III.49 §2(1) Code of Economic Law). Likewise, the names of silent partners need not be registered. However, the names of the founders of the partnership must be mentioned in the information relating to the partnership filed with the CED and thus be made public. This applies to a silent partner that acts as a founder but not to a silent partner that joins the partnership afterwards, as the Code of Economic Law does not stipulate that the names of subsequently joining partners must be filed with the CED.

When a silent partnership has two or more general partners and one or more silent partners, creditors (and other third parties) will perceive the business as a partnership and may seek recourse from each of the general partners for full payment of their claims, if the partnership fails to pay them in time. However, if a partnership has only one general partner and one or more silent partners, third parties will consider the business to be a sole proprietorship, run by a single person. In this case, the partnership is truly silent and is known only to the partners, as the agreement with the silent partners need not be made public. In this case, it is unclear whether the existence of the partnership should be disclosed to the CED given that no partnership exists in the eyes of third parties. One could argue, based on a literal reading of the Code of Economic Law, that the names of the founding partners, including the silent partners, must be filed with the CED. However, it could also be argued that since the partnership is not known to the public, its existence need not be disclosed. In any case and as mentioned above, the identity of silent partners that join the partnership after its creation need not be disclosed.