Country Guide
Belgium

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A Guide to doing business in Belgium

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THE COUNTRY AT A GLANCE

Name:	Kingdom of Belgium - *Koninkrijk België* (Dutch)- *Royaume de Belgique* (French) - *Königreich Belgien* (German)
System:	Parliamentary monarchy
Legal system:	Civil law

State organization:	Federal State
Capital city:	Brussels (Brussel/Bruxelles/ Brüssel)
Official languages:	Dutch, French, German Population: around 11,600,000
Surface:	30,528 km²
Time zone:	GMT +1
Currency:	Euro
GDP:	€ 554 bn (2023)*
GDP per capita	€ 40.906 (2023)**
Labor Force	4.8 million***
Unemployment:	5.6 % (2023)****
Growth rate:	1.5% (2023)*****
Budget deficit:	-4.4% of GDP (2023)******

*Belgium GDP (tradingeconomics.com)
**Belgium GDP per capita (tradingeconomics.com)
***Statbel, the Belgian statistical office | Statbel (fgov.be)
****Statbel, the Belgian statistical office | Statbel (fgov.be)
*****Belgium Full Year GDP Growth (tradingeconomics.com)
******neco23.pdf (nbb.be)

Despite this "federalization" process, the country has remained a parliamentary monarchy ever since its foundation in 1830. The reigning monarch is King Philippe I. The country's capital city, Brussels, is also home to prominent international decision-making centers and institutions such as the European Commission, the European Parliament and NATO headquarters.

Belgium has a highly developed and dense road and railroad network. The density of this network does not only result from Belgium's early development of coal and heavy steel industry (1835), but also from the presence of very large ports (Antwerp and Zeebrugge), which form important bridgeways to international trade and gateways to the European markets. The

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Located at the heart of Western Europe, Belgium is one of the smaller European countries in terms of size. It shares borders with the Netherlands (in the north), Germany (east), Luxembourg (southeast) and France (south), with access to the North Sea (west).
Due to its geographical position, at the junction of "Latin" and "Germanic" Europe, Belgium is a dynamic, multilingual, multicultural country. Overall, Belgians enjoy a modern, Western lifestyle.

The Belgian population can be divided into three main communities: Flemings (Dutch-speaking, approximately 60% of the population), the French-speaking community (approximately 40% of the population, which includes the Walloon and the French-speaking Belgians who reside in Brussels and represent approximately 85 to 90% of the Belgian population in Brussels), and German-speaking Belgians (approximately 78,000). All three communities are located in geographically distinct regions (Flanders, Wallonia and the Eastern municipalities on the German border).

Originally unitary, the Belgian state institutions have undergone many reforms since the 1970s, which have transformed the country into a federal state. In sum, it can be said that legislative and executive power in Belgium is divided between the federal, state and the various federated entities (Regions and Communities). Belgian federalism is based upon a split into the different communities making up its population. Hence, besides its federal state, Belgium consists of three Regions (Flanders, Wallonia and the Brussels-Capital Region) and three Communities (Flemish Community, French Community, and German Community), each having its own legislative and executive bodies to give effect to its individual competences and powers.

port of Antwerp is the second largest port in Europe and is accessible to capesize ships.

The number of significant Belgian airports may seem limited. However, given Belgium's fairly small size, the nearest airport is never very far away. The most important airports are Brussels international airport, Charleroi international airport and Liège airport (mainly focused on air freight).

The part played by heavy industry in the Belgian economy has declined over time. At present, Belgium's GDP is principally accounted for by the services industry. However, the main traditional heavy industry sectors (steel, automotive, chemistry, refining, textiles, etc.) are still present in Belgium, despite their lesser importance. The Belgian workforce is considered highly skilled and productive.

GENERAL CONSIDERATIONS

INVESTMENTS POLICIES

Belgian (regional) authorities are favorable towards foreign investment: various attractive tax regimes and investment incentives exist to facilitate and draw foreign investments to Belgium.

Interested investors can seek help and guidance from the federal and regional authorities. See the following websites:

Invest in Belgium

https://business.belgium.be/en

Invest in Brussels (Brussels Invest & Export) One-stop-Shop for foreign companies in Brussels - why.brussels

Invest in Wallonia (AWEX) Home (investinwallonia.be)

Flanders Investment & Trade
https://welcome.flandersinvestmentandtrade.com/en

Local consulates and embassies also provide prospective entrepreneurs with information and assistance on the most efficient manner of setting up a business in any Region of Belgium.

Generally (and subject to what is stated below in the section on Foreign Direct Investment), there are no restrictions on setting up a business in Belgium. It does not require special government authorization. However, in order to be able to carry on business, an entrepreneur has to register with the Crossroads Bank for Enterprises, "BCE/KBO" (*Banque Carrefour des Entreprises/ Kruispuntbank Ondernemingen*), which is responsible for registering business activities in Belgium. Registration is required *inter alia* in order to obtain a VAT number. Access to a number of activities (such as building and construction) does however require registration with the competent authorities.

Belgium is a member of BENELUX, a regional free trade agreement between Belgium, the Netherlands and Luxembourg, and of the Belgium-Luxembourg Economic Union, based on a customs and excises union and including, *inter alia,* a coordinated policy in the economic, financial and social fields.

Belgium is a founding member of the following international organizations: the United Nations, the European Union, the Council of Europe and the North Atlantic Treaty Organization (NATO). Belgium is a founding member of GATT.

Belgium entertains diplomatic relationships with most of the world's countries. The addresses of Belgian embassies and consulates abroad and of foreign embassies and consulates in Belgium are available on the website https://diplomatie.belgium.be/en/embassies-and-consulates

DIPLOMATIC RELATIONS

INTRODUCTION

Ever since the 1970s, the then unitary Belgian State has undergone a steady transformation into a federal State, composed of Communities and Regions, to which more and more powers have been devolved over time.

At the present time, the organization of political power in Belgium is spread over the following entities:

- The Belgian federal state (House of Representatives, Senate and federal government);
- 3 Regions (Flanders, Wallonia and Brussels-Capital), each having their own legislative and executive bodies. The Regions are mostly competent for economic matters and have oversight over the provinces and municipalities.
- 3 Communities (Flemish, French and German), each having their own legislative and executive bodies. The Communities are competent for all "personal" matters, *i.e.* mostly culture and education-related policies.
- 10 provinces;
- 581 municipalities

GOVERNMENT

The underlying reasons for the progressive transformation of the unitary Belgian state into a federation stem from the fact that Belgium consists of multiple, more or less homogenous populaces each with a different mother tongue, i.e. Dutch-speaking Flemings in the north, French- speaking Walloons in the south, and German-speakers in the eastern-most part of the country. The country's capital, Brussels is administratively bilingual, though the majority of its Belgian inhabitants speak French. Brussels is home to more than 1 million inhabitants, 30% of whom are of foreign nationality.

The Belgian state's organization and constitution can be said to be in almost constant evolution. The reforms have been known to

provoke political crises, with the political factions of the two main Communities (Flemings and Walloons) needing quite some time to form a government after federal elections.

Traditionally, there are four main political families in Belgium: left-wing socialists (PS and Vooruit), Christian democrat centrists (CDH and CD&V), liberals (MR and Open VLD) and the Flemish nationalists (N-VA).

FEDERAL INSTITUTIONS

At a federal level, legislative power is vested in the federal parliament, consisting of a House of Representatives and a Senate. The importance of the Senate has diminished over the decades in favor of the House. Today, it works more as a "think-tank" and as a representation of the Regions and Communities in the federal legislative process. Comparable to the American and German upper assemblies, members of both bodies are currently elected for a term of five years.

The elections occur by universal franchise, and the available seats are divided among the political parties on a proportional representation basis. Some senators, however, are elected indirectly. The federal parliament can be dissolved in certain circumstances, and new general elections can therefore be held before a legislature goes to its full term.

The formal head of state is the King, though any action by the King must necessarily be approved by the federal government.

In order to enter into force, an act of parliament needs the royal assent, which cannot in practice be refused by the King (acting through his ministers).

The federal government, which is formally appointed by the King but is in practice the result of negotiations among the political parties represented in the House, can issue royal regulations, which are executive rules (secondary legislation) required to execute (primary) federal legislation.

The Belgian federal state retains important competences such as foreign affairs (coordination), national defense, parts of justice, finance, social security, public health policy and domestic affairs (police, etc.).

COMMUNITIES AND REGIONS

All three **Communities** (Flemish, French and German- speaking) have their own legislative and executive powers, which are limited to their respective linguistic areas. The linguistic areas are set by law and require a "supermajority" in the federal parliament to be amended. The Communities' competences mainly relate to "person-oriented" matters: cultural matters, scientific and cultural institutions, museums, sports, education, and the more specific "personal" matters, containing aspects of health policy and of the support to people.

The three **Regions** (Flanders, Wallonia and Brussels- Capital) have legislative and executive powers over their respective territories in the following matters: economic policy[1], energy and environmental policy, aspects of employment, public works and transport, agriculture & fishing, housing, rural development and nature conservation, regional development, urban planning, organization of the provinces and municipalities, foreign trade, some fiscal powers, and a number of others.

The Communities and Regions partially overlap (for example, the German-speaking minority in Belgium has its own Community, whereas, for regional matters, it forms part of Wallonia).

For an overview of the various Belgian institutions and their respective territories, please visit http://www.belgium.be/en/about_belgium/.

Generally speaking, members of the Community and Regional parliaments are elected every five years by universal franchise, seats being divided among the political parties on a proportional representation basis.

The legislative acts of the Communities and Regions are called decrees (*décret/decreet*). They rank equally with the acts of the federal Parliament. Only for purely Brussels' competences, exercised e.g. by the Brussels-Capital Region, the legislative acts are called ordinances (*ordonnance/ordonnantie*).

Each Community and Region has a parliament and a government. However, the Flemish regional institutions have been absorbed by the Flemish Community, so that both Community and Regional matters are *de facto* exercised by a single parliament and executive.

In order to avoid and resolve conflicts of competence between federal and regional levels, an elaborate system has been developed, revolving mainly around the Belgian Constitutional Court, as explained below.

JUDICIARY

National jurisdictions

Judicial power in Belgium lies with the courts. Belgian courts are composed of judges appointed for life in order to guarantee their independence from the executive and legislative powers. The system is perceived and conceived to be impartial.

In civil, labor and commercial matters, the judiciary comprises the following courts:

- local justices of the peace (mainly small claims and lease matters);
- Courts of First Instance (full competence over civil and commercial matters, appellate jurisdiction for decisions rendered by justices of the peace and police courts);
- Enterprise Courts (courts at first instance in commercial matters, with exclusive jurisdiction over insolvency and some corporate matters such as conflicts between shareholders);
- labor courts (specializing in labor matters);
- Courts Of Appeal (five across Belgium, which hear appeals from the Courts Of First Instance and the Enterprise Courts);
- labor courts of appeal (appellate jurisdiction in labor matters);
- the Supreme Court (*Cour de cassation/ Hof van Cassatie*), which is the highest court. The Supreme Court does not judge any case on its merits. It has the power to annul decisions in appeal that misapplied the law.

The Belgian legal system also includes (i) a Constitutional Court,

[1] The Region's power in terms of economic policy do not, however, cover general commercial law, monetary issues, etc..., which remain matters of federal competence.

before which the constitutional validity of federal, regional or community legislation may be challenged and (ii) the Council of State, before which the legality of administrative and executive acts and decisions can be challenged.

Belgian courts are accessible at fairly low cost. The losing party will be ordered to pay a fixed amount (currently between EUR 105 and EUR 42,000 depending on the value of the case) to the winning party.

The workload of some courts tends to be large, especially in Brussels, so that cases can commonly last up to several years.

Foreign judicial decisions

Judicial decisions by courts in other EU member states are recognized and can be enforced fairly quickly and at low cost under Regulation (EC) 1215/2012. Other foreign decisions can be declared enforceable through a special "exequatur" procedure before a court of first instance.

Arbitration

(International) arbitration is permissible under Belgian law for any present or future dispute for which it is within the parties' prerogative to settle. In employment matters, however, arbitration agreements that predate the dispute are unenforceable except in very limited cases. Courts must decline jurisdiction where there is a valid arbitration agreement.

Unless otherwise agreed by the parties, an arbitral award cannot be appealed before the courts. Appeal may however lie against an arbitral award to the court of first instance in a very limited number of cases.

Belgium is party to the main international treaties on international arbitration, such as the New York Convention of June 10, 1958, regarding the recognition and enforcement of awards of arbitration tribunals.

Choice of law and jurisdiction clauses

Generally speaking, pursuant to Regulation 1215/2012, parties may contract a jurisdiction clause by which disputes are to be settled by a foreign court. European and Belgian private international law also allow parties a free choice of the law applicable to their contract. It is therefore possible for a Belgian judge to apply foreign law.

ENVIRONMENTAL CONSIDERATIONS

GOVERNMENT ATTITUDE TO ENVIRONMENTAL REGULATION

Both the general public and public authorities have become increasingly sensitive to environmental issues over the last 40 years. Various environmental issues, at global, regional and local levels, have raised high awareness of issues such as climate change, ozone depletion, loss of biodiversity, air pollution, etc. Demand for better and more stringent regulation in this field, as well as more transparent access to environmental information, has increased over the years, partly due to pressure from ecologist parties, which have consolidated their presence on the political landscape.

ENVIRONMENTAL REGULATIONS

Environmental policy- and lawmaking (including planning and zoning law) has been almost entirely devolved to the three Regions. Only the transit of waste, protection against ionizing radiation (including radioactive waste), product regulations and matters of occupational safety and health remain within the brief of the federal authority.
Environmental policies at federal and regional levels are greatly influenced by the wider framework set down by the European Union.

Historically, the Flemish Region has played more of a vanguard role in developing and enforcing environmental legislation. Although the Brussels-Capital and Walloon Regions have been catching up by issuing new legislation over the last two decades, enforcement practice and culture have remained distinctly different in these two Regions from those in the Flemish Region, where they are generally stricter, especially at a judicial level.

The main environmental regulations are briefly summarized below. Breaches of these regulations can carry a variety of administrative, civil and criminal penalties.

Environmental permits

In all three Regions, operating an activity or a plant that is potentially harmful to the environment requires an environmental permit or notification and, consequently, is subject to general, sectoral and/or special operating conditions.

An activity likely to harm the environment falls into three main classes depending on the nature and importance of its

impact. An environmental permit is required for class I and II activity or plant. For class III, the operator only needs to notify the municipal authorities.

Although quite different in how they operate, the three regional permit schemes are similar in approach and principle. They provide for a single permit encompassing all the environmental aspects (with a few exceptions, especially in the Brussels Capital Region) of operations that are potentially harmful to the environment (*inter alia* the discharge of waste water, the management of waste, the storage of hazardous substances, air pollution and noise emissions). Greenhouse gas emissions permits also form an integral part of the environmental permit scheme.

Permits are granted further to public enquiries and are subject to an assessment of the environmental impact of a project – the detail of which may vary depending on the nature of the business.

In the Flemish Region environmental permits are valid indefinitely. In the Walloon Region it is currently limited at a maximum period of 20 years, however the Walloon government has vowed to change this to an indefinite validity. In the Brussels-Capital Region, the maximum is 15 years.

Environmental permits must be obtained or notifications made by the operator of the plant.

Transfers of environmental permits to other operators require prior notification to the competent authorities.

Soil contamination

All three Regions have adopted comprehensive sets of rules on soil and groundwater contamination.

The three regional soil contamination schemes are fairly similar in their overall approach, though they have notable differences in how they are implemented in practice. The three Regions apply the following common principles:

- various events will trigger an obligation to have a licensed soil expert conduct a preliminary soil survey (e.g. accidental pollution or discovery of hitherto unsuspected soil pollution; transfers of land where activities considered as a potential cause of soil pollution are or have been carried on; start and cessation of risk-laden activities, etc.). The preliminary soil survey report has to be filed with and approved by the regional authority;

- the regional authority can require descriptive soil surveys to be filed as well as full remediation of the soil pollution;

- although, in principle, it is up to the person that caused the contamination to put it right, holders of land rights may also be under an obligation to have surveys or clean- ups done.

There are releases from these obligations (subject to varying conditions) under all three sets of regional soil contamination regulations.

Waste

Each Region has enacted a comprehensive set of rules on waste management, based on the principle that the owner of the waste is responsible for managing waste in compliance with all applicable provisions so that no harm occurs to the environment or human health. Either the owner manages the waste himself (he has to be duly licensed to operate the facilities or carry on the activities in question) or he contracts with a licensed third party to manage the waste accordingly.

Other relevant regulations

In all three Regions, special regulations exist concerning water, air, asbestos, the energy efficiency of buildings, etc.

For the latest information on environmental policy and regulation in Belgium, visit the following websites:

- Walloon Region: http://environnement.wallonie.be/
- Flemish Region: https://www.vlaanderen.be/en/environment
- Brussels-Capital Region: https://environnement.brussels

PATENTS

INTELLECTUAL PROPERTY

Definition and legal requirements

An invention is patentable under Belgian law in case it is new, results from an inventive step and is capable of industrial application. Belgian law rules out certain matters from qualifying as inventions, e.g. scientific theories and computer programs as such.

Registration

Application for a patent registration can be initiated with the Belgian Office for Intellectual Property (Belgian patent law), the European Patent Office (European Patent Convention) or the World Intellectual Property Organization (Patent Cooperation Treaty).

Applications with the Belgian Office for Intellectual Property are subject to the first-to-file principle and are automatically registered after checking the formal requirements (e.g. does the application contain a description of the invention). There is no prior verification of the patentability of the invention, but a non-binding opinion of the European Patent Office is issued. The patent application must contain a clear and complete description of the invention to enable the application by a person skilled in the art, and the lack thereof may e.g. prevent registration by the European Patent Office. Patents furthermore require the payment of procedural fees, as well as annual renewal fees (as from the 3rd annuity). If the annual renewal fees have not been paid in due time, the patent shall lapse.

Duration

In principle 20 years from the filing date.

Rights

The patent owner has the exclusive right to exploit the invention. The patent owner also has the right to take action against infringement of his patent. Thus, a patent owner may stop third parties from producing, selling, using, holding or importing a patented product or using or offering a patented process. The patent owner has this right to stop infringements even before the patent is actually granted. Indeed, the patent owner can claim reasonable compensation for infringing acts performed between the date of the patent's registration and its date of publication. Patent rights are not unlimited, as limitations and the exhaustion principle apply.

Assignment and license

A patent owner can assign or license all or part of his rights, exclusively or otherwise. This must be done in writing in order to be valid. Furthermore, assignments or licenses of Belgian patents must be notified to the Belgian Office for Intellectual Property and are only enforceable against third parties if registered in the applicable register. Belgium specifically allows for the innovation deduction for income derived from patents (85% exemption from corporate income tax).

Enforcement and remedies

See section below on enforcement and remedies.

TRADEMARKS

Belgium has two types of trademarks: the Benelux trade mark (governed by the Benelux Convention on Intellectual Property of 1 March 2019) and the European Union trade mark (governed by the European Union trade mark regulation of 14 June 2017).

Definition and legal requirements

To be eligible for trade mark protection, a sign must have a distinctive character in relation to goods and/or services and be capable of being represented in the respective trade mark register. Signs can be rejected from registration as a trade mark based on absolute (e.g. descriptive signs) or relative grounds (e.g. earlier trade mark right, subject to opposition of the owner).

Registration

Application for a trade mark registration can be initiated with the Benelux Office for Intellectual Property (Benelux trade mark), the European Union Intellectual Property Office (European Union trade mark) or the World Intellectual Property Organization (Benelux trade mark and/or European Union trade mark, together with other national trade mark applications). The applicable fees a.o. depend on the number of Nice classes and type of trade mark.

Duration

(Unlimited) renewable periods of 10 years.

Rights

A trade mark allows the owner to prevent others from using in the course of trade an identical or similar sign in relation to identical or similar goods and services. In case such sign and/or goods and services are similar to the ones in the trade mark registration, a likelihood of confusion on the part of the public is required. Owners of trade marks with a reputation have a specific right to protect against free riding. Owners of a Benelux trade mark can additionally prevent the use of a sign for purposes other than distinguishing goods or services in case such use would take unfair advantage of or be detrimental to the distinctive character or the repute of the trade mark (e.g. using trade marks in a political campaign, in satire art, as a domain name, as a metatag in the source code of a website, etc.). Trade mark rights are not unlimited, as limitations and the exhaustion principle apply.

Assignment and license

A trade mark may be assigned or licensed in respect of some or all of the goods or services. In order to be valid, the assignment must be done in writing. Such formal requirement is not specified in relation to licenses, but the lack of written agreement can cause evidentiary and enforceability problems (see below). Assignments must cover the entire territory (Benelux or EU), whilst licenses can cover whole or part of the respective territory (e.g. Belgium). Furthermore, assignments or licenses are only enforceable against third parties if registered in the applicable register.

Enforcement and remedies

See section below on enforcement and remedies.

DESIGNS

Belgium has three types of designs: the Benelux design (governed by the Benelux Convention on Intellectual Property of 1 March 2019), the (long-term) registered Community design (governed by the regulation on Community designs of 12 December 2001) and the (short-term) unregistered Community design (governed by the same regulation).

Definition and legal requirement

A design is the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colors, shape, texture and/or materials of the product itself and/or its ornamentation. A design is eligible for protection if it is novel and has an individual character. Designs can be rejected from registration for several reasons, e.g. in case it is solely dictated by a product's technical function.

Registration

Application for a registered design can be initiated with the Benelux Office for Intellectual Property (Benelux design), the European Union Intellectual Property Office (registered Community design) or the World Intellectual Property Organization (Benelux design and/or registered Community design, together with other national design applications).

Duration

Registered designs are protected for renewable periods of five years from the date of filing, with a maximum of 25 years. Unregistered designs are protected for a (non-renewable) period of three years as from the date on which the design was first made available to the public within the EU.

Rights

The owner can a.o. prevent the making, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or to which it is applied. Design rights are not unlimited, as limitations and the exhaustion principle apply.

Assignment and license

A design right can be subject to a license agreement, without being subject to any formal requirements. The lack of written agreement can however cause evidentiary problems. A design right can also be assigned. Benelux design rights can however only be assigned in writing and for the entire Benelux territory. In order to be enforceable against third parties, assignment or license agreements must be registered.

Enforcement and remedies

See section below on enforcement and remedies.

COPYRIGHT

Definition and legal requirements

The specific copyright provisions contained in the Belgian Code of Economic Law (BCEL) protect original works that are expressed in a material form (as harmonized in EU law). The scope of copyright protection is broad in Belgium (e.g. clothes, furniture, art, architectural works, books, music, etc.).

The BCEL furthermore protects computer programs and sui generis databases as part of copyright in the broad sense, as well as neighboring rights.

Registration

In Belgium, copyright protection arises automatically as soon as the work is created. No registration is required. Nor is it required to use the © symbol or to quote the words "copyright by", although this can be useful in certain circumstances.

Duration

In principle 70 years after the death of the author, but deviating durations exist for e.g. neighboring rights (50 years).

Rights

The rights (economic and moral rights) are initially conferred to the original author of the work. Economic rights include the right to reproduce the work (e.g. copy, edit, translate, rent or lend), to communicate the work to the public and to distribute the work. The first sale or other transfer of ownership in the European

Union of the original or a copy triggers the exhaustion rule of that original or copy in the European Union. Moral rights for example concern the right of first publication, the right of attribution (paternity right) and the right of integrity.

Assignment and license

The economic rights can be assigned by contract or by a

DATA PROTECTION

(rebuttable) legal presumption, whilst moral rights are inalienable. The rights can furthermore be subject to contractual provisions (e.g. license). Contractual copyright provisions are interpreted in favour of the author, must be done in writing and must follow specific rules to avoid nullity and/or evidentiary problems.

Enforcement and remedies

See section below on enforcement and remedies.

ENFORCEMENT AND REMEDIES WITH RESPECT TO PATENTS, TRADE MARKS, DESIGNS AND COPYRIGHT

Belgian law provides for very specific proceedings entitling the right holder to gather evidence prior to initiating "normal" proceedings, i.e. *ex parte* counterfeiting seizure: These *ex parte* proceedings allow a right holder to obtain descriptive and/or seizure measures for evidence purposes against an alleged infringer within a matter of hours/days. To obtain descriptive measures, the right holder must only prove a seemingly valid intellectual property right and indications of a (threatened) infringement. To obtain seizure measures, the right holder must prove a seemingly valid intellectual property right, that the infringement cannot be reasonably contested and that a balance of rights is in its favor. The *ex parte* counterfeiting seizure is an important asset to meet the frontloaded evidence requirement within the framework of proceedings before the Unified Patent Court (a court common to 17 EU member states).

In order to be able to use the evidence gathered, the right holder must initiate proceedings on the merits within a certain period of time (in principle the longer period of 20 business days or 30 calendar days after the evidence is filed), such as summary proceedings, as in summary (injunction) proceedings and damages proceedings. Measures to be obtained during these (as in) summary and damages proceedings are (depending on the proceedings initiated) a.o. (temporary) injunctive relief, damages, destruction or recall of infringing goods, transfer of profits, etc.

TRADE SECRETS (NO IP RIGHT SENSU STRICTO)

Definition and legal requirements

Belgian law provides protection for trade secrets, meaning information that is secret, has commercial value because it is kept secret and has been subject to reasonable measures to keep it secret.

Rights

Trade secret holders can a.o. act against the unauthorized access to trade secrets, as well as the unauthorized use or disclosure of trade secrets.

Enforcement and remedies

Asides to the "normal" proceedings (e.g. injunction and damages proceedings), Belgian judicial law furthermore allows trade secret holders to protect their trade secrets during proceedings, e.g. by appointing a confidentiality club or by restricting access to hearings or decisions.

The Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data (GDPR) is directly applicable in Belgium to processing of personal data.

The GDPR is applicable to so-called "controllers" (i.e. the entity determining the purposes and means of the processing of personal data) established in the European Union as well to those that are not established in the European Union, where such controllers offer goods or services to data subjects in the European Union. Determining which party is the controller requires a case-by-case analysis of each processing at stake, taking into account the territorial application and the circumstances of each individual case.

Several principles set forth in Article 5 GDPR must be complied with (e.g. lawfulness, fairness and transparency, purpose limitation, data minimization) when carrying out a processing of personal data.

The Belgian Data Protection Act of 30 July 2018 has completed some of the GDPR provisions that were open to further clarification or additional requirements on a national level. For example, that Act provides for additional measures to be taken by the controller when processing genetic, biometric or health-related data, specifies the cases in which the rights of data subjects may be restricted, and lists the instances in which the prohibition on processing data relating to criminal convictions and offences may be lifted. That Act also contains specific provisions for the police, intelligence and security services, and for data processing in the context of, inter alia, scientific research.

In addition, Belgian law regulates the processing of certain data by means of specific laws, such as those pertaining to the National Register Number. Other provisions also govern the processing of personal data in certain specific sectors (e.g. Book VII of the Belgian Code of Economic Law contains provisions on the processing of personal data in the financial sector).

CONTROLLER'S OBLIGATIONS

Controllers shall comply with several obligations as provided by the GDPR. For instance, a controller must maintain in writing (incl. in electronic form) a record of processing activities[2] and has the obligation to take adequate organizational and technical measures to ensure the security and confidentiality of the personal data in accordance with Article 25 and 32 GDPR.

The controller has also the obligation to inform the data subjects (e.g. customers) of all the information listed in Article 13-14 GDPR. This includes for instance the purposes for which their personal data will be processed and the legal ground applicable, the identity of the controller or its representative, the (categories of) recipients of the personal data (if any), etc.

[2] Article 30 GDPR.

In accordance with the accountability principle set forth in Article 5(2) GDPR), the controller is responsible for and should be able to demonstrate compliance with the GDPR.

SPECIFIC OBLIGATIONS REGARDING SPECIAL CATEGORIES OF PERSONAL DATA

In accordance with Article 9 GDPR, special categories of personal data, include personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation. The GDPR strictly regulates the processing of such personal data, as well as the processing of personal data relating to criminal convictions and offences under Article 10 GDPR.

Processing of special categories of personal data and of personal data relating to criminal convictions and offences is only allowed if such processing meets the very restrictive legal conditions enshrined in art. 9-10 GDPR and art. 9-10 of the Belgian Data Protection Act.

CROSS-BORDER TRANSFERS OF PERSONAL DATA

As a general principle, transfers of personal data outside the European Economic Area (EEA) are prohibited by the GDPR, unless the recipient third country ensures "an adequate level of protection" for the transferred personal data[3].

The European Commission may decide that a third country ensures such an adequate level of protection by issuing an "adequacy decision", in which case the transfer can take place without any specific authorization[4].

In the absence of an adequacy decision, international data transfers can only take place if the data exporter implements appropriate safeguards (such as by entering into the Standard Contractual Clauses issued by the European Commission with the data importer), and provided that enforceable rights and effective legal remedies are available to data subjects[5].

Further to the "Schrems II" decision dated 16 July 2020[6] of the Court of Justice of the European Union, controllers must comply with additional requirement when transferring personal data from the EEA to outside the EEA, in particular by carrying out a data transfer impact assessment prior to the transfer[7] and by implementing supplementary measures where the third country does not provide an adequate level of protection (e.g. pseudonymization with the encryption key with an independent third party in the EEA).

SANCTIONS

The Belgian Data Protection Authority is competent to impose administrative fines as provided by the GDPR. Administrative fines under the GDPR can amount to twenty million euro (EUR 20,000,000) or 4% of global annual turnover, whichever is higher.

The Belgian Data Protection Authority imposes fines of varying amounts. So far, the fines issued have ranged from EUR 1,000 (for lack of a sufficient legal basis for the processing) to EUR 600,000 (fine imposed on Google for failure to respect the rights of data subjects). Furthermore, the Belgian Data Protection Act provides for a specific procedure for actions for injunctions that can be initiated by the data subject or by the Belgian Data Protection Authority[8].

DIRECT MARKETING

Note that specific obligation under e-commerce laws apply in accordance with Article XII.12 and XII.13 BCEL when carrying out electronic direct marketing. An "opt-in" system must in principle be provided when considering advertising by electronic mail (e-mail, direct message on social media or other, text message, etc.) for allowing the addressee to give its prior, free, specific and informed consent to the direct marketing communication.

Pursuant to Article 1 of the Royal Decree of 4 April 2003, such a consent is not to be obtained when direct marketing is addressed to impersonal email addresses of legal persons31 (e.g., info@company.be) or when direct marketing is addressed to existing customers, provided certain conditions are met ("soft opt-in process").

[3] Article 44 GDPR.
[4] Art. 45 GDPR. The European Commission has so far recognised Andorra, Argentina, Canada (commercial organisations), Faroe Islands, Guernsey, Israel, Isle of Man, Japan, Jersey, New Zealand, Republic of Korea, Switzerland , the United Kingdom under the GDPR and the LED, the United States (commercial organisations participating in the EU-US Data Privacy Framework) and Uruguay as providing adequate protection.
[5] Art. 46 GDPR.
[6] CJUE, case C-311/18, Data Protection Commissioner vs Facebook Ireland Limited and Maximillian Schrems, available here : https://curia.europa.eu/juris/liste.jsf?num=C-311/18.
[7] A data transfer impact assessment is a process of assessing the level of protection in a third country, assessing, whether supplementary measures are needed, and identifying such effective measures.
[8] Article 209 and 211 Belgian Data Protection Act 2018.

INVESTMENTS INCENTIVES

In Belgium, the Regions are competent for economic policy, including grants to businesses and attracting foreign investors.

A common element is that each Region has numerous financial incentives to assist both Belgian and foreign-owned companies (for SME's and large undertakings) to establish or expand their business in Belgium. Typical forms of aid are:

- Subsidies to train employees in new industries; these grants take the form of payments during a particular time of a fraction of the wages of the employees concerned;
- Subsidies to acquire assets (including intellectual property); these subsidies are available for investments that are made in specific technologies, or that organize production processes in a more ecofriendly and energy-efficient way. These grants are calculated on a subsidized value of the investment and are paid out in installments only after proof of the investment has been submitted;
- R&D grants ; the grant will subsidise part of the R&D effort (e.g. by partly paying the wages of researchers); and
- Tax benefits, the most usual being he reduction of real estate withholding tax for a limited number of years.

If the investment is made in an area that is expressly designated as a "development area", the investment can benefit from higher subsidies, or additional tax advantages (e.g., reduction of real estate withholding tax for a limited number of years).

The EU state aid rules ensure that aid schemes awarded remain compatible with the proper operation of the EU single market.

The Federal Holding and Investment Company (SFPI-FPIM), is a limited liability company, that acts as holding company for

the Belgian federal government and also acts as an investment company by making investments in in certain sectors deemed crucial or strategic for the Belgian economy. A similar role is taken up by Participatiemaatschappij Vlaanderen (Flemish

government owned holding company) and SRIW (Walloon Regional Investment Company).

The Belgian public credit insurer is the National Ducroire-Delcredere Office. It insures companies and banks against political and commercial risks from international commercial transactions.

FINANCIAL FACILITIES

BANKING/FINANCIAL FACILITIES

TYPES OF FINANCIAL INSTITUTIONS

The main types of financial institutions in Belgium are (1) credit institutions, (2) investment firms, (3) management companies of collective investment undertakings (UCITS ManCos), (4) managers of alternative investment funds (AIFMD managers), (5) insurance companies, (6) institutions for occupational retirement provision, (7) payment service providers, (8) electronic money institutions, and (9) providers of services related to virtual assets (crypto VASPs).

A ***credit institution*** is defined under the Act of 25 April 2014 on the status and supervision of credit institutions (the Banking Act) as a Belgian or foreign undertaking whose business consists of receiving deposits or other repayable funds from the public and granting credits for its own account. Before commencing operations in Belgium, a credit institution must be authorized by the National Bank of Belgium (NBB), irrespective of wherever else it might carry on business. The authorization conditions are laid down in the Banking Act. Specifically, Title I of Book III for the credit institutions established in the EEA and holding an EEA passport through a branch or under the freedom to provide services, in Title II of Book III for the branches of credit institutions governed by foreign law established in Belgium and Title I of Book II for the credit institutions governed by Belgian law.

An ***investment firm*** is defined under the Act of 25 October 2016 on the access to the investment services activity and the status and supervision of portfolio management and investment advisory companies (the Act of 25 October 2016) as an undertaking, governed by Belgian law or by foreign law active in Belgium, whose ordinary business consists of professionally providing or offering one or more investment services for third parties and/or carrying out one or more

- asset management;
- providing investment advice
- underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;
- placing of financial instruments without a firm commitment;
- operation of multilateral trading facilities; and
- operation of organized trading facilities (OTF).

Belgian law distinguishes between two categories of investment firms: stockbroking companies and portfolio management and investment advice companies. Authorization from the National Bank of Belgium is required for stockbroking companies, while portfolio management and investment advice companies must be authorized by the Financial Services and Markets Authority (FSMA).

A ***management company of an undertaking for collective investment*** (UCITS ManCo) is a company governed by Belgian or foreign law whose primary business is managing portfolios of public undertakings for collective investment in Belgium.

Additionally, ***managers of alternative investment funds*** (AIFMD managers), who manage alternative investment funds, are subject to specific regulations as outlined in the Act of 19 April 2014, transposing the EU's AIFMD directive into Belgian law.

Insurance companies, both insurance and reinsurance companies, operate under the Act of 13 March 2016 on the status and supervision of insurance or reinsurance companies (The Supervision Act) and the Act of 4 April 2014 concerning insurance (The Insurance Act), along with specific acts and royal decrees regulating various types of insurance.

Institutions for occupational retirement provision (IORPs) are defined under the Act of 27 October 2006 on the supervision of institutions for occupational retirement provision (IORP Act) and must be authorized by the National Bank of Belgium. The IORP Act includes provisions from the Directive (EU) 2016/2341 (IORP II), imposing additional governance, risk management, information, and transparency requirements.

Payment service providers and ***electronic money institutions*** in Belgium are regulated under the Act of 11 March 2018, covering payment institutions, electronic money institutions, and payment service providers.

Finally, ***providers of services related to virtual assets***, including

crypto VASPs, are governed by the Act of 20 July 2020, focusing on the prevention of money laundering and terrorist financing.

BANK ACCOUNT IN BELGIUM

Opening a bank account with a credit institution is essential for setting up a business in Belgium, for both individuals and companies. The Act of 25 April 2014 on the status and supervision of credit institutions, along with the Act of 18 September 2017 on the Prevention of Money Laundering and Financing of Terrorism, governs the requirements for opening a bank account.
Additionally, Title 3, Chapter 8 of Book VII of the BCEL ensures the right to a basic bank account for legal residents of the European Union.

REQUIREMENTS FOR OPENING A BANK ACCOUNT

The requirements for opening a bank account are specified by the credit institution's terms and conditions. While banks are not obligated to accept every customer, they must comply with the basic banking service for legal residents of the EU as per Title 3, Chapter 8 of Book VII of the BCEL. The Anti-Money

Laundering and Counter-Terrorist Financing legislation mandates the verification of the identity of applicants, with specific requirements for natural and legal persons.

RESTRICTIONS ON THE INVESTOR'S USE OF THE ACCOUNT

Investors are subject to the AML/FT legislation and contractual rules set in the terms and conditions, with no additional restrictions on account usage.

STRUCTURE OF THE BANKING SYSTEM

As of 2024, Belgium's banking system includes 28 credit institutions governed by Belgian law and 51 foreign law-governed institutions, with specific regulatory structures under the Act of 2 July 2010. The NBB oversees micro- and macro-prudential supervision, while the FSMA is responsible for overseeing financial intermediaries and market integrity.

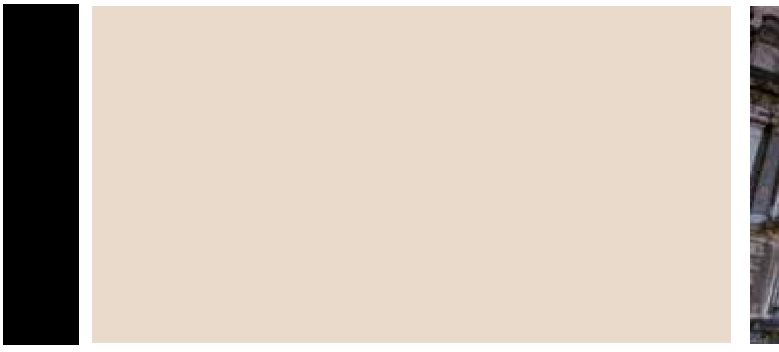
STOCK MARKETS

Belgian stock markets as of 2024 include the regulated Euronext Brussels market, Euronext Growth, Euronext Access, a market for derivative products, and a regulated off-exchange market. Euronext Growth and Access markets, functioning as MTFs, cater primarily to small and medium-sized enterprises.

BANK LOANS

While there are no legal restrictions on bank loans, the Belgian Code on Companies and Associations (BCCA) allows a public limited-liability company to give financial assistance for the purpose of the acquisition of its own shares (e.g. by granting loans, giving advances or providing security) only in narrowly defined circumstances.

EXCHANGE CONTROLS



BUSINESS TRANSACTIONS WITH NATIONALS, RESIDENTS OR NON-RESIDENTS

HOW ARE NATIONALS, RESIDENTS AND NON-RESIDENTS DEFINED?

A national is any person qualifying for Belgian nationality under Belgian law. As a general rule, nationality is not relevant for doing business in Belgium. A natural person is considered to be a resident if their domicile, habitual residence or the seat of their wealth is located in Belgium. Seat of wealth is not the place where assets (wealth) are situated but the place where the assets are managed.

Companies or associations are Belgian residents where their principal place of business or their seat of management or administration is situated in Belgium.

ARE THERE RESTRICTIONS ON CONDUCTING BUSINESS WITH NATIONALS, RESIDENTS OR NON-RESIDENTS?

In general, no distinction is made between Belgian and non-Belgian companies.

There might however be national, European, or international sanctions and/or embargos with which Belgium must comply. The lists can be consulted on the website of the Federal Public Services (Financial sanctions | FPS Finance (belgium.be)).

ARE THERE REPORTING REQUIREMENTS?

If the investor supplies goods or services, it is required to register for VAT purposes.

If the investor is a company, its directors are obliged to prepare annual accounts. Small companies can prepare simplified accounts. In addition, an annual report has to be drawn up giving a true and fair view of the company's development and results. The annual accounts and the annual report have to be submitted to the Belgian National Bank, unless the company is one of the exempt types. This is a recurring reporting obligation.

Natural persons that are undertakings within the meaning of Belgian law do not have to submit annual accounts or an annual report to the Belgian National Bank. They can prepare simplified accounts if their turnover does not exceed a certain amount.

Belgian companies, trusts, fiduciaries, and similar legal structures as well as foundations and (inter)national non-profit organizations must report their Ultimate Beneficial Owners (UBOs) to the General Administration of Treasury by declaring them in the UBO register (Law of 18 September 2017).

Issuers of financial instruments listed on a regulated market have to report periodic and occasional information to the public (division IV of the Royal Decree of 14 November 2007). They must also enable securities holders to exercise all the rights attaching to the securities by providing them with all necessary information and facilities (division III of the Royal Decree of 14 November 2007).

Financial institutions operating in Belgium are required by law to report information on their customers' domestic accounts, financial contracts concluded in Belgium and transactions involving cash carried out in Belgium to the Central Point of Contact for accounts and financial contracts (Law of 8 July 2018).

The CSRD will be implemented in Belgium. As of 2024, all large companies, listed small and medium-sized companies (apart from microenterprises), and certain non-European companies will need to publish sustainability information in their annual reports.

Since July 2023, Belgium started screening foreign investments.

MONEY TRANSFERS

This regime is discussed in the section "Structures for Doing Business", below.

EXCHANGE RATES

The EURO foreign exchange reference rates are made public by the European Central Bank.

RESTRICTIONS ON THE TRANSFER OF MONEY

Prior authorization is not required for transfers of money within Belgium or from foreign countries. Within the EU, the Payment Services Directive 2007/64 established a Single Euro Payments Area (SEPA) without restrictions on cross-border payments. Transferring money between bank accounts in different countries can be limited to certain amounts by the payment service providers, however.

A reporting obligation applies to Belgian companies that make payments in excess of EUR 100,000 to a country that is considered a tax heaven as defined by the OECD, the EU's list of non-cooperative areas or the Belgian authorities. The companies concerned must append form 275F to their tax filing to report the payment. The tax deductibility of the payment is *inter alia* dependent on the use of this particular form.

RESTRICTIONS ON THE REMITTANCE OF PROFITS ABROAD

There are no foreign- exchange restrictions on the transfer of capital or profits.

CAN HARD CURRENCY BE TAKEN OUT OF THE COUNTRY?

Yes. There is no foreign exchange control. However, as is required by EU law, a natural person leaving Belgium (or entering the EU via Belgium) with cash money, bearer negotiable instruments or commodities used as highly-liquid stores of value (such as gold) representing a value equal to or in excess of EUR 10,000 may only do if a disclosure declaration is made to the Belgian customs. The disclosure declaration must be made using a specific form. The same disclosure obligation applies if the cash money, bearer negotiable instruments or commodities are exported from Belgium outside the EU or imported in Belgium from outside the EU as part of a consignment, without being accompanied by a natural person.

INVESTMENT CONTROLS

STRUCTURES FOR DOING BUSINESS

Belgium has traditionally both invited and encouraged investment from abroad. Apart from the recent cooperation agreement of 30 November 2022 that establishes a foreign direct investment screening mechanism, following the implementation of the European FDI (Foreign Direct Investment) regulation of 19 March 2019 (cfr. infra), there are no general prohibitions against foreign investment or ownership of business entities or real property and the government has created a favorable climate for private initiatives and taken steps to stimulate investment.

A foreign company that wants to operate a business in Belgium will often set up a subsidiary. The most common forms chosen by foreign investors for operating a subsidiary in Belgium are either the NV/SA or the BV/ SRL. In the past years, foreign investors have also been looking at setting up an SE, which stands for Societas Europaea or European Company. Alternatively, instead of incorporating a subsidiary in Belgium, a foreign company can do business in Belgium by opening in Belgium a a branch office.

In addition, but only if an undertaking is set up in the Walloon Region and if the undertaking is considered to be a "small or medium-sized enterprise" ("SME"), its managing director will have to give proof of his/her management skills either by submitting diplomas or by providing proof of management experience.

LIMITED LIABILITY COMPANIES

FORMS AND CONSTITUTION

Limited liability companies are permitted in Belgium and can be incorporated in the following forms:

- public limited liability company (*naamloze vennootschap/ société anonyme (NV/SA)*);
- private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid/société à responsabilité limitée (BV/SRL)*); and
- co-operative society with limited liability (*coöperatieve vennootschap/ société coopérative à responsabilité limitée (CV/SC*))

For liability reasons, foreign investors often choose to do business in Belgium by setting up a wholly owned subsidiary (*dochtervennootschap/filiale*) in the form of a limited liability company. The NV/SA and BV/SRL are the most widely used forms.

Limited liability companies must be constituted by notarial deed. The founders must either appear before a notary and sign the articles of incorporation in the presence of the a notary or appear by means of a videoconference before the notary and sign the deed electronically.

The founders of a public limited liability company must give the notary evidence that the minimum capital has been paid into a special (blocked) bank account opened in the name of the company to be founded. This proof takes the form of a certificate issued by the bank. The funds are subsequently released in favor of the company on confirmation by the notary to the bank that the company was duly incorporated. Also, a financial plan, which is not made available to the public, must be submitted to the notary at the time of incorporation.

The founders of both a public limited liability company and a private limited liability company must ensure that the company has a share capital (for a public limited liability company) or initial funds (for a private limited liability company, where the notion of capital has been repealed) that are, at the time of incorporation, sufficient in light of the proposed activity.

An excerpt of the articles of association must be filed with the registry of the Enterprise Court *(griffie van de ondernemingsrechtbank/ greffe du tribunal d'entreprise)* in whose jurisdiction the registered office of the company is located. Filing the deed with the registry of the Enterprise Court will confer legal personality on the company. The excerpt of the deed must also be published in the Belgian Official Journal (*Belgisch Staatsblad/Moniteur belge*) within 30 days of incorporation. Finally, the company has to be registered with the Crossroads Bank for Enterprises (*Kruispuntbank voor ondernemingen/Banque-carrefour des enterprises*) via the intermediary services of a business registration agency (*ondernemingsloket/guichet d'entreprise*) and, if applicable, with the VAT administration.

The costs and fees related to incorporation of a company include notarial fees (in principle a reducing percentage depending on the amount of the subscribed capital), and other expenses such as the cost of publishing the articles of association in the Belgian Official Gazette and costs of enrolling at the Central Businesses Data Register for Enterprises and VAT authorities.

PUBLIC LIMITED LIABILITY COMPANY (NAAMLOZE VENNOOTSCHAP/SOCIÉTÉ ANONYME (NV/SA))

Capital & shares

Although most NV/SAs are held privately, in principle an NV/SA is designed to be a public company. Hence the broad scope of the types of

securities it may issue (voting stock, bonds, convertible bonds, subscription rights, beneficiary shares (which do not represent the issued capital) and non-voting stock).

A public limited liability company is founded by at least one shareholder, who may be a natural or legal person, contributing at least EUR 61,500 to its capital, which must be fully paid up at the incorporation of the company. Furthermore, on each share corresponding to a contribution in cash and on each share corresponding in whole or in part to a contribution in kind, one-fourth must be paid up. The shares representing in whole or in part contributions in kind must be paid up in full within a period of five years from the incorporation of the company.

The articles of association, the terms of issue of securities or private agreements may put limits in place on the transferability of shares, subscription rights or any other securities giving access to shares. These inalienability clauses must be justified by a legitimate interest, particularly in terms of their duration.

Management

In principle, an NV/SA must have at least three directors (*bestuurders/administrateurs*), who may be individuals or companies. Together, they form the board of directors representing the company in all its dealings with third parties. The board of directors may consist of just two directors, to the extent that and for as long as the company has less than three shareholders. Directors can only be appointed if they are not the subject of a management ban, imposed by a Belgian court or an authority in any EU member state. Daily management of the company may be entrusted to one or more persons, who can be individuals or corporations and need not be directors.

The directors do not need to be Belgian residents. If the directors are companies, the company has to appoint a permanent representative (natural person) entrusted with carrying out the directorship duties on behalf of the company.

Permanent representatives bear the same liability as the directors (by definition, companies) whose tasks they carry out. The permanent representative cannot combine mandates both as director in his own name and as the permanent representative of another legal entity-director.

Pursuant to the BCCA which entered into force on 1 May 2019, an NV/SA can be organized in any of the following ways:

- Monistic management: the NV/SA is managed by a board of directors. This is the so-called 'default' arrangement, which will apply when the shareholders do not make any specific arrangements.

- Sole Director: the NV/SA is managed by a single director. The is useful within groups of companies to maintain simplicity.

- Dual management: the management of the NV/SA is divided between two bodies: the Supervisory Board and the Management Board. Both bodies have their own powers and must each have at least three members, without the possibility of a member of one body also being a member of the other body.

The powers of the Supervisory Board are to define the general company policy and strategy and to supervise (and appoint members of) the Management Board.

The Management Board has the powers that are not reserved to the Supervisory Board and thus has the residuary power.

General Meetings

The shareholders of an NV/SA exercise their control over the corporation through two types of meetings, namely ordinary meetings and extraordinary meetings. Ordinary meetings are held at least once a year to approve the financial statements, decide upon the allocation of profits, appoint statutory auditors or authorize agreements between the company and its directors or corporate executives other than those normally entered into by the company. Extraordinary meetings are held to amend the articles of association, increase or reduce the share capital or decide on major corporate reorganizations. Belgian law also provides for compulsory quorum and majority conditions.

PRIVATE LIMITED LIABILITY COMPANY (BESLOTEN VENNOOTSCHAP MET BEPERKTE AANSPRAKELIJKHEID/SOCIÉTÉ PRIVÉE À RESPONSABILITÉ LIMITÉE (BVBA/SPRL))

Capital & shares

Following the adoption of the BCCA, the BV/SRL was re-designed with a focus on more flexibility, both in terms of the minimum capital requirements as well as the minimum amount of founding members.

A BV/SRL can be founded by one shareholder, who may be a natural or legal person. The notion of 'capital' was abolished in the BCCA. Whereas previously a minimum capital of EUR 18,550 was required in order to incorporate a BV/SRL, the founders are now required to ensure that the initial equity of the company at the time of incorporation is sufficient, also taking into account other sources of financing, for the intended activity. If it appears that the initial equity was manifestly insufficient, the founders risk personal liability.

Management

The BV/SRL is managed by one or more directors (*bestuurders/administrateurs*), who may be individuals or companies. Directors can only be appointed if they are not the subject of a management ban, imposed by a Belgian court or an authority in any EU member state. Each director may in principle perform all acts necessary or useful for achieving the company's object individually, unless the general meeting decides to set-up a collegial management (board of directors). In principle, each director may also represent the company individually in dealings vis-à-vis third parties, unless in the event a more stringent rule is included in the articles of association. The daily management of the company can be entrusted to individuals or legal entities.

Similar to an NV/SA, the directors do not need to be Belgian residents. If the director is a company, the company has to appoint a permanent representative (natural person) entrusted with the directorship duties on behalf of the company. Permanent representatives bear the same liability as the directors (by definition, companies) whose tasks they carry out.

General meetings

The general meeting of shareholders of a BV/SRL functions in the same way as that of an NV/SA. It has the same powers and restrictions on voting as the general meeting of an NV/SA.

THE CO-OPERATIVE SOCIETY (COÖPERATIEVE VENNOOTSCHAP /SOCIÉTÉ COOPÉRATIVE (CV/SC))

A co-operative society focuses on a co-operative culture and organization. The goal is not to maximize profits but to meet certain specific, common needs of the shareholders and/or to further develop their economic and social activities. A cooperative society can only be formed by three or more persons, who may be natural or legal persons. As is the case in the BV, the notion of the term 'capital' was abolished and the founders are instead required to ensure that the company has received sufficient initial equity (also taking into account other sources of financing) for the intended activity.

The transfer of shares is strictly regulated. The shares are transferable to other shareholders in the manner set down in the articles of association. The shares can only be transferred to third parties explicitly named in the articles of association or that belong to a specific category of potential transferees mentioned in the articles of association.

Incorporation of a CV/SC is procedurally similar to and takes around the same time as that of an NV/SA.

UNLIMITED LIABILITY COMPANIES

COMPANY FORMS WITH LEGAL PERSONALITY

The BCCA lists various forms of unlimited liability companies with legal personality:

- general partnership *(vennootschap onder firma/ société en nom collectif (VOF/SNC))*
- limited partnership *(commanditaire vennootschap/ société en commandite (Comm.V/SC))*
- European economic interest grouping *((Europees) economisch samenwerkingsverband/groupement d'intérêt économique européen (EESV/GIEE)*

The incorporation of the abovementioned companies is similar in process and timing to that of limited liability companies, except that no notarial deed is required to set them up (although there must be a written document). These companies acquire legal personality as of the date on which the written deed of constitution is registered with the Enterprise Court with jurisdiction over the location of the company's registered office.

COMPANY FORMS WITHOUT LEGAL PERSONALITY

The BCCA also provides for one company form which does not have legal personality: the unregistered partnership (*maatschap/société simple*).

The unregistered partnership is the default form of company. If two or more persons carry on business together without filing their agreement with the Enterprise Court, they are deemed to have formed an unregistered partnership. If the unregistered partnership pursues a commercial purpose, the partners will be jointly and severally liable for all the debts of the partnership.

GENERAL PARTNERSHIP (VENNOOTSCHAP ONDER FIRMA/SOCIÉTÉ EN NOM COLLECTIF (VOF/SNC))

A VOF/SNC is a partnership formed by two or more partners who jointly carry on commercial or non- commercial activities under a common name. There are no minimum capital requirements for a VOF/SNC. The partners are jointly and severally liable for the debts of the partnership. However, the partners cannot be held personally liable for obligations of the partnership unless the partnership itself is held liable. Each partner is considered to be an undertaking. As a consequence, both Belgian and foreign partners must apply for registration with the Central Businesses Data Register.

Each partner may in principle do whatever is necessary or useful to achieve the company's purpose and also represents the company (and the other partners) in dealings with third parties, unless the articles of association grant one or more partners power to represent the company alone or jointly.

LIMITED PARTNERSHIP (GEWONE COMMANDITAIRE VENNOOTSCHAP/SOCIETE EN COMMANDITE SIMPLE (COMM.V/SCS))

A limited partnership is a partnership which is formed by two distinct types of partners, namely one or more partners who are jointly and severally liable for all the debts of the partnership and who are referred to as "managing partners" (*beherende vennoten/associés commandités*), and one or more partners that merely invest in the partnership (and are only liable for their stake), who are referred to as "silent partners" (*stille vennoten/associés commanditaires*). There are no minimum capital requirements.

The BCCA expressly provides that silent partners are prohibited from managing the partnership (including acting as an agent of the partnership under a proxy), at the risk of joint and several liability. Similarly, a silent partner's name must not figure in the name of the partnership.

ECONOMIC INTEREST GROUPING

Belgian law additionally provides for the European economic interest grouping (EEIG) (*Europees economisch samenwerkingsverband/ groupement d'intérêt économique européen (EESV/GIEE)*), which is governed by the EC Regulation 2137/85 of July 25, 1985.

An EEIG is a group comprising of two or more individuals or legal entities, with at least 2 members from different EU countries. It combines the interests of its members while maintaining their individuality and autonomy. The purpose of the grouping is to facilitate or develop the economic activities of its members by a pooling of resources, activities or skills. This is intended to produce better results than the members acting alone.

Under Belgian law, an EEIG is a separate legal entity, which is set up by means of a written document (either a notarial deed or a private written contract). The grouping acquires legal personality as of the day the deed or contract is filed with the Enterprise Court, according the provisions set out in the BCCA.

It is not intended for the EEIG to make profits for itself. The profits of an EEIG will be deemed to be the profits of its members and will be allocated either according to the relevant clause in the contract or, failing such a clause, in equal shares. The profits or losses of an EEIG will not be taxable at the level of the EEIG, but instead only

in the hands of its members . The EEIG is therefore considered a fiscal transparent entity.

The members' liability is unlimited, which may be justified by the fact that members are not required to provide a minimum amount of capital.

EUROPEAN PUBLIC LIMITED LIABILITY COMPANY (SOCIETAS EUROPAEA OR SE) (EUROPESEVENNOOTSCHAP/SOCIÉTÉ EUROPÉENNE)

Investors may also consider structuring their business as a *Societas Europaea* (SE) under Belgian law, a corporate legal form created by Council Regulation (EC) 2517/2001 of October 8, 2001, on the Statute for a European Company (SE).

The principal purpose of the SE is to allow companies incorporated in different European jurisdictions to merge or to form a holding company or joint subsidiary in another European jurisdiction. The subscribed capital of an SE may not be less than EUR 120,000. An SE is managed by either a one-tier or two-tier board system. Under Belgian law, SEs are mainly governed by the provisions applicable to NV/SAs.

JOINT VENTURES

Although not as such a concept under the BCCA, joint ventures can range from the creation of jointly owned and controlled companies (requiring notification under EU or national merger control rules if certain thresholds are exceeded) to less formal agreements between companies to cooperate in certain areas such as research and development, production, purchasing, selling or the creation of industry standards.

BRANCHES/ REPRESENTATIVE OFFICES

Foreign companies may carry on business and engage in transactions in Belgium either by setting up a local branch or through some other form of presence, or by offering goods or services from abroad. Companies with their real or statutory seat within the European Union enjoy what is called the freedom of establishment and the freedom to provide services. A branch *(bijkantoor/succursale*) is a permanent establishment that has no separate legal personality, through which contacts are made with third parties and at which at least one agent is present who can bind the company the agent represents, even if this agent's powers are limited. Not every form of presence in Belgium constitutes a branch. A warehouse, for instance, is not a branch, and so having a warehouse in Belgium does not necessarily in itself trigger disclosure requirements

A branch is subject to certain of the legal requirements as apply to Belgian companies. A branch is established in Belgium by filing a certified copy of the articles of incorporation of the foreign legal entity and an extract of the resolution to establish a branch with the register of the Enterprise Court. A branch manager must be appointed as the legal representative of the foreign company in Belgium. A translation of the aforementioned documents must be filed and excerpts published in the Belgian Official Journal, in the official language of that part of the country in which the branch is to be located (Dutch in Flanders, French in Wallonia, and either language in the Brussels Region). Registration with Crossroads Bank for Enterprises is also required. For this, certain specific information must be disclosed such as the number of the bank account opened by the foreign company in Belgium.

Operating a Belgian branch of a foreign company means all of the foreign company's assets are liable for its debts. The liability of the manager or legal representative of the branch of the foreign company is similar to that of a director of a Belgian company. The Belgian branch of a foreign company must pay Belgian corporate taxes (but only to the extent the profits are attributable to the operations of the Belgian branch). The branch must also publish in Belgium the annual accounts of the foreign company. Although not a legal entity, a branch must hold accounts separate from those of a foreign company.

TRUSTS AND OTHER FIDUCIARY ENTITIES

COMMON-LAW TRUST

The common-law "trust" is unknown in Belgian law. Belgium has neither signed nor ratified the Hague Convention of July 1, 1995, relating to the law applicable to trusts and their recognition. However, foreign trusts are recognizable in Belgium under the Act of July 16, 2004, on the Private International Law Code, according to which the settlor can elect the law to govern the trust (for example, his national law), provided the elected law contains trust provisions. If the settlor has not specified the governing law, the law of the country in which the trustee was habitually resident when the trust was constituted applies.

PRIVATE FOUNDATION (PRIVATE STICHTING/ FONDATION PRIVÉE)

A private foundation can be considered similar to a trust. It is a legal person established by a legal act of one or more individuals or legal persons by which an estate is singled out and destined to realize a certain goal in which the founders have no patrimonial interest. The preservation of a family estate and/or the certification of shares of a business company have been recognized by law as constituting such goals.

REQUIREMENTS FOR THE ESTABLISHMENT OF A BUSINESS

ALIEN BUSINESS LAW

Foreign investors are not subject to alien business law in Belgium.

COMPETITION LAW

Competition policy in Belgium falls within the powers of the Belgian federal government. It applies throughout Belgium. With regard to both procedure and substance, the legal provisions are modeled on EU competition law. Mergers and acquisitions are subject to merger control clearance if certain thresholds are exceeded. If the combined turnover of your businesses involved in a merger or acquisition exceeds 100 million euro in Belgium and the turnover of each of at least two of the participating businesses exceeds 40 million euro in Belgium, the transaction is subject to mandatory pre-merger filing in Belgium. The transaction is not subject to Belgian merger control, but subject to the jurisdiction of the EU Commission instead if the transaction has a so-called "community dimension", i.e., if the combined aggregate worldwide turnover of all entities involved is more than 5 billion euro and the aggregate EU turnover of at least two of those entities is more than 250 million euro, unless each of the entities involved derives more than two-thirds of its aggregate EU turnover within one member state.

BELGIAN FDI SCREENING REGIME

Finding its source and inspiration in EU Regulation 2019/452, the Belgian FDI screening regime entered into force on 1 July 2023 and captures all investments by non-EU investors by means of direct or indirect acquisitions of, depending on the case, (i) at least 10% or 25% of the voting rights in, or (ii) control of entities or undertakings established in Belgium

active in certain strategic or sensitive sectors.

The ex-ante foreign investment screening notification with the Interfederal Screening Commission (ISC) is mandatory and suspensory. In its review, which consists of a two-stage procedure (assessment "phase I" procedure and, as the case may be, screening "phase II" procedure), the ISC will assess whether the notified transaction will have an impact on public order, national security or the strategic interests of the Regions and Communities.

ENVIRONMENTAL REGULATIONS

Environmental regulations may apply to both industrial processes carried out and to products or services placed on the market. Industrial activities usually need operating permits and/or administrative declarations, while products and services require compliance with product safety regulations, certification requirements, etc. Procedures to obtain permits may entail significant consulting costs.

GOVERNMENT APPROVALS, LICENSES/ PERMITS

As stated, Belgium (both the federal and the regional governments) has traditionally invited and encouraged foreign investment on a national basis. Foreign investment is totally unrestricted and capital and profits can be freely transferred in and out of the country. However, certain foreign investments by non-EU investors are subject to a screening (see Belgian FDI Screening Regime, *above*).

OPERATION OF THE BUSINESS

PRODUCT LIABILITY

Under the Product Liability Act of 25 February 1991 (soon to be restated in Book VI of the Belgian Civil Code), that implements EU Directive 85/374, the manufacturer is liable for damage caused by a defect in a product. There is a defect when a product does not meet the safety that one can reasonably expect, taking into account all the relevant circumstances, such as the instructions and safety guidelines provided with the product. One needs to take into account not only the intended uses, but all reasonably expected uses.

The manufacturer cannot escape liability by invoking his mere ignorance of the defect, unless he proves that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered.

Are equally liable under the Product Liability Act, the company importing the products into the EU and any person putting their name, trademark or other distinguishing feature on the product. Distributors are liable if the manufacturer or importer into the EU cannot be identified.

The Product Liability Act chiefly pertains to damage to persons (including pain and suffering). Material damage to goods is indemnifiable under the Product Liability Act if the product is primarily intended to be used in the private sphere, subject to a deductible of EUR 500.

In general, the liability under the Product Liability Act is mandatory. The liability can however be reduced or excluded in case the damage is jointly caused by the own fault of the victim.

The liability under the Product Liability Act is applicable for a period of 10 years after putting the product into circulation. However, there is no liability it can be proven that it is probable that the defect did not exist at the time when the

product was put into circulation.

Under articles 1641 to 1649 of the old Civil Code, sellers may incur a distinct liability for hidden defects in products sold. Hidden defects are characteristics that make the product unsuitable for its intended use. In case of hidden defects, the seller is liable to take back the product and reimburse the cost of the purchase, or to award a reduction on the price, at the buyer's discretion. If the seller was aware of the defect, he is also liable for any damage caused by the defect, regardless of its nature. As a matter of judge-made law, specialized sellers are presumed to be aware of the defects within their products, and can only rebut this presumption if the defect was undiscoverable.

Court claims against a seller pursuant to the warranty for hidden defects have to be initiated within a "short period", which is assessed by the courts on a case-by-case basis. The warranty against hidden defects is attached to the good and can therefore be exercised by subsequent purchasers against an original seller.

Belgium is a contracting state to the Vienna Convention on the International Sale of Goods (CISG), hence the CISG will often apply instead of articles 1641-1649 of the old Civil Code in case of a professional sale between parties residing in different states, even when Belgian law is declared applicable.

Consumers enjoy additional protections under the common European consumer warranty by virtue of EU Directive 2019/771, transposed into Belgian law in articles 1649bis and following of the old Civil Code.

The putting into circulation or distribution of a dangerous product may also constitute a civil fault, and give rise to liability for the damaging consequences under the general tort principles of Belgian law.

Product safety is governed by Book IX of the BCEL. Manufacturers have a general obligation to ensure that all products sold are safe. Manufacturers must take organizational measures to be informed of the risks of their products in due time and need to take the necessary measures to prevent further risks if a product is found to be unsafe (warn customers, stop the commercialization and recall the products). Such measures may also be imposed by the Minister of economic affairs, who has broad powers in relation to product safety. Non-compliance with product safety rules may lead to fines.

E-COMMERCE

Conducting business in an online context via a webshop is subject to different sets of rules. Anyone who operates a website (regardless of whether such website includes a webshop) should:

- identify itself and include in an easily accessible manner certain identification details, such as full company details, company number, e-mail address, VAT-number, etc. (articles III.25, III.74-75, XII.6 BCEL and article 2:20 BCCA). It is common practice to include these details in a banner at the bottom of each webpage or in a "contact" or "legal" section; and

- refrain from any unfair market practices, including misleading advertisement, illegitimate comparative advertisement, etc. (articles VI.93, VI.104/1 BCEL).

When operating a webshop, regardless of whether it is B2B or

B2C, one should:

- comply with the different obligations in the context of the ordering process (e.g. indicate different technical steps in the ordering process, allow for correction of data, indicate in what language(s) the contract is available, send confirmation e-mail) (article VI.46 and XII.7-XII.9 BCEL);
- provide the contractual terms in a downloadable/printable manner (article VI.46 and XII.7-XII.9 BCEL).

B2C CONTEXT

There are additional obligations in the B2C context. One should, where applicable:

- adhere to the rules regarding price indication. Prices mentioned should be legible, visible, at least in euro and should be an "all-in" price included all taxes and mandatory costs to be paid by the consumer. Any additional costs, such as transportation costs, should also be mentioned (articles VI.3-VI.7 and VI.45, 5° BCEL). If price reductions are announced, a reference price should be mentioned, i.e. the lowest price offered in the 30 days prior to the announcement of the price reduction (article VI.18 BCEL);
- clearly indicate that the order implies a payment obligation. This can be done by using expressions such as "go to payment", "continue with payment obligation", etc. (article VI.46 BCEL);
- provide certain legally required information prior to the contract conclusion. This information includes information regarding the main characteristics of the products, payment methods, delivery information, customer complaints procedures, right to withdraw or the lack thereof, etc. (article VI.45 BCEL);
- offer the consumer a right to withdraw its online purchase within 14 days without reason (article VI.47-VI.53 BCEL); and
- provide for an electronic link to the Online Dispute Resolution Platform (ODR Platform) in an easily accessible manner (article 14 Regulation (EU) 524/2013).

BURDEN OF PROOF

The burden of proof that the specific rules regarding contracting at a distance with consumers were complied with lies with the webshop operator. Clauses deviating from these specific rules or putting the burden of proof (partially) on the consumer, will be null and void (articles VI.62-VI.63 BCEL).

ADDITIONAL/SPECIFIC OBLIGATIONS

Additional obligations shall apply to online marketplaces, such as more extensive information obligations (article VI.45/1 BCEL).

Specific obligations shall apply where the distance contract is concluded for financial services (articles VI.54 et seq. BCEL).

CONSUMER PROTECTION, MARKET PRACTICES AND ADVERTISING

Since May 2014, the major rules and principles governing market practices (including, a.o., advertising) and consumer protection have been codified in Book VI of the BCEL.

The goal is to ensure fair competition between traders and adequate information and protection for consumers.

As this topic is mainly a matter for the EU legislator, a series of EU Directives are being implemented by Book VI BCEL, namely:

- Directive 76/211/EEC of 20 January 1976 on the approximation of the laws of the Member States relating to the making-up by weight or by volume of certain prepackaged products;
- Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts;
- Directive 98/6/EC of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers;
- Directive 2002/58/EC of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (e-Privacy Directive);
- Directive 2002/65/EC of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC;
- Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair commercial practices Directive);
- Directive 2006/114/EC of 12 December 2006 concerning misleading and comparative advertising;
- Directive 2011/83/EU of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

The outline of Book VI BCEL is set out below.

CONSUMER INFORMATION & ADVERTISING

Title 2 of Book VI BCEL concerns the right of consumers to obtain certain information regarding goods and services offered.

This Title sets out particular rules regarding (i) the general obligation to provide adequate information to the consumer, (ii) the indication of prices (e.g. stated prices must include all taxes and costs), (iii) the payment by the consumer (price rounding rules and the obligation for the trader to make electronic payment means available to consumer) (iv) the name, composition and labeling of goods and services, (v) information on quantities (vi) comparative advertising and (vi) price promotions, such as "sales" and clearance sales, as well as price reduction announcements (see below for more details regarding comparative advertising, price reduction announcements and the offers for sale under the terminology

"Sales" and alike).

Generally speaking, these rules aim at ensuring that, before any agreement is entered into by consumers, traders offering goods or services to consumers provide them with all relevant information on the good or service at stake and on the contractual conditions of purchase.

Such information must always be provided in a clear and comprehensible manner (art. VI.2 BCEL). This requirement applies not only to the content of the information provided (simple terminology and syntax, etc.) but also to the language in which it is provided. There is no general obligation to translate any information provided to consumers into all three national languages (French, Dutch or German). However, depending on the type of goods or services concerned, such translation is often considered best practice as one cannot assume that the average consumer necessarily understands English, for instance.

As stated above, Chapter 5 of Title 2 of Book VI BCEL regulates comparative advertising. An advertisement is considered "comparative" if, even implicitly, it refers to competitors or goods or services sold by competitors. Comparative advertising is allowed provided it meets certain conditions aimed at ensuring that a comparison between two products is objective, relevant and verifiable and does not cause harm or confusion in the market. In addition, like any other commercial practice, (comparative) advertising must not be unfair (i.e., misleading or aggressive or contrary to the professional standards) (see title "Forbidden commercial practices" below).

As also stated above, Section 1 of Chapter VI of Title 2 of Book VI BCEL regulates price reduction announcements. There are several ways of announcing a price reduction : a.o., "- x %", "- x EUR", "was x EUR/now x EUR", "x EUR / x EUR", etc. Any announcement of a price reduction to consumers must indicate the prior price applied for a determined period of time prior to the application of the price reduction. As a rule, such "prior price" refers to the lowest price applied by the trader during a period of 30 days prior to the application of the price reduction.

Section 3 of Chapter VI of Title 2 of Book VI BCEL, on its part, regulates the price campaigns using the "Sales" terminology *("Soldes", "Opruiming", "Solden", "Schlussverkauf"* or any similar wording). Such terminology may only be used for marketing goods or services sold at a reduced price: (i) from 3 January until (and including) 31 January (should 3 January fall on a Sunday, the sales period starts on 2 January); and (ii) from 1 July until (and including) 31 July (should 1 July fall on a Sunday, the sales period starts on 30 June). In the sectors of clothing, leather goods and shoes, there is a ban period one month before the "sales periods" referred to above on announcing price reductions or distribution of vouchers with discounts.

CONSUMER CONTRACTS

As a general matter, it follows from Belgian case law that, in order for general terms and conditions to be enforceable towards consumers, two conditions must be met: (i) the consumer must have had a reasonable opportunity to read these terms and conditions prior to or at the latest at the moment of conclusion of the agreement, and (ii) the consumer must have accepted them, either expressly (e.g., signature of the document setting out such general terms and conditions or of another contractual document which clearly and expressly mentions the applicability of these general terms and conditions, having been provided to the consumer before signature; for distance contracts, "click-wrap" method (providing consumer with a hyperlink to the general terms and conditions and preventing the order from being finalized until the consumer has actively ticked a box stating, e.g., "*I have read and accepted the general terms and conditions of the trader*")) or via the "informed silence" method (e.g., expressly and clearly indicating, prior to the finalization of the order, that by finalizing the order, the consumer shall be presumed to have read and accepted the terms and conditions made available via a hyperlink)). The burden of proof of both knowledge and acceptance of the general terms and conditions lies with the trader.

Title 3 of Book VI BCEL regulates specific aspects of consumer contracts, particularly: distance contracts: These are contracts concerning goods or services concluded between a trader and a consumer under an organized distance sales or service-provision scheme set up by the trader, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded. Extensive information obligations must be complied with by the trader in such a case (regarding the identity of the trader, the features of the product, the price, the costs of delivery, the delivery periods, the payment method, the return of unwanted items, etc.). Distance contracts can also be cancelled by consumers over a minimum period of 14 calendar days as from delivery (right of withdrawal). Particular attention should be paid to ensuring the enforceability of distance contracts towards consumers (provision of the contractual terms in a downloadable/printable manner; recommendation to use the "*click-wrap*" method and prohibition to use pre-filled boxes to demonstrate acceptance of consumers ; etc.). For more details in this respect, see section "e-Commerce".

- **Off-premises contracts:** These are contracts concluded with the simultaneous physical presence of the trader and the consumer but outside of the trader's premises. Such agreements are subject to mandatory rules similar to those governing distance contracts;

- **Joint offers:** These are offers tying the acquisition of goods or services to other goods or services, whether free of charge or not. Joint offers are allowed, provided that they do not entail any unfair commercial practice, i.e. they should (i) not constitute a sale at a loss, (ii) indicate whether the consumer can also purchase the products separately at their usual price, and (iii) inform the consumer of the usual price of each product and about the overall price advantage, if any. Joint offers comprising at least one financial service are however not allowed (except in a limited list of cases, set out in Art. VI.81, §2 BCEL).

- **Unfair B2C contract terms:** Chapter 6 of Title 3 of Book VI BCEL sets out a list of unfair or abusive contractual terms which are deemed per se unfair (and thus null and void), as well as a list of those that are presumed unfair, until the presumption has been reversed. Clauses deemed per se unfair are, for example, those entitling the trader to fix the period within which he will perform his side of the contract; clauses under which the trader alone decides whether delivered goods or services provided are fit for purpose; clauses under which the consumer cannot terminate the contract if the trader breaches his contractual obligations; clauses entitling the trader to modify (increase) the price without objective reasons stated in the contract, etc.

- **Unfair B2B contract terms:** A list of unfair B2B contract terms (clauses deemed unfair per se as well as clauses presumed unfair until the contrary is proven) is also provided for (Title 3/1 of Book VI

BCEL).

FORBIDDEN COMMERCIAL PRACTICES

Title 4 of Book VI BCEL sets out the rules concerning restricted commercial practices, being (i) unfair commercial practices towards consumers, (ii) unfair market practices towards non-consumers, (iii) unrequested communications, and (iv) sales at a loss.

In order not to be held unfair towards consumers, the concerned commercial practice (i.e., any act, omission, course of conduct or representation, commercial communication including advertising and marketing (see title "Consumer information and advertising" above), by a trader, directly connected with the promotion, sale or supply of a good or service to consumers) must meet the following requirements:

- it shall not appear in the black list of unfair commercial practices *per se* as set out by Art. VI.100 and VI.103 BCEL;
- it must not be aggressive nor misleading (i.e., containing false information or omitting material information that the average consumer needs, according to the context, to take an informed transaction decision, or deceiving (or being likely to deceive) the average consumer, even if the information provided is factually correct, in relation to, for example, the existence or nature of the product, the main characteristics of the product, the price or the manner in which the price is calculated or the existence of a specific price advantage, and in either case causing or being likely to cause consumer to take a transactional decision that he/she would not have taken otherwise). , in light of the particular circumstances of the commercial practice at stake (case-by-case analysis); and
- it must not be contrary to the professional standards nor materially distort or be likely to distort the economic behavior of the average (group of) consumer(s) reached or addressed.

CEASE AND DESIST ORDER AND CRIMINAL/ADMINISTRATIVE SANCTIONS

In case of any infringement of Book VI BCEL by a trader, there is a possibility for the FPS Economy, consumers as well as competitors to initiate cease-and-desist proceedings before the President of the competent Enterprise Court in order to obtain a cease and desist order against the trader concerned.

In addition, consumers and competitors could also, in separate proceedings, seek damages in court against the concerned trader, should they be able to demonstrate a prejudice caused by the practice at stake. Such damages proceedings may also be initiated in the form of a class action, where all consumers or competing SMEs individually harmed by the trader's infringement of Book VI BCEL may be represented by a single entity (generally, an association for the defense of consumers' interests or SME's interests) (see Title 2 of Book XVII BCEL).

Depending on the infringement at stake, criminal or administrative fines may also be incurred. These are however not automatic insofar as (1) prior to launching any administrative proceedings (and imposing any fine) or deciding to refer the case the Public Prosecutor's Office, the FPS Economy usually send infringers a first warning aimed at inviting them to comply with the legal provisions concerned, and (2) a settlement procedure is also available to the FPS Economy.

BUSINESS CONTRACTS

In principle, foreign investors can freely enter into any business-related contract in Belgium. There are no specific restrictions on foreigners, who in this respect enjoy the same level of freedom as local businesses.

Business contracts under Belgian law are mainly governed by the Civil Code and the BCEL.

Generally speaking, parties enjoy a broad freedom to agree on contract terms and these terms shall be binding to the parties. Notable exceptions are:

- limitation of liability clauses and penalty clauses can be declared null and void if manifestly excessive;
- more generally, clauses that create a significant imbalance between the parties' rights and obligations can be declared null and void;
- automatic price adjustment clauses are subject to restrictive conditions. Notably, a price adjustment clause needs to be proportional to the actual cost structure, be based on specific representative cost parameters (and not general inflation indices such as the consumer price index) and be limited to 80% of the price. These restrictions do not apply to lease contracts, nor to contracts concluded with parties residing abroad or that are performed outside of Belgium; and
- as a general principle and except if parties agreed otherwise, when an unforeseeable change of circumstances renders the performance of the contract excessively onerous so that one cannot reasonably request such performance, the affected party may claim renegotiation or termination (in whole or in part) of the contract. This hardship rule, only applicable to contracts entered as from 2023, should apply only very exceptionally.

Some business contracts are subject to specific mandatory legislation aiming at protecting the "weaker" party.

In case of termination without cause of distribution agreements, the distributor may be entitled to a reasonable period of notice (calculation not specified by law) or an indemnity in lieu thereof, and a goodwill indemnity.

The BCEL contains mandatory provisions on commercial agency agreements, (including those transposing EU Directive 86/653) such as provisions on the agent's entitlement to commissions, specific formalities for termination for cause and, in case of termination without cause, a mandatory period of notice (up to 6 months) or indemnity in lieu thereof, and a possible goodwill indemnity (up to one year of commissions).

At least one month before any commercial cooperation agreement, such as but not limited to a franchise agreement, specific precontractual information must be disclosed, which, if disregarded, can entail the nullity of the agreement or of some provisions of the agreement.

ATTORNEYS

Given the fact that Belgian law is fairly complex in various matters of interest to prospective investors that have no thorough knowledge of it, local counsel is highly recommended in setting up and operating a business enterprise in Belgium.

From a litigation point of view, even though appointing an attorney is not a legal obligation (although it is highly recommended), courts tend to encourage (or even order) the appointment of an attorney in cases that present a certain degree of difficulty.

Each of the 27 local bar associations keep up-to-date lists of their members. An attorney registered with one bar association has access to all the courts in Belgium, save for the Supreme Court, which has its own bar, consisting of 20 attorneys with Supreme Court privileges in civil matters. In criminal matters, any attorney can plead before the Supreme Court.

Attorneys' fees are variable, and can be freely negotiated between the attorney and his client.

Professional rules forbid attorneys charging just a "*quota litis*", i.e. a fee in proportion to the amount awarded by the court. Success fees are allowed, however.

CONSTRUCTION

The costs of construction in Belgium are comparable to costs of construction in other western European countries. The Belgian National Institute of Statistics uses a construction cost index, based on costs of materials and labor costs, to monitor construction costs in Belgium. The index applies to the whole of Belgium, but construction costs can vary between regions. According to Eurostat and the OECD, construction costs have been steadily increasing in Belgium (and in Europe generally) over the past few years.

Building permits are required for construction projects. Each of Belgium's Regions has enacted its own planning and zoning legislation ("codes") with provisions on building permits.

We would mention the following guidelines for the three Regions:

- every property falls within a particular zoning area, determined by the applicable *zoning plans* ("regional zoning plans" at regional level and "municipal zoning plans" at municipal level). These plans are of regulatory value, i.e. they have to be taken into account whenever the competent authorities have to deal with any application for a building permit, but also when issuing, extending or renewing any other permit such as an environmental permit;
- carrying out construction works requires a building permit. Erecting a building without having first obtained a building permit is a criminal offence as is maintenance of buildings erected without a permit; and
- other acts which also require a prior building permit include demolition works and transformation or reconstruction of existing constructions.

Each Region has its own permits procedure, but the following guidelines apply to them all:

- a permit application dossier containing drawings of the planned constructions, technical schedules, an assessment of the environmental impacts of the project – in greater or lesser detail depending on their importance, etc. – has to be filed with the competent (often municipal) authority;
- if applicable, and depending on the project, advisory opinions are obtained from various bodies and/or a public inquiry is held prior to any decision being taken on the application; and
- appeal is always possible against a refusal to grant a building permit.

As a rule of thumb, obtaining a building permit often takes between three and six months, depending on the type of construction works, the location and the advisory opinions or public inquiries needed. If an administrative appeal is filed, the procedure is extended by an additional period of up to six months. However, specific rules may cause the permit procedure to take longer. All permits are additionally challengeable in an assigned administrative court.

The Architect's Act of 20 February 1939 renders the cooperation of an architect mandatory for most construction projects requiring a building permit. The architect must be independent from the contractor and is entrusted with the design and the supervision on the performance of the works.

Building sites involving multiple contractors will require the mandatory appointment of a safety coordinator in the distinct phases of conception and the execution of the works. The safety coordinator shall assist in implementing general risk prevention principles with regard to safety of workers, and is in charge of drafting and maintaining a health and safety plan and assembling a post-intervention file.

The safety coordinator is expected to attend meetings between the worksite professionals, and to perform regular site visits during crucial phases. For larger construction sites, the appointment of the safety coordinator has to be made by the customer. For smaller sites, the parties responsible for the design and performance of the works are responsible for the safety coordination.

Within a construction contract, the acceptance criteria, and the warranty for hidden defects, can be contractually defined and adapted by the parties. However, as a matter of mandatory law, the contractor and the architect shall warrant buildings against defects affecting their stability for a period of 10 years after their acceptance. This 10-year liability is also extended to other intellectual professionals in the construction sector whose scope of works could affect the stability of the building.

A number of mandatory insurances are applicable to the construction sector:

- Architects require a mandatory insurance against their 10-year liability and their general professional liability, regardless of the purpose of the building.
- Other intellectual professionals within the construction sector (safety coordinators, land surveyors, engineering firms and other types of consultants, etc.) require a general professional liability insurance regardless of the purpose of the building. Such general professional liability insurance need not cover the 10-year liability.
- Contractors intervening in the construction of residential buildings require an insurance against their 10-year liability, provided their scope of work pertains to the closed shell construction.
- Intellectual professionals providing services in relation to the construction of residential buildings require an insurance against their 10-year liability.

Belgian law provides in a chain liability for the social security debts and (para)fiscal debts of (sub)contractors employed by an entity in the construction sector, which is linked to a withholding obligation on behalf of the state. The existence of such debts can be verified with an online tool (https://www.checkinhoudingsplicht.be/).

According to Belgian law a direct liability rests upon any party employing a contractor for the outstanding wage debts of the contractor. A distinct direct liability applies to a party employing a contractor or subcontractor for their outstanding wage debts if they illegally employ third country citizens. Obtaining a particular written declaration from the (sub)contractor limits these direct liabilities unless the party employing the (sub)contractor ought to have been aware of the irregular situation.

Subcontractors that are not paid by their direct customer (who is himself a (sub)contractor), can directly claim the outstanding amounts from their customer's customer to the extent of the latter's outstanding obligations. Whether this applies to third or higher degree subcontractors as well is disputed in case law.

Construction contracts are generally concluded for a firm fixed price or based on man hours and material cost. A price increase in a fixed firm price contract will only be allowed on the basis of a variation that was agreed in writing or could possibly – in exceptional cases - be claimed under the hardship rule introduced applicable Belgian contract law since 2023 (see "Business Contracts"); although this has not yet been tested in case-law.

Unless specified otherwise, a construction contract for a definite term or for a specific scope of works can be terminated for convenience by the customer, provided he compensates the contractor for the costs incurred and the loss of profit.

Special legislation applies to the sale of a residential buildings that are sold before the building process has started. These contracts must meet the strict conditions set forth in the Act "Breyne" of 9 July 1979. Amongst others, the advance payment should be limited to 5% of the total price, the schedule of payments should be in accordance with the actual rate of progress, the total price needs to be predetermined, the acceptance process should be in two phases, and the future proprietor enjoys a financial guarantee.

To participate in public tenders, a contractor is required to be admitted to a list of recognized contractors. Such admission is preconditioned upon previous work experience, financial solvency of the company, and the professional integrity of the directors. Construction contracts awarded by public procurement are subject to a set of mandatory and detailed contractual conditions, set out in the Royal Decree of 14 January 2013 regarding the general performance rules for public procurement missions.

SUBSTANCE REGISTRATION

Depending on the type of materials manufactured by a business enterprise, substance registration may be mandatory.

Generally speaking, substances that could represent a danger to public health will need to be either registered or specifically traceable.

This will apply, say, to goods falling under the REACH Regulations for chemicals, or for food and drugs, which must be registered with or notified to the relevant authorities prior to their being introduced into the market (see FPS Public Health (belgium.be)).

REDUCTIONS OR RETURN ON CAPITAL

Shareholders can reduce the capital of their company whilst it is still in "going concern".

Such an operation, however, will be subject to certain rules and limitations set out in the BCCA. For instance, a reduction of a company's capital is subject to a decision by an extraordinary shareholder's meeting, and such decision can only be taken at a specific majority. A notarial deed is required to give effect to such a decision.

Creditors can, under certain conditions, also request additional securities when the capital of a company is reduced.

As mentioned above, the notion of 'capital' in the BV/SRL was abolished in the BCCA. Any type of distribution in a BV/SRL is subject to a net assets test and liquidity test on the basis of articles 5:142 and 5:143 BCCA, also referred to as the "double distribution test".

These tests entail the following:

(i) Net assets test

No distribution can take place if the net assets (*netto actief/actif net*) of the company are negative or will become negative following the distribution. If the company has equity funds that cannot be distributed in accordance with the law or the articles of association, then no distribution can take place if the net assets are lower than or, following such distribution, would become lower than such non-distributable equity funds. The net assets are calculated as follows: the balance sheet total minus the provisions, the debts and the not yet depreciated incorporation and expansion costs and R&D costs.

(ii) Liquidity test

The decision to distribute will only be effective if the company's board of directors has established that the company, according to reasonably foreseeable developments and based on the accounting and financial information available at that time, will continue to be able to pay its debts as and when they become due and payable over a period of at least 12 months as from the date of the distribution.

This differs from an NV/SA, where one is in principle only obliged to apply the net assets test, whereby no distribution may be made when the net assets, as shown in the annual accounts, fall, or would fall, as a result of such distribution, below the amount of the company's paid-up capital (or, if this amount is higher, of the called-up capital) increased by any reserves which the law or the articles of association do not allow to be distributed.

TRADE ASSOCIATIONS

Trade associations exist in various industry sectors. Generally speaking, membership is optional.

Most national chambers of commerce are represented in Belgium, and some joint chambers of commerce exist in order to facilitate business. Again, membership is not mandatory.

CESSATION OR TERMINATION OF A BUSINESS

DISSOLUTION AND LIQUIDATION OF A COMPANY

A public or private limited-liability company (*NV/SA* or *BV/SRL*) may be dissolved upon the expiration of its term, by a shareholders' vote at a special general shareholders' meeting ("voluntary winding-up") or by court order ("judicial winding-up"). No government approval or intervention is required to wind up and liquidate a company.

Once the company has been wound up, it is deemed to continue in existence during the period of its liquidation. Liquidation of a company means realization of its assets and payment of its liabilities, followed by distribution of the liquidation surplus, if any, to the shareholders.

Liquidation can last from a few months to several years, except if the fast-track liquidation procedure is selected in which case the company is dissolved and its liquidation is closed in one single notarial deed.

VOLUNTARY WINDING-UP

Voluntary winding-up at any time

A general shareholders' meeting can dissolve the company at any time on the basis of a report drawn up by the directors and a recent statement of assets and liabilities.

The resolution must be passed before a notary public in accordance with the rules for an amendment of the articles of association, i.e. a quorum of half the stated capital (NV/SA) or half of the total number of shares (BV/SRL) and a three-fourths majority of the votes cast.

The directorships terminate automatically upon the winding-up of the company.

"Voluntary" winding-up in a case of losses

If a company's net assets fall below half or one-fourth of its stated capital, the directors must call a general shareholders' meeting within two months of the date on which the loss is, or should have been, discovered. A vote at that general meeting determines whether the company is to be wound up. The resolution to wind the company up is passed according to the same rules as apply to an amendment to the articles of incorporation. If losses mean that the net assets of the company have fallen below one- fourth of the company's stated capital, it is wound up if the resolution is passed by one-fourth of the votes cast.

Appointment of liquidators

Once the special general shareholders' meeting has resolved to wind the company up, one or more liquidators are appointed to realize the company's assets and liabilities.

The liquidator, who may be a director of the company in liquidation, is appointed by the shareholders. If it is established that the liquidation will be loss-making (based on the statement of assets and liabilities that has been submitted to the general meeting of shareholders), the liquidator's appointment must be approved by the court. Under certain circumstances, the court can appoint another liquidator.

JUDICIAL WINDING-UP

The court may order dissolution of a company:

- on a petition by a shareholder or partner of a company for lawful reasons. There are lawful reasons, not only when a shareholder grossly neglects his/her obligations or is in the impossibility to perform them, but also in all other cases that make the normal continuation of the company's business impossible, such as the profound and lasting disagreement between the shareholders;
- on a petition by the district attorney or by any interested party: if the company fails to file annual accounts with the Belgian National Bank within the statutory timeframe; or
- on a petition by any interested party: if, following losses, the net assets of the NV/SA are less than the statutory minimum capital. As the notion of 'capital' was abolished by the BCCA, this possibility does not exist for the BV/SRL.

STATUS OF A COMPANY IN LIQUIDATION

A company's liquidation means that:

- it is deemed to continue in existence during the liquidation period;
- all documents drawn up by the wound-up company must indicate that the company is being liquidated;
- the company may not change its name during the liquidation period;
- the company may only move its registered office with the court's approval, which will be forthcoming if it considers the change as expedient for the liquidation;
- it can be declared bankrupt during the liquidation period and for a period of six months after termination of the liquidation;
- if a wound-up company is subsequently declared bankrupt, the

date of cessation of payments can be set as being the date of the winding-up order if there is evidence that the liquidation was intended to prejudice the creditors.

TAX TREATMENT OF A COMPANY IN LIQUIDATION

Corporate Income Tax

Under Belgian tax law, companies in liquidation continue to be liable to corporate income tax in accordance with the ordinary corporate income tax rules.

Liquidation distributions are not subject to any withholding tax provided they do not exceed the (revalued) paid-up capital. Insofar as the liquidation distributions exceed the (revalued) paid-up capital, they are treated as dividends subject to 30% Belgian withholding tax, subject to exemptions or reduced rates under domestic law or double tax treaties.

Liquidation distributions are imputed on: (i) the (revalued) paid-up capital, (ii) taxed reserves (including any capital gains realized or established in connection with distribution of the liquidated company's assets), and (iii) previously untaxed reserves. Hence, corporate income tax is only due to the extent that previously untaxed reserves are included in these distributions.

Personal income tax

For personal income tax purposes, liquidation boni, i.e. the difference between the amount distributed and the par value of the (revalued) paid-up capital, are in principle subject to 30% withholding tax. Reduced rates or exemptions can however apply subject to conditions under domestic law or double tax treaties.

COSTS

Fees are to be paid for the liquidators. It is advisable to agree these fees before their appointment.

CLOSURE OF THE LIQUIDATION

Before closing the liquidation, the liquidators of a loss-making liquidation must submit the distribution plan to the court for approval.

In the case of a voluntary winding-up, the general shareholders' meeting votes by a simple majority to close the liquidation. In the case of a judicial liquidation, the court orders closure of the liquidation. Notice of closure of the liquidation is published in the Official Gazette.

Once the liquidation is closed, the company is deemed no longer to exist. Claims against the liquidators can, however, be filed for up to five years following publication of the closure notice. Within this period, creditors can lodge claims under the ordinary law based on the debtor having acted in a manner prejudicial to their interests provided their claims have not been paid out of the liquidation proceeds and it is evidenced that the shareholders resolved to close the liquidation in the knowledge that creditors would suffer loss as a result.

Up to six months after closure of the liquidation, the company can be declared bankrupt.

INSOLVENCY PROCEEDINGS

GENERAL

Purpose

In Belgium, the following types of insolvency proceedings can be distinguished:

- out of court amicable (settlement) agreement;
- judicial reorganization proceedings;
- the transfer of (part of) the business activities and related assets under judicial authority;
- bankruptcy proceedings; and
- the (deficit) dissolution and liquidation (winding up) of companies.

While the (deficit) dissolution and liquidation proceedings are governed by the Belgian Code on Companies and Associations (BCCA), the other insolvency proceedings are governed by Book XX of the Belgian Code of Economic Law (BCEL).

Scope

The insolvency proceedings laid down in Book XX of the BCEL apply to "undertakings" (*entreprise / onderneming*) within the meaning of Article I.1, 1° of the BCEL, *i.e.* any individual performing a professional activity on a self-employed basis, any legal entity and any other organization without legal personality. However, the BCEL provides for certain exceptions to which the insolvency proceedings of the BCEL do not apply (such as public legal entities that do not offer goods or services on a market, credit institutions or insurance undertakings).

The (deficit) dissolution and liquidation procedure applies to certain types of undertakings that have legal personality (e.g. BV/SRL and NV/SA).

It should be added that an individual who does not qualify as an undertaking within the meaning of Article I.1, 1° of the BCEL can petition the opening of collective debt proceedings introduced by the Act of July 5, 1998.

Jurisdiction

The insolvency proceedings governed by the BCEL and the (deficit) dissolution and liquidation proceedings governed by the BCCA are submitted to the Enterprise Court.

Detection of traders in financial distress

The chambers for undertakings in financial distress, established within the Enterprise Court, collect and examine economic data evidencing that undertakings established within their jurisdiction are experiencing financial difficulties (repeated summons for payment by creditors, default judgments against the debtor, annual reports, judgments declaring a commercial lease dissolved on grounds for which the debtor is liable, etc.). If appropriate, an investigating judge can summon the debtor to a hearing in chambers in order to gain information regarding its financial situation.

The chamber may take a decision causing the opening of winding-up proceedings or of bankruptcy proceedings.

Liability in relation to insolvency proceedings

In the context of insolvency proceedings, directors can be held liable for wrongful acts based on the general principles of tort law (articles 1382 and 1383 of the old Civil Code), failure in the management of the company (article 2:56 of the BCCA), breaches

of the articles of association of the company or the provisions of the BCCA (article 2:56, § 3 BCCA) and general criminal law.

In addition, directors may be held liable for late or absence of filing for bankruptcy, conducting a loss-making business (wrongful trading), manifest gross wrongdoing that has contributed to the situation of bankruptcy, and unpaid social security or tax claims.

If a company goes into bankruptcy and its liabilities exceed its assets, the court can hold all or any of the directors and *de facto* directors personally or jointly liable for all the unpaid social security debts of the company if it is evidenced that a given (*de facto)* director "manifestly committed a serious mistake contributing to the bankruptcy" or the (*de facto*) director has in the previous five years been involved in two or more bankruptcies, liquidations or similar operations involving unpaid debts due to the National Social Security Office (*Rijksdienst voor Sociale Zekerheid/Office National de Sécurité Sociale*).

If loss-making business is continued without a petition for bankruptcy or the opening of a judicial reorganization, the directors may be held personally responsible.

EMPLOYMENT LAW ISSUES AND INSOLVENCY

General

In addition to their general obligation to regularly inform employee representatives of the financial and economic situation of the enterprise, employers should inform the works council of the company's decision to petition for a judicial reorganization or bankruptcy and should inform and consult with the works council if an important restructuring is envisaged (e.g. merger, acquisition, closure, etc.). If there is no works council, the prevention and protection at work committee or the trade union delegation must be informed and consulted. If there is no employee representation at all, the employees should be informed and consulted.

During a judicial reorganization

During a judicial reorganization, the employer must comply with certain information and consultation obligations under the BCEL. These vary depending on the purpose of the judicial reorganization (see below).

During bankruptcy proceedings

The BCEL provides special rules applicable to bankruptcy proceedings such as:

- the fact that bankruptcy has been filed for and the data showing that the conditions for bankruptcy are fulfilled must be notified to the employees (in principle via the works council);

- employment contracts are not automatically terminated in the case of bankruptcy. The trustee will decide whether or not to terminate the employment contracts. The courts allow that, if the trustee decides to dismiss protected employees, he does not need to follow the relevant procedures; and

- if a buyer wishes to acquire the bankrupt assets within six months of the bankruptcy, special rules apply which do not require him to take over all the employees and all the individual employment conditions (except for seniority). The employees who are not taken over will be laid off. If their claims cannot be paid out of the proceeds of sale, they can in some cases qualify for benefit from the Employees' Compensation Fund.

Collective dismissals and closures of enterprises or division of enterprises

Belgian employment law lays down special rules applying to "collective dismissals" and "closures of enterprises or divisions of enterprises". They include special prior information and consultation obligations incumbent on the employer. Non-compliance with these mandatory rules may result inter alia in administrative fines, criminal prosecutions and liability to repay state aids. If closure of the enterprise entails a collective dismissal, the information and consultation obligations applying to both a collective dismissal and closure of an enterprise have to be applied cumulatively.

If an employer employing 20 employees or more envisages a collective dismissal, an "employment unit" must be set up. Its main purpose is to offer "outplacement" to laid-off workers.

In practice, in the context of a collective dismissal and/ or a closure of an enterprise, a redundancy scheme is negotiated, in which additional benefits are granted to the dismissed employees.

The company can, under certain conditions, apply to the Minister of Labor for recognition as an enterprise in difficulties or in restructuring so that it can enjoy special derogations from the general rules applicable to conventional early retirement pensions.

REORGANIZATION

The BCEL contains various instruments intended to allow enterprises in financial distress to continue all or part of their business as a going concern.

Out of court amicable (settlement) agreement

The undertaking may negotiate an out of court amicable settlement agreement with one or more creditors without intervention by the court in order to improve the financial situation or reorganize the business. The terms of this agreement are determined by the undertakings that are a party thereto and it is not binding on third parties. The agreement and the resulting transactions are, however, 'bankruptcy-proof' to some extent.

Judicial reorganization proceedings

A company in financial distress may request the Enterprise Court to open judicial reorganization proceedings. This request, if upheld, will grant the company in financial distress judicial protection against its creditors by imposing a stay on enforcement proceedings and limiting creditors' rights.

In principle, the debtor 'remains in possession' during the proceedings, *i.e.* he continues to conduct and administer the debtor and its business activity, and he may take all decisions in that respect (including the disposal of assets).

Opening of judicial reorganization proceedings

Conditions

The debtor will be granted such protection if its continuity is or may become threatened. A debtor is also allowed to file for judicial reorganisation proceedings even when he is already in a situation of bankruptcy.

The effects of the filing of the petition

As soon as the petition has been lodged and until the decision by the court:

- the debtor's movable and immovable assets cannot be sold through enforcement proceedings (there are a few exceptions to this principle);
- the debtor cannot be declared bankrupt; and
- the debtor cannot be judicially dissolved.

Protection against creditors

The main consequences of commencing judicial reorganization proceedings can be summarized as follows:

- for a certain period, the debtor is protected against (most of) his creditors through a stay on individual enforcement actions (*opschorting/sursis*). This principle relates only to debts dating from before the opening of the judicial reorganization proceedings;
- no bankruptcy or judicial winding-up can be ordered;
- existing agreements are not automatically terminated;
- penalty clauses stipulated in existing agreements are of no effect during the suspension period;
- the debtor can, under certain conditions, decide to suspend the performance of an existing agreement; and
- the debtor can pay certain creditors voluntarily.

Reorganization measures available in judicial reorganization proceedings

The debtor may choose between the following reorganization measures:

(i) entering into an amicable settlement agreement with a limited number of creditors, under the courts' supervision, which will be submitted to the court for ratification. The agreement can include payment deferrals, an instalment plan, voluntary haircuts, waivers (principal, interest, costs), etc. If the agreement is ratified by the court, the ratification decision is published.

(ii) submitting a collective reorganization plan to all creditors, which describes how the company intends to pay its existing debts (*i.e.* claims that have arisen prior to the opening of the judicial reorganization proceedings) and sets out the reorganization and restructuring measures it intends to implement in order to achieve a turn-around and to preserve the continuity of its business activity. These measures can include payment deferrals and/ or instalment plans, haircuts on principal amounts, for up to 80% of the principal amount, etc. The plan will be binding on all creditors (including, in principle, tax and social security creditors) upon approval by a majority of them and subject to homologation by the court.

The undertaking may also opt for the opening of private or silent reorganisation proceedings, which basically means that the decisions taken by the court will not be published.

Private (or silent) judicial reorganization proceedings allow a debtor to request the President of the Enterprise Court to appoint a reorganization practitioner who will be responsible to "silently" negotiate an amicable agreement with certain creditors, or to prepare a collective reorganization plan. At the request of the reorganization practitioner, the court may grant temporary relief (payment terms) and suspend related enforcement actions by the relevant individual creditors. The

decisions of the court appointing the reorganization practitioner or granting relief measures are not published.

When the debtor and the reorganization practitioner have reached one or more amicable agreement(s) and/or agreed on a reorganization plan, they may petition the competent Enterprise Court to have it homologated

TRANSFER UNDER JUDICIAL AUTHORITY

A debtor may request the Enterprise Court to order the transfer of all or part of its business activities and related assets with a view to ensuring the efficient liquidation of its assets. The judgment ordering the transfer appoints a liquidation practitioner to organize and carry out the transfer in the name and on behalf of the debtor.

The same transfer may, under certain conditions, be ordered upon request of the public prosecutor, a creditor or any person with an interest in acquiring all or part of the debtor's business.

BANKRUPTCY

Conditions

A company can be declared bankrupt if:

- it has persistently ceased making payments, *i.e.* the company can no longer pay its debts when they fall due; and
- its credit is exhausted, *i.e.* the creditors' confidence is affected and the company is no longer able to raise credit anymore.

Balance sheet insolvency is insufficient as long as the company can pay its debts as they fall due. A company in liquidation whose debts exceed its assets is only in a state of bankruptcy if the creditors lose confidence in the liquidators (see below). If the bankruptcy conditions are fulfilled, the company can still choose to request for the opening of judicial reorganization proceedings or dissolution and winding up proceedings.

Procedural elements

Silent preparation of bankruptcy proceedings

An undertaking that is in a state of bankruptcy may request the court to open bankruptcy proceedings, and may request that, prior to the declaration of bankruptcy, the transfer of all or part of its assets and activities be prepared in a confidential way under the supervision of an envisaged bankruptcy trustee.

Initiating bankruptcy proceedings

Bankruptcy proceedings can be initiated either by the undertaking itself or by the public prosecutor, a creditor, or certain other insolvency practitioners.

The company must file for bankruptcy within one month as from the day on which the bankruptcy conditions are fulfilled.

Directors failing to file for bankruptcy in due time can be held personally liable for having conducted a loss-making business. Also, they can be subject to criminal prosecution.

Consequences of the bankruptcy judgment

Appointment of a bankruptcy trustee

The bankruptcy judgment divests the company of its capacity to administer its estate. One or more bankruptcy trustees (*curator/curateur*) are appointed to liquidate the company's estate. The bankruptcy trustee operates under the supervision of a judge- commissioner, appointed by the court.

The bankruptcy trustee must handle all transactions so as to preserve the company's rights against its debtors. The trustee draws up an inventory of all the company's assets and, if necessary, a balance sheet. He may settle all disputes with creditors. The creditors (except secured) will no longer be allowed to initiate individual enforcement procedures on the company's estate, but will be paid out of the enforcement proceeds of the estate by the bankruptcy trustee, after payment of the costs and expenses of the proceedings and administration.

Closure of the bankruptcy entails automatic dissolution of the company and the immediate closure of its liquidation.

Creditor's claims – classes of creditors

From the date of the bankruptcy judgment, the claims of the individual creditors are suspended and all debts of the bankrupt become immediately payable.

In order to take part in the distribution of the liquidation proceeds of the assets, creditors have to file a statement of claim within 30 days following the bankruptcy judgment and ultimately one year thereafter. Secured creditors (holding a pledge, mortgage, retention right, reservation of title clause) or preferential creditors have a higher ranking and shall be paid out before any payments are made to unsecured and subordinated creditors.

Voidable transactions – suspect period All acts performed by the undertaking with respect to its estate after the date of the bankruptcy are void.

Moreover, the court may install a so-called 'suspect period' (or 'claw back period') if there are serious and objective

circumstances that unambiguously indicate that, in reality, the bankruptcy conditions were fulfilled at an earlier moment in time before the bankruptcy judgment. The suspect period may extend to six months before the bankruptcy judgment. Certain acts, agreements or transactions performed or entered into by the undertaking during the suspect period can be declared void vis-à-vis the estate by the court. In a nutshell, the following acts, agreements or transactions are 'voidable' when accomplished during the suspect period:

- undervalue transactions;
- granting of new security rights (collateral) for old (existing) debts;
- payments of debts that were not yet due as well as payments other than in cash , bills of exchange, promissory notes or checks;
- all other payments, acts or transactions if the counterparty had knowledge of the cessation of payments and if the transaction was prejudicial to the creditors; and
- any transaction entered into or payment made with fraudulent intent will be set aside irrespective of when it occurred (i.e. within or outside the suspect period).

If a payment/transaction is declared void, the proceeds must be returned to the estate.

DEFICIT DISSOLUTION AND LIQUIDATION

The general meeting of the shareholders can resolve to dissolve the company (voluntary dissolution and liquidation or winding-up of the company). The BCCA also provides that a company can opt for a dissolution even though its debts exceed its assets provided the following conditions are met:

- the decision to dissolve the company is not just motivated by avoiding the bankruptcy related liability regimes;
- the appointment of the liquidator is homologated by the court;
- the principle of equality amongst the creditors has been duly applied and no legal constructions have been used that impair the creditors' interests;
- the dissolution and liquidation were duly and properly conducted to the satisfaction of most of the creditors who were informed; and
- the creditors maintain their confidence in the liquidation proceedings and the liquidator.

If these conditions are not or are no longer fulfilled, either the liquidator must file for bankruptcy or a creditor/public prosecutor can initiate bankruptcy proceedings.

EMPLOYER/EMPLOYEE RELATIONS

GENERAL REMARKS ON LABOR REGULATIONS

The body of legislation governing employment and labor relations is vast. This legislation has been enacted at different levels: first, at national level through statutes, royal decrees or ministerial orders; second, at regional level by regional orders — mainly of a binding nature; third, through self-regulation by collective bargaining agreements between trade unions and employer organizations, whether at national level within the National Labor Council or at sector level within joint committees or at corporate level. Typically, these agreements deal with subjects such as salaries and wages, working conditions, safety at work and welfare. Work rules and individual contracts contain additional agreed conditions. Custom and tradition play a subsidiary role.

MAIN SETS OF RULES GOVERNING EMPLOYER/EMPLOYEE RELATIONS

Labor law and regulations only deal with employment in a relationship characterized by the exercise of authority, in which one party (the employee) works under the authority of the other (the employer) in return for pay. The rules and statutes which govern the relationship between employers and employees may be split into three main categories:

- Employment Contracts Act of July 3, 1978: this contains most of the rules relating to individual employment contracts between employers and each of their employees. Mandatory rules are to be observed by the parties, but otherwise they are generally free to determine the terms of their employment contract.

- Separate laws address a wide range of matters such as: working hours, vacations, pay, working conditions and retirement. These rules constitute a minimum level of protection granted to each employee. It is to be noted that

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collective bargaining agreements may set a higher level of

at the level above and the agreements are binding. Collective bargaining agreements may contain provisions regarding the pay scales, additional premiums and benefits, working time, etc.

LANGUAGE

The language (French, Dutch or German) used in employment relations depends, in principle, on the location of the workplace, i.e. the place of business of the relevant operating unit of the undertaking. If it is in the Flemish Region, labor-related communication and labor documents, employment contracts, pay slips, etc. must be written in Dutch. If it is in the Walloon Region, these documents must be in French, and if the location is in the German-speaking Region (in the eastern part of Wallonia, adjacent to the German border), the documents must be in German. For the Brussels Region, they must be in either French or Dutch depending on the language usually used by the employee. One must bear in mind, however, that the European Court of Justice handed a landmark decision, on 16 April 2013, according to which, in the particular context of a cross-border employment contract, the principle of freedom of movement for employees requires the parties to be able to draft their contract in a language other than the official language of the state of the workplace (i.e., Dutch, French, or German in the case at hand).

On February 26, 2014, the Flemish Decree on the use of languages in social relations between the employers and employees has, to a certain extent, been amended accordingly. The cross-border nature of the employment contract can be inferred, for example, from the following elements:

- although the employer is a company based in Belgium, it is part of an international group; or

- the employee has dual nationality.

WORK RULES

Work rules are a set of internal policies, a staff handbook. They are mandatory for all companies employing employees in Belgium. Their terms are by and large dictated by law. They contain a number of compulsory and optional statements and are binding on the employer and the employees. The language of the work rules depends on the Region where the place of business of the relevant operating unit of the undertaking is located. A special procedure must be followed in order to adopt and amend work rules.

OBLIGATION TO TRAIN EMPLOYEES

Employers with more than 20 employees must draw up a training plan for their employees by March 31 of each year. The draft training plan must be submitted to the works council, or in its absence to the trade union delegation. In the absence of a works council and a trade

union delegation, the training plan must be submitted to the employees.

The training plan must include training for employees belonging to high-risk groups such as those aged at least 50 and those with disabilities. In addition, the plan must include training to address the lack of candidates for bottleneck occupations in the sector to which the employer belongs.

Furthermore, every employee has an individual training right. In a company with at least 20 employees, the number of training days will be 5 per year and per full-time employee (as from 2024). If the company has between 10 and 20 employees, this entitlement will be equal to one day per full-time employee and per year.

NATIONALS OF THE COUNTRY

There is no obligation for investors to hire Belgian employees.

To be able to work in Belgium, foreign employees (being employees who are not nationals of the European Economic Area[9] or Switzerland) must have a permission to work. In most cases, a so-called single permit is needed for the employment of foreign employees for a period of work of more than 90 days. The single permit is a residence permit linked to a permission to work. The residence permit will state whether the person has the permission to work.

A self-employed person who is not a national of the EAA or Switzerland, requires holding a valid professional card instead of a single permit.

For more information on this topic, please refer to section XVI, A – "labor permits".

WHISTLEBLOWING

The Act of November 28, 2022 has implemented the EU Whistleblower Directive (2019/1937) into Belgian law for the private sector (the Whistle-blower Act).

Based on the Whistleblower Act, whistleblowers in the private sector who reported information that they became aware of in a work-related context (or outside of a work-related context if the report relates to legislation on financial services, products and markets or anti-money laundering and terrorism financing) are protected against retaliation provided that (i) they had reasonable grounds to believe that the information they reported on was correct, (ii) they made a report with respect to one of the domains that falls in scope of the Whistleblower Act, and (iii) they reported the information through one of the available reporting channels, i.e. an internal reporting channel, an external reporting channel or public disclosure.

MINIMUM WAGE

According to the Pay Protection Act[10], "pay" covers the following:

- wages and salaries;
- tips and commissions resulting from employment or custom; and
- fringe benefits paid by an employer in cash.

The concept of pay varies depending upon what part of the legislation is applicable. This means that it does not necessarily have exactly the same meaning in the Employment Contracts Act, the social security regulations, tax law, etc.

The Supreme Court has confirmed on several occasions with respect to the Employment Contracts Act that pay is the counterpart for the work performed by the employee, including any benefit in kind received by him by virtue or as a result of the employment relationship.

Wages and salaries will only be adjusted in line with the consumer prices index if such adjustment has been agreed in a collective bargaining agreement signed within the sector relevant for the undertaking, or the individual contract.

Whilst Belgian law does not provide for any statutory maximum wage, minimum wages are regulated in detail and are often agreed in collective bargaining agreements at sector level. These minimum wages generally vary according to seniority.

Pay-adjustment mechanisms are also provided by most collective bargaining agreements dealing with the minimum wage: these guarantee pay-earners either full income or adequate compensation in cases of sickness and disability, industrial accidents, occupational diseases or inability to work caused by a technical breakdown.

SOCIAL SECURITY

In addition to their pay, an employer has to pay social security contributions for his employees.

Unless otherwise stated in an international agreement (whether multilateral – such as European Regulation 883/2004 – or bilateral)[11], salaried employees working in Belgium for an employer that is established in Belgium or has a place of business (branch) in Belgium will in principle be subject to the Belgian social security scheme[12]. The social security system for wage and pay-earners covers sickness and disability benefits, unemployment benefit, old-age and survivors' benefits, family allowances and annual vacations.

The contributions of both employer and employee are based on pay, at a fixed rate. They are paid by the employer to the National Social Security Office ("ONSS- RSZ"), which administers the program under supervision of the Ministry of Social Security.

For 2024, compulsory social security contributions are 13.07% of gross pay with respect to the portion owed by white-collar employees and 13.07% of gross pay, increased by 8%, with respect to the portion owed by blue-collar employee (not taking into consideration any applicable reduction programs). With regard to the portion owed by the employer for white- collar and blue-collar employees, the rate is 24.92%. (depending on the number of employees on the payroll, special contributions are to be paid on top of ordinary contributions or, by contrast, any reductions in

[9] The EAA includes EU countries and Iceland, Liechtenstein and Norway.

[10] Pay Protection Act of April 12, 1965.

[11] Belgium has bilateral social security treaties with Albania, Algeria, Argentina, Australia, Bosnia-Herzegovina, Brazil, Canada (as well as a separate treaty with Quebec), Chile, DR Congo, the Philippines, India, Israel, Japan, Kosovo, FYR Macedonia, Morocco, Moldova, Montenegro, San Marino, Serbia, Tunisia, Turkey, Uruguay, the United States and South Korea.

[12] Employees temporarily posted to Belgium will, under certain conditions, continue to be subject to the social security legislation of the country where they usually work. See the Social Security Act of June 27, 1969, and the Royal Decree of November 28, 1969.

social security contributions can apply).

WORKING HOURS

As a ruling principle, average working hours may not exceed 38 a week. However, where an appropriate provision has been stipulated at sector level by way of a collective bargaining agreement before January 1, 2003, actual working hours may remain at 40 a week provided that extra days off, so-called working time reduction days, are granted in order to remain within the average weekly limit of 38 hours on a yearly or quarterly basis.

There are several statutory exceptions to the 38-hour-week rule, e.g. for shiftwork, work that cannot be interrupted, risk of accident, emergency situations, etc.

In addition, in case of application of the system of the so-called "small flexibility", the weekly working-hours limit applicable to the undertaking may be increased to a cap of 45 hours, provided the yearly average remains at 38 hours. The system of small flexibility allows employees to perform alternating peak and off-peak schedules according to the fluctuation of the volume of work in the company.

In the case of work that cannot be interrupted, the limit may even be set at 50 hours a week.

Other specific, and relatively complex, rules apply to overtime work, night work and work on Sundays and public holidays.

It has to be mentioned that the majority of the above restrictions do not apply to domestic servants, sales representatives or staff entrusted with supervision and responsibility functions (e.g. managers, assistant managers, work-site supervisors, etc.).

VACATION AND SICK DAYS

Holidays

Public holidays: the legislation on public holidays[13] defines public holidays as New Year's Day; Easter Monday; May Day (May 1); Ascension Day; Whit Monday; National Day (July 21); Assumption Day (August 15); All Saints' Day (November 1); Armistice Day (November 11); and Christmas Day.

Normal pay is due on each public holiday. If a public holiday falls on a Sunday or another non-working day, employees are entitled to a replacement day.

Annual vacation: a distinction has to be made between blue-collar and white-collar employees in this regard.

Blue-collar employees: the length of the annual vacation is based on the number of days for which the employee has been employed and generally results in four weeks' paid vacation. The vacation allowance amounts to 15.38% of the gross wage, rounded up to 108%. It is paid to the employee by a vacation fund to which the employer must contribute (not directly by the employer).

White-collar employees: annual vacations are fixed by law on the basis of a minimum of two days for each month of actual work or work interruption counting as actual work (sickness, pregnancy, etc.) during the previous calendar year, for a six-day-a-week schedule. With a five-day-a-week schedule, however, the number of vacation days is reduced to 20 a year. The vacation allowance is paid directly by the employer to the employee.

Sick days

If an employee is unable to perform the tasks contractually agreed due to illness or injury, performance of the contract is suspended by law during the time the employee is unable to work.[14]

During the first month of sick leave, the employee is entitled to a guaranteed pay payable by the employer. The employee has the following information obligation towards his employer:

- He must immediately notify his employer of his incapacity for work, except in cases of force majeure. This notification must allow the employer to have the incapacity for work checked and to adjust the working arrangements during the employee's absence.
- He must submit a medical certificate to the employer if a collective bargaining agreement or the work rules require it, or at the employer's request.

The certificate should establish the incapacity for work and mention its probable duration and whether or not the employee is allowed to direct himself (herself) to another place for the purpose of control.

However, there is an exception: three times per calendar year, there is no obligation to submit a medical certificate for the first day of incapacity for work unless derogated from at sector or company level.

The employer has the possibility to have a verification of the incapacity for work carried out by a control doctor of its choice who meets well-defined legal requirements. The employee is obliged to undergo this verification.

HIRING AND FIRING REQUIREMENTS

Minimum number of persons

There is no obligation for an employer to hire a minimum number of persons. However, depending on the number of employees in the undertaking, the employer may be subject to quota obligations in terms of "young" employees.

Minimum number of nationals

There is no rule concerning the minimum number of nationals to be hired. The employer is free to employ as many nationals or foreign employees as he wishes.

Positions of nationals

There is no obligation for an employer to reserve certain positions for nationals.

Rules regarding hiring/dismissing personnel

Belgium has regulations concerning recruitment, interviewing and selection procedures. The recruitment and selection of employees is regulated by collective bargaining agreement no. 38, which lays down mandatory obligations concerning how employees are to be recruited and selected.[15] A policy of non-discrimination must be followed. In addition to these mandatory obligations, collective bargaining agreement no. 38 sets certain rules of conduct to be observed in the selection and recruitment procedure. However, they are only binding on signatories to the national collective agreement (i.e. the National Employer's Association and the trade unions represented on the National Labor Council), which have committed to exercise their authority to ensure their members follow these recommendations. There are no penalties for failure to do so.

Employment contract

While the parties are generally free to fix the terms of their employment contracts, they are in fact limited by mandatory provisions and requirements of public policy. The Employment Contracts Act of July 3, 1978, governs the majority of employment contracts and covers the most important matters addressed in such contracts (i.e. formation, duration, content, suspensions and termination).

An agreement between an employer and his employee may be written, oral or even implied. If an employment contract is not in writing, it is always deemed to have been entered into for an unlimited period. In order to avoid evidential problems if a conflict arises, it is always preferable to have the agreement in writing. In addition, the Employment Contracts Act of July 3, 1978, provides that some employment contracts must be set down in writing before employment starts, namely fixed-term employment contracts, contracts for a specified task, replacement contracts, student contracts and part-time contracts. All mandatory written employment contracts must be drawn up in duplicate and signed no

[13] Public Holidays Act of January 4, 1974 and Royal Decree of June 19, 2012.
[14] Section 31(1), Employment Contracts Act of July 3, 1978.
[15] Collective bargaining agreement no. 38 of December 6, 1983, on the recruitment and selection of employees.

later than the commencement of employment.

Labor regulations apply to a variety of pay earners. Special standards and rules apply to each category of pay earner (blue-collar employees, white-collar employees, sales representatives, domestic servants and students).

The UES Act[16] which came into effect on January 1st, 2014, was the first step towards the harmonization of the employment status of blue- and white-collar employees – a distinction that still continues to apply in Belgium.

Open-ended/fixed-term employment contracts: if no time limit is set in the contract, it is an "open-ended" contract, which means that either party may terminate it at any time, subject, however, to specific termination rules applicable under Belgian law. Conversely, a fixed-term contract is one in which the parties lay down the term of the agreement beforehand. In principle, the contract automatically ends on the expiry date, and the parties may not unilaterally terminate the contract before the expiry date. The possibility to conclude successive fixed term contracts is subject to specific rules laid down in the Employment Contracts Act of July, 3 1978.

Employment contract for a specific task: in this case, the agreement in principle ends at the moment when the work is completed. The object and extent of the work to be carried out by the employee must be defined with precision so that the parties can estimate the expected length of the contract.

Part-time contract: a part-time employee is an employee whose normal working time is less than that of a full-time employee. Such contracts must fulfill certain conditions: they must be set down separately in writing for each employee no later than the time he commences work and must include the working schedule.[17]

Specific contract clauses

Trial clause

The UES Act abolished the trial period for contracts taking effect on or after January 1st, 2014. As from that date, it is therefore no longer possible to include a trial period in the employment contract.

By way of exception, a trial period still applies to student work, temporary work and temporary agency work, but the existing rules have been modified. The first three days of such contracts are considered to be a trial period during which both parties can terminate the employment contract without notice period or indemnity in lieu of notice. This trial period applies automatically and therefore does not need to be inserted explicitly in the employment contract.

Non-competition clause

The employment contract may contain a non-competition clause whereby the employee is prohibited, when he leaves his employer, from carrying out similar activities, either on his own behalf or by entering into service of a competitor.

Such clause is permissible under very strict conditions laid down by Belgian law:

1. the clause can only apply to an employee whose annual gross pay exceeds a threshold fixed by law (EUR 83.939 in 2024, indexed annually by Royal Decree)[18];
2. the clause is not enforceable if the contract is terminated during the first six months or is terminated by the employee for serious cause or by the employer without serious cause;
3. the clause must be agreed in writing, in the appropriate language;
4. reference is made only to similar activities;
5. the clause has a limited geographical scope and is limited to places where competition is *de facto* possible (not extending beyond Belgium);
6. the clause has a maximum duration of 12 months after termination of the contract; and
7. the clause must provide for upfront payment of compensation to the employee corresponding to at least half the gross pay the employee would have otherwise been entitled to over the duration of the prohibition.

For white-collar employees, and provided that the employer carries out its activities on an international scale or has its own research and development center, there is a possibility to enter into a derogating non-competition clause (e.g. encompassing a larger territory than Belgium and/or extending its applicability beyond 12 months).

Non-competition clauses for sales representatives are subject to special rules (e.g. no indemnity being due by the employer upfront)

Non-solicitation clause

In addition, Belgian employment agreements sometimes contain a non-solicitation clause. The non-solicitation clause is not regulated by the Belgian Employment Contracts Act. However, it must be ensured that this is not an abusive clause. This is the case if the benefit to the employer is considered to be disproportionate to the loss of opportunity for the employee. Therefore limitation in time for this clause is for example necessary.

Suspension of the employment contract

An employment contract can be suspended on a number of grounds, such as: annual vacations, maternity leave, paternity leave, sick leave, temporary *force majeure*, etc. Some grounds are briefly mentioned below:

1. Certain *family events* (e.g. weddings and funerals) or civic duties (e.g. jury service) can allow an employee to be absent from work with full pay for one or more days.

2. *Paid educational leave* allows employees to follow additional training.

3. Temporary *full-time* or *part-time leave for personal reasons* may be requested by an employee, pursuant to the national collective bargaining agreements that have successively been adopted to that effect. Indeed, the system was radically modified by means of National CBA No. 103, which replaced CBA No. 77bis with respect to employees who request temporary full or part-time leave as from September 1, 2012, the so-called time credit regime.[19]

[16] Unified Employment Status Act of December 26, 2013, concerning the introduction of a single employment status for blue-and white collar employees with regard to the notice periods and the first day of sick leave and related measures (so-called Unified Employment Status Act or UES Act).

[17] Act of March 5, 2002, establishing the principle of non-discrimination for part-time employees.

[18] For employees whose annual gross pay lies between €41,969 and €83,939 (in 2024), such clauses are only valid for positions set down in a collective bargaining agreement.

[19] Royal Decree of December 28, 2011, published in the Belgian State Gazette of December 30, 2011 and collective bargaining agreement no. 103.

Under this time credit regime, an employee may request:

- temporary full-time leave, part-time leave, or reduction in performance of up to 1/5, for no specific reason: a break of a duration corresponding to a maximum of twelve months' full-time leave is allowed; an extension may be granted at sectoral level;

- temporary full-time leave, part-time leave, or reduction in performance of up to 1/5, for specific reasons:

  - a maximum break of 36 months is allowed for training.

  - a maximum break of 51 months is allowed for the following reasons : (i) to provide palliative care, (ii) to provide care to a member of the household or the family who is seriously ill, (iii) to provide care to the employee's disabled child until the child reaches the age of 21 and (iv) to assist or provide care to the employee's child who is seriously ill or to any child who is seriously ill and is part of the household.

  - a maximum break of 48 months is allowed for the following reasons: (i) to take care of the employee's child until the child reaches the age of 5 years old (temporary full-time leave) and (ii) to take care of the employee's child until child reaches the age of 8 years old (temporary part-time leave or reduction in performance of up to 1/5).

4. *Parental leave* is governed by EC Directive 96/34 and EU Directive 2019/1158 and by Belgium's laws implementing the rules.

5. In the case of a *lack of work due to economic circumstances, technical interruptions to plant operations or bad weather conditions*: a blue-collar employee's contract can be suspended for several days or weeks. Certain conditions must be met, and the employee is entitled to compensation. The employer may suspend the contracts of white-collar employees under certain conditions where the company is recognized as an *undertaking facing financial difficulties*.

Individual termination of the employment contract[20]

The UES Act has considerably amended the rules that were prevailing until December 31, 2013.

As of January 1st, 2014, the same dismissal rules apply to all (white and blue-collar) employees' contracts which came into effect on or after January 1, 2014. In order to safeguard the rights acquired by employees entered into service before January 1, 2014, a transitory scheme has been adopted for employees with an employment contract that took effect before January 1st, 2014 and who are dismissed after December 31, 2013.

TERMINATION BY NOTICE

Except in the case of serious cause or for certain protected employees, an employer who terminates an employment contract must either give notice to the employee in question or pay compensation in lieu of notice. The compensation is calculated on the basis of the pay the employee would have earned during the notice period, including statutory and contractual or fringe benefits.

To be valid, notice must be given in writing and specify the starting date and the length of the notice period. The length of the notice period is expressed in weeks. If the contract is terminated by the employer, notice must be served by registered mail or by a bailiff. Notices served by Wednesday of a given week at the latest, will take effect from the Monday of the following week (in weeks without public holidays).

No termination formalities need to be complied with if a party terminates an employment contract with immediate effect and pays compensation in lieu of notice. The compensation in lieu of notice will correspond to the pay the employee would have earned during the notice period, including statutory and contractual or fringe benefits. As the length of the notice period is expressed in weeks; there is a conversion rule for the calculation of the weekly pay for employees who are paid on a monthly basis. This conversion rule is as follows:

- the gross monthly pay is multiplied by three to cover a time period of a quarter (gross quarterly pay); and

- the gross quarterly pay is then divided by 13 (number of weeks in a quarter).

- *Contracts for an Indefinite Term effective on or after January 1st, 2014*

The notice periods provided by the UES Act for employment contracts which took effect on or after January 1st, 2014 apply to both blue and white-collar employees and are solely based on the length of service of the employee at the moment the notice period starts. The amount of the pay or the age of the employee is not of any importance for determining the applicable notice period. The notice periods are fixed.

The employer gives notice

The following table gives an overview of the notice periods which now apply in the event the employer gives notice:

Length of service	Notice period
< 3 months	1 week
3 - 4 months	3 weeks
4 - 5 months	4 weeks
5 - 6 months	5 weeks
6 - 9 months	6 weeks
9 - 12 months	7 weeks
12 - 15 months	8 weeks
15 - 18 months	9 weeks
18 - 21 months	10 weeks
21 - 24 months	11 weeks
2 - 3 years	12 weeks
3 - 4 years	13 weeks
4 - 5 years	15 weeks
5 - 6 years (+ 3	18 weeks

20 Collective dismissals and/or closing down of an undertaking or part of an undertaking, are strictly regulated under Belgian law. We will limit the scope of this section, as our contribution is limited to individual termination of an employment contract, and will not further elaborate the matter.

weeks a year)	
6 - 7 years	21 weeks
7 - 8 years	24 weeks
8 - 9 years	27 weeks
9 - 10 years	30 weeks[21]
10 - 11 years	33 weeks
11 - 12 years	36 weeks
12 - 13 years	39 weeks
13 - 14 years	42 weeks
14 - 15 years	45 weeks
15 - 16 years	48 weeks
16 - 17 years	51 weeks
17 - 18 years	54 weeks
18 - 19 years	57 weeks
19 - 20 years	60 weeks
20 - 21 years	62 weeks
21 - 22 years (+ 1 week a year)	63 weeks
22 - 23 years	64 weeks
...	...

The employee gives notice

The notice periods which apply in the event the employee gives notice are more or less equal to half of the notice periods applicable in the event of notice by the employer, limited however to 13 weeks.

Length of service	Notice period
< 3 months	1 week
3 - 6 months	2 weeks
6 - 12 months	3 weeks
12 - 18 months	4 weeks
18 - 24 months	5 weeks
2 - 4 years	6 weeks
6 - 7 years	10 weeks
7 - 8 years	12 weeks
8 years – and more	13 weeks

Counter-notice given by the employee

Special notice periods apply in the event a counter-notice is given by the employee whose employment contract was previously terminated by the employer and who wishes to leave the employer sooner because he found a new employment. This counter-notice is limited to four weeks.

Length of service	Notice period
< 3 months	1 week
3 - 6 months	2 weeks
6 - 12 months	3 weeks
As of 1 year	4 weeks

• *Sales representatives*

The Employment Contracts Act subjects the termination of a sales representative to the same provisions as those applicable to a white-collar employee. One major exception is that a sales representative is entitled to a supplementary compensation (named "goodwill indemnity"), but only if all the following conditions are satisfied: (i) the sales representative is dismissed by his employer, (ii) the sales representative has more than one year's service as a sales representative and (iii) the sales representative proves that he has increased the clientele or turnover to the benefit of the employer. In that case, the goodwill indemnity is calculated as three months' pay for a sales representative who has worked for the same employer for one to five years, plus one month for each additional period of service of five years or part thereof.

• *Legal and contractual deviations*

Specific notice periods apply in certain cases (e.g. in the event the retirement age of 65 is reached, in case of unemployment with company allowances in an undertaking recognized in difficulties or in restructuring, in the event of termination by an employee during periods of complete suspension of the employment contract and of temporary unemployment because of economic reasons or even for bad weather conditions which last more than one month).

It is possible to deviate from the notice periods at individual level (employment contract) or even at the undertaking's level. In any event, no notice periods may be determined which are less favorable to the employee than the statutory notice periods.

• *Transitory Schemes*

Contracts for an Indefinite Term effective before January 1st, 2014

Under this scheme, the notice periods to be observed by the employer (dismissal) comprise two parts which must be added up following three distinct steps as follows:

- Step 1: the first part is based on the employee's length of service and gross annual pay acquired on December 31, 2013 (as blue or white-collar employee);
- Step 2: the second part is based on the employee's length of service acquired as of January 1st, 2014 under the new regime;
- Step 3: the effective notice period to be observed is calculated by adding up the two results obtained under step I and step 2 here above.

Step 1

• White-collar employees

- For 'low level' white-collar employees (i.e. with a gross annual pay on December 31, 2013 < EUR 32,254), the rule of three months' notice per started period of five years of service applies.
- For 'high level' white-collar employees (gross annual pay on December 31, 2013 > EUR32,254), the following fixed determined notice periods apply: 1 month per started year of service, with a minimum of three months.

21 Employees entitled to a notice period of at least 30 weeks or a corresponding compensation in lieu of notice, are entitled to outplacement assistance regardless of their age

- Blue-collar employees

  - The duration of their notice period will be determined according to the legal, statutory and conventional rules which were applicable on December 31, 2013.

Step 2

The second part of the notice period is calculated based on the length of service acquired by the employee (without distinction between white and blue-collar employees) as of January 1st, 2014, and as fixed by the UES Act (see above).

Step 3

The third step consists of adding up the results of step 1 and step 2.

From 28 October 2023, the notice period to be observed by the employee when the employee resigns, is only the "new" notice period stipulated above under the heading 'The employee gives notice'. Thus, when an employee gives notice, the notice period will be a maximum of 13 weeks, irrespective of whether the employee is a blue-collar employee, a white-collar employee or a high-level white-collar employee.

- *Dismissal Compensation Indemnity for blue-collar employees with a Contract effective before January 1st, 2014*

As these blue-collar employees have less generous dismissal rights than under the new rules, the UES Act sets forth an additional dismissal compensation indemnity paid by the Belgian National Employment Organization (NEO) provided that the blue-collar employee meets cumulatively the following conditions:

- the employment contract started before January 1st, 2014;
- the employment contract terminated after December 31, 2013;
- the length of service amounts to:
  - at least 20 years on January 1st, 2014;
  - at least 15 years on January 1st, 2015;
  - at least 10 years on January 1st, 2016;
  - less than 10 years on January 1st, 2017.

- *Notice during or before the suspension of the contract*

If notice of termination is served by the employer at a time the employment contract is temporarily suspended, the notice period only takes effect after the end of the suspension period. A solution for an employer that wants to terminate a contract immediately is to pay compensation in lieu of notice. Conversely, if notice is given by the employee, it is effective and the notice period runs even during the suspension period.

If, during the notice period served to the employee, the latter becomes incapable to work, (due to illness or accident), the employer can terminate the employment contract with immediate effect, subject to the payment of an indemnity in lieu of notice corresponding to the balance of the notice period. The employer may deduct from the indemnity in lieu the guaranteed pay that was paid since the beginning of the incapacity during the notice period. If the employee was incapable to work several times during the notice period, only the guaranteed pay paid during the last period of incapacity to work may be deducted.

- *Rights and duties during the period of notice*

As a matter of principle, the employment contract continues to exist during the period of notice, which in practice means that both parties normally have to continue performing the contract. However, during the notice period, the employee retains the right to look for another job ("solicitation leave") and may therefore be absent from work for that purpose during one whole or two half working days a week during the last 26 weeks of the notice period, and during half a working day a week in the period preceding the last 26 weeks of the notice period.

However, employees who benefit from outplacement are entitled to one day (or two half days) solicitation leave a week during the entire notice period. The employee will thus use his solicitation leave in order to benefit from outplacement support.

For part-time employees, the solicitation leave entitlement always has to be applied proportionally.

- *Termination of a Fixed-term Contract*

The UES Act maintains the possibility to unilaterally terminate a fixed-term employment contract before the expiration of its contractual term with payment of an indemnity equal to the amount of the pay due until the end of the contractual term. However, the indemnity can never amount to more than twice the pay which corresponds to the notice period which would have been applicable in the event the employment contract would have been concluded for an indefinite duration.

In addition to this rule, it is possible to terminate a fixed-term employment contract by serving a notice or paying an indemnity in lieu thereof in accordance with the notice periods set out in the UES Act, provided however that (i) the unilateral termination takes place during the first half of the employment contract's term and (ii) termination occurs within the first six months of the contract. Within these limits, notice served by the employer shall vary between two to four weeks.

- *Motivation of the Dismissal*

On February 12, 2014, the National Labor Council (NLC) has entered into CBA No.109 on the motivation of the dismissal. As from April 1st, 2014, an employer must, in principle, be able to give a reason for the dismissal of a blue-collar or white-collar employee.

The CBA No.109 introduced a unified regime on the motivation of the dismissal, based on the following principles:

- each dismissed employee has the right to know the concrete reasons which have led to his dismissal. If not communicated in writing by the employer on his own initiative, the employee can request the employer to explain the reasons for dismissal. In such case, the employee addresses this request to the employer by registered mail within two months after the end of the employment contract or, in the case of notice, within six months after the notification thereof, without exceeding two months after the end of the employment contract. If the employer does not respond within two months after the receipt of the request, he owes a lump-sum civil fine of two weeks of pay; The dismissal remains effective however;
- a dismissal of an employee hired for an indefinite period for reasons which do not relate to the employee's capability or conduct or to the operational requirements of the undertaking, and which would have never been decided by a normal and reasonable employer, is an "unjustified dismissal". The employee can dispute the reason for dismissal before the labor courts. If the unjustified - meaning "manifestly unreasonable" - character of the dismissal is admitted, the employer owes damages to the employee. These damages vary between

3 and 17 weeks of pay. The actual amount of the compensation depends on the degree of manifest unreasonableness of the dismissal;
- the employee will be entitled to damages only when the employer's decision to dismiss is held to be "manifestly" unreasonable. The courts acknowledge that the employer, when exercising the right to dismiss, has the freedom to choose between several strategies or policies. The courts will therefore restrain themselves in the assessment of the employer's decision to dismiss to sanction only those decisions that would never be taken by any normal and prudent employer;
- the CBA No.109 does not apply to a considerable number of dismissal situations, such as employees dismissed during the first six months of their employment or in the frame of collective lay-off or closing down; and
- according to the advice of the NLC, the lump-sum civil fine and the amount of damages would be exempted from social security contributions.

TERMINATION FOR "SERIOUS CAUSE"

Serious cause is defined as a breach rendering working cooperation between the employer and the employee immediately and definitively impossible. Where the employer terminates an employment contract for serious cause, the employer does not need to observe a notice period needs nor does the employer have to pay to the employee any compensation in lieu of notice. There is nevertheless one crucial requirement in such cases: the employer must notify to the employee a statement of the grounds for dismissal either in the termination letter or in a separate justification letter, within strict deadlines and observing strict formalities, otherwise dismissal for serious cause is null and void, and compensation in lieu of notice is due to the employee.

Notification of notice to the employee: within three days after the day on which the employer has reasonably sufficient knowledge of the breach capable of justifying dismissal for serious cause; and

Notification of the reasons justifying dismissal for serious cause, sent by registered mail: within three days after the first deadline, unless the employer has stated these reasons in the termination letter.

SPECIAL DISMISSAL PROCEDURES

Some employees are protected against dismissal because of their "vulnerable" situation, such as employees taking specific types of leave, filing specific complaints or assuming a specific function in the undertaking (e.g. prevention advisor, member of employee representative bodies). This protection entails the prohibition for the employer to dismiss for a reason related to the vulnerable situation of the employee.

Notwithstanding the above, the employers do maintain their right to dismiss. The financial risk linked to a specific dismissal will, however, depend on the situation of the employee and on the circumstances of the case. In cases where dismissal is not sufficiently motivated or is based on discriminatory reasons, or in case the employer decides to dismiss a protected employee, then the financial risk will be higher.

CONTINUING OBLIGATIONS TOWARDS DISMISSED EMPLOYEES

Documents

When dismissing an employee, the employer must issue the following documents:

- *employment certificate*, indicating the date of termination and the nature of the work;
- *unemployment certificate* (so-called "C4-form"), providing all relevant information concerning past employment. The employer must also indicate the reason for termination of the contract;
- *vacation certificate* for white-collar employees, which allows them to verify whether they have received all amounts due and claim their right to annual vacation from their new employer;
- *individual account for the current year;*
- *tax slip 281.10* for the declaration of income tax;
- *financial statement* for the last work done; and
- *proof of payment of health insurance contribution*

Outplacement

Outplacement means consulting and coaching services that provide employees with support or assistance in making their career transition. Outplacement programs are offered to personnel who are being terminated, either on a compulsory basis or on a voluntary basis.

All employees who are terminated with a notice period or indemnity in lieu of notice equal to at least 30 weeks are also entitled to sixty hours of outplacement support. In the event an indemnity in lieu of notice of at least 30 weeks is paid, and provided the employee accepts the outplacement services, four weeks may be deducted from such indemnity, in consideration for the outplacement support.

Dismissed employees whose notice period (or indemnity in lieu thereof) does not reach 30 weeks, are entitled to outplacement under the following conditions:

- the employee is not dismissed for serious cause;
- the employee has reached the age of 45 at the moment of termination of his employment contract; and
- the employee has an uninterrupted period of service of at least one year at the moment of termination of the employment contract.

Outplacement assistance can also be granted by an employer on a discretionary basis, based on CBA No. 51 but is always subject to the employee's prior written agreement.

Early retirement

"Unemployment with company allowances" is a special unemployment arrangement for dismissed employees, which was initially intended to encourage older employees to take early retirement to make room for younger employees. This system combines unemployment benefit paid by the social security institutions and an additional compensation paid by the employer. The system is based on National Labor Council collective bargaining agreement no. 17 of December 19, 1974, and many other collective bargaining agreements at sector and undertaking levels. A number of conditions must be met.

LABOR AVAILABILITY

All kinds of labor resources (skilled and unskilled) are available in Belgium.

LABOR PERMITS

Please refer to section on "Work Permits".

SAFETY STANDARDS

HEALTH AND SAFETY SERVICES

For the purpose of preparing mandatory health and safety documents, employers must be assisted by an internal health and safety service and in certain cases by an external health and safety service. These mandatory health and safety documents comprise an *overall health and safety plan*, which is valid for five years. The plan details the accident-prevention measures to be developed and applied (having regard to the size of the undertaking and the nature of the risks inherent in the business). It also sets out an annual action plan with targets for achievement of the overall health and safety plan and improvement of well-being at work over the next working year, plus an annual report on the functioning of the internal health and safety service.

Internal health and safety service: an *internal health and safety advisor* must be appointed to advise on safety in the workplace. The advisor is the head of the company's internal health and safety service (and, in small companies, is its only member). The internal advisor must be knowledgeable of the regulations on well-being at work.

External health and safety service: when the internal health and safety service cannot fulfil all the tasks entrusted to it by itself (which is in practice the case in most companies), the employer must additionally use an external occupational prevention and protection service.

PREVENTION AND PROTECTION AT WORK COMMITTEE

A the prevention and protection at work committee is required for all companies that employ an average of 50 employees or more.[22] The committee's mandate covers health, safety and welfare issues. For further information, please see "Unions", below.

PERSON OF TRUST

A person of trust listens, advises and mediates in the event of undesirable situations in the workplace. For example, in cases of behavior that crosses certain boundaries (including harassment, violence, unwanted sexual behavior), conflicts or excessive work pressure.

Currently, it is not yet mandatory to appoint a person of trust in the company in companies that employ less than 50 persons. However, on 1 December 2023, the Act of October 26, 2023 became effective which requires that a company must appoint a person of trust whenever a company employs 50 employees or more.

UNIONS

RECOGNIZED UNIONS

Membership of employees' or employers' organizations is unrestricted. The principle in Belgian law is that nobody can be forced to become a member of such an organization and that no employee can be discriminated against for being or not being a member of a trade union.

With regard to trade unions or employees' organizations, not all of them are recognized as *representative organizations*. The status of *representative* organization confers special privileges (e.g. the right to enter into collective bargaining agreements; the right to put up candidates for labor elections). Only three main organizations meet these criteria: FGTB/ABVV (socialist tendency); CSC/ACV (Christian democrat tendency); and CGSLB/ACLVB (liberal tendency).

With regard to employers' organizations, they are organized on a national and a regional basis. The main national employers' organization in Belgium is FEB/VBO. On a regional basis, employers are organized in three groups: VEV (Flemish Region), UWE (Walloon Region), and VOB (Brussels Region).

WORKS COUNCIL

Each undertaking employing an average of 100 employees or more must set up a works council.[23] If the company employs an average of less than 100 employees, the tasks of the works council are carried out by the prevention and protection at work committee and/or the trade union delegates (see below).

Composition: the works council members are elected from within the undertaking every four years. The council is composed of employees' representatives and the manager of the undertaking and/or his representatives or deputies.

Tasks: the works council has a wide range of tasks and meets at least once a month. One task is to *promote cooperation and discussion*. As a consequence, the employer is under an obligation to give it economic and financial information concerning the undertaking (*i.e.,* information relating to the company's articles of association, its financial structure, competitive position, production and productivity, budget and cost calculations, price computations, personnel costs, corporate goals and prospects, scientific research, public grants and the undertaking's organizational chart). [24]

In addition, the works council is involved in the process of appointing the undertaking's statutory auditor , and is informed of late payments to public authorities or agencies (late payment of value-added tax, social security contributions, etc.).

In the labor area, the works council has *a right to be informed* (and consulted in certain circumstances) of the employment structure of the undertaking and any planned changes and their consequences on the workforce, employment matters (e.g. work organization and conditions, productivity, educational measures, paid educational leave, time-credit, collective dismissal or closure of the undertaking, insolvency and bankruptcy procedures, etc.).[25]

Special protection: the employees' representatives and their deputies in the works council can only be dismissed either for serious cause recognized by the labor court or for technical or economic reasons that have been accepted by the relevant joint committee and/or the labor court. Failure to abide by these protection rules can

[22] Section 49, Welfare at Work Act of August 4, 1996.

[23] Act of September 20, 1948, on the organization of the economy.

[24] RD of November 27, 1973, on economic information to be disclosed to works councils.

[25] Collective bargaining agreement no. 9 of March 9, 1972, concluded within the National labor Council, rendered binding by the RD of September 12, 1972.

result in liability to pay very substantial amounts of compensation.

PREVENTION AND PROTECTION AT WORK COMMITTEE

Each undertaking employing an average of 50 employees or more must set up a health and safety at work committee. Its tasks relate to health, safety and welfare issues. In addition, in conjunction with any trade union delegates, it exercises the powers of the works council if the undertaking employs fewer than 100 employees but more than 50. It is made up of representatives of all the employees and the employer. It meets at regular intervals or at the request of a qualified number of employees' representatives. The committee's members enjoy the same protection as described above in relation to employees' representatives on the works council.

TRADE UNIONS

In-house trade union chapters are governed by collective bargaining agreement no. 5 of May 24, 1971, (issued within the National labor Council) and by collective bargaining agreements adopted at sector level. [26]

Trade union delegates represent the interests of the employees and may attend and participate in discussions concerning all collective and individual disputes or demands on issues relating to wages and work conditions. They also may *negotiate and enter into collective agreements* directly with the employer.

Trade union delegates are protected against discriminatory action and termination on the part of their employer.

EUROPEAN WORKS COUNCIL

In Belgium, the operation of a European Works Council (EWC) is governed by two instruments. In the first place, the EWC is governed by European Directive 2009/38/EC on the establishment of a EWC or similar procedure for the purposes of informing and consulting with employees in companies which operate at European Union level. In the second place, the said directive is implemented by CBA no. 101. In particular, the directive applies to:

- *all Community-scale undertakings*: all companies with 1,000 employees or more and at least 150 employees in each of two or more EU member states.
- *all Community-scale groups of undertakings*: a group of undertakings is a controlling undertaking (i.e. an undertaking which can exercise a dominant influence over another undertaking by virtue of, say, ownership, financial participation or the rules which govern it) and its controlled undertakings. This group must have the following characteristics:
  - at least 1,000 employees within the member states,
  - at least two group undertakings in different member states, and
  - at least one group undertaking with at least 150 employees in one member state and another group undertaking with at least 150 employees in another member state.

The competences of EWCs are limited to *information and consultation* on matters which concern said undertakings. "Consultation" means the exchange of views and establishment of dialogue between employees' representatives and central management or any more appropriate level of management. In other words, EWCs give representatives of employees from all European countries in big multinational companies a direct line of communication to top management. They also make sure that employees in different countries are all told the same thing at the same time about transnational policies and plans. The EWCs give employees' representatives in unions and on national works councils the opportunity to consult with each other and to develop a common European response to employers' transnational plans, which management must then consider before those plans are implemented.

UNIONS' POLITICAL AFFILIATIONS

As already mentioned, unions' political affiliations reflect the main political tendencies in Belgium: socialist (FGTB/ ABVV), Christian democrat (CSC/ACV) and liberal (CGSLB/ACLVB).

MANDATORY COLLECTIVE BARGAINING AGREEMENTS

Collective bargaining agreements regulate working conditions, determine individual and collective relations between employers and employees and provide for their respective rights and obligations.[27] They are entered into at various levels national collective bargaining agreements are issued within the National Labor Council; collective bargaining agreements concerning widespread industries are issued within a joint committee or sub-committee. Agreements may also be entered into at undertaking level. In principle, depending on its sector and the nature of its activity, each undertaking falls under the jurisdiction of a joint committee created by the Royal Decree. The tasks of joint committees are, *inter alia*, to assist in the conclusion of collective bargaining agreements between representative organizations and to prevent or mediate in any dispute between employers and employees.

Collective bargaining agreements contain two types of provisions: normative provisions, which determine individual or collective labor relations between the employees and employers covered by the agreement; and mandatory provisions, which cover the contractual rights and obligations of the parties (*i.e.,* employees and employers' representatives, or in some cases, individual employers). Collective bargaining agreements are legally binding. They are legally binding in the first place upon the representative organizations (and their members) and employers which have entered into the agreements. Second, they are also binding on the representative organizations (and their members). Furthermore, they are also binding on employers which have adhered to the agreement. Next, they are binding on employers that join a representative organization which is bound by the agreement; and finally, they are binding on all employees of an employer which is bound by an agreement. In addition, a collective bargaining agreement agreed within the National Labor Council or by a joint (sub-)committee, can be made generally binding by Royal Decree, which means that all the employers and employees covered by the joint committee are bound by it.

[26] Collective bargaining agreement no. 5 of May 24, 1971, on trade union delegates.

[27] Act of December 5, 1968, on collective labor agreements and joint committees.

TAX SYSTEM

The Belgian tax system combines direct and indirect taxes. Direct taxes mainly concern income taxes (i.e. personal income tax, corporate income tax, legal entity tax and non-resident income tax). The most important indirect tax is the Belgian value-added tax (VAT) (i.e. implementation of the EU VAT directives). Other indirect taxes relate to excise duties and custom duties (for which there is some harmonization at EU level) as well as inheritance taxes and registration duties (which have to a large extent been regionalized). In addition, there are also some more specific indirect taxes such as the tax on stock exchange transactions, the tax on securities accounts, the tax on insurance operations, etc.

Provinces and municipalities have limited taxing powers.

GENERAL CONSIDERATIONS

INCOME TAXES – GENERAL OVERVIEW

Income tax covers – for Belgian tax residents – personal income tax, corporate income tax and legal entity tax, as well as non-resident income tax for Belgian non-resident taxpayers, whether they are individuals, corporations or other legal entities.

Belgian resident taxpayers are in principle subject to income tax on their worldwide net income; non-resident taxpayers are liable for income tax in Belgium only on their Belgian-source income.

CORPORATE INCOME TAX

The corporate income tax is levied on companies that are tax resident in Belgium. Resident companies (i) have legal personality under Belgian or foreign law (or for certain non-Belgian corporate entities a form similar to legal personality), (ii) are engaged in business or profit-making activities, and (iii) have their tax residence in Belgium. A company has its tax residence in Belgium if its principal place of business or its seat of management is located in Belgium. Companies with their statutory seat located in Belgium are presumed to have their principal place of business or their seat of management in Belgium. This presumption can only be

rebutted if it is proven that the principal place of business or seat of management is not located in Belgium and if the company is tax resident in another jurisdiction based on domestic tax legislation of said jurisdiction.

Certain corporate entities are excluded from corporate income tax and subject to legal entity tax (e.g., certain so-called "*intercommunales / intercommunale vennootschappen*" – associations of local authorities).

Tax base

General

A company's taxable income consists of (i) the net income from its business operations (as adjusted for tax purposes, i.e. disallowed expenses), and (ii) the increase or decrease in the net value of its assets during the taxable year. The valuation rules for tax purposes may differ from accounting rules.

The tax basis so determined is then reduced by way of various specific tax deductions subject to limitations.

Valuation rules

Accounting rules and principles apply also for Belgian tax purposes, subject to derogations under tax law. Assets are in principle valued at acquisition cost, i.e. their purchase price, production cost or assigned value.

Depreciations are based on the asset's acquisition or investment value. Accounting rules apply subject to specific tax exceptions.

Capital gains

Realized capital gains are considered ordinary profits and are therefore taxable at the ordinary corporate tax rate. A realized capital gain is the difference between the (i) realization value of the asset less realization costs, and (ii) its acquisition value less previously allowed depreciation and impairment.

Expressed but unrealized capital gains are in principle exempt subject to conditions.

A tax-deferral regime is available with respect to tangible and intangible fixed assets subject to conditions, including a reinvestment condition. This regime leads to the capital gains being taxed over time in proportion to the annual depreciation allowed for tax purposes on the reinvested assets.

Capital gains on shares are in principle taxable but can be exempt subject to the condition that the dividends relating to such shares could benefit from the so-called dividend-received deduction (i.e., the dividend participation exemption under the EU Parent-Subsidiary Directive in the form of a 100% deduction).

Capital losses and impairment on shares are in principle not deductible subject to exceptions and limitations such as in the case of the liquidation of the relevant company.

Gross income

A company's gross income generally comprises all accounting profits realized by a company during the tax year subject to certain specific tax rules, for example with respect to so-called "abnormal or gratuitous advantages". An advantage is defined as any enrichment of the beneficiary without equivalent consideration. A benefit is "abnormal" if it goes against the ordinary course of business, established rules or what is

customary in such cases. It is "gratuitous" when the provider does not receive a proportionate (or even any) consideration when the benefit is provided, without being the performance of an obligation. The benefit is in principle added to the tax base unless the benefit is used to determine the taxable income of the recipient. This rule on abnormal or gratuitous benefits could be considered as an emanation of the "arm's length"-principle; hence, it is unlikely in practice that the above rule would apply in dealing with independent third-parties.

Deductible and disallowed expenses

Gross income is reduced by deductible expenses subject to exceptions (in which case they are referred to as "disallowed expenses").

The tax deductibility is, as a general rule, subject to three conditions: (i) the expense or charge must be made or incurred in order to acquire or maintain taxable income (i.e. the presence of a link between the expenditure and the business activity), (ii) the expense or charge must be made or incurred during the taxable period, which will be the case once the expense or charge is certain and definitive, and (iii) the expense or charge must be evidenced with documents.

Specific disallowed expenses are listed in the Income Tax Code; they include inter alia:

- 31% of the amount of restaurant costs, and 50% of reception costs;
- a portion of automobile expenses, depending on the vehicle's emissions;
- corporate income taxes and certain other taxes;
- excessive interest as per the arm's length principle (transfer pricing rules) and specific interest limitations rules; and
- impairments and capital losses on shares subject to exceptions.

Special deductions

The net profit of the company is further reduced by specific tax deductions such as:

- exempt foreign profits (cf. based on double taxation treaties);
- the so-called dividends-received deduction which reflects a 100% deduction of dividends received based on the EU Parent-Subsidiary. Various conditions apply such as (i) a participation condition, (ii) a holding condition, and (iii) a taxation condition which takes the form of various exclusion categories;
- the carried-forward tax losses: companies can carry over tax losses incurred in previous years. Although such tax losses can be carried forward indefinitely, specific limitations apply as to the amount of tax losses that could annually be used to offset taxable income. Companies are not allowed to set carried-forward tax losses against abnormal or gratuitous benefits received from a related party; hence this will in practice constitute a minimal taxable base. In the context of certain reorganizations, for example in the case of (de)mergers, the transfer of carried-forward tax losses is subject to a specific pro rata limitation rule based on the fiscal net value of the assets following the (de)merger. In the case of acquisitions, carried-forward tax losses are forfeited upon a change of control of the Belgian company unless said change of control is justified by legitimate financial or economic needs. This should be appreciated on a case-by-case basis.
- a deduction for certain specific investments ("investment deduction"). The investment deduction allows companies to deduct from their net taxable income a certain percentage of the acquisition or investment value of qualifying assets.

Tax rates

The ordinary corporate tax rate is 25%. SMEs can benefit from a reduced rate of 20% for profits up to 100k EUR subject to conditions. This reduced corporate tax rate is not available for certain companies such as financial companies, investment companies, subsidiaries, and companies not attributing to at least one of their directors' emoluments of at least 45k EUR for assessment year 2024.

Commissions paid to beneficiaries whose identity is not disclosed are in principle taxed at a rate of 100% if the recipient is an individual and 50% if the recipient is a company, unless the beneficiary is subject to Belgian accounting standards and issued a VAT-compliant invoice, subject to other exceptions. Said tax as well as the commission expense are in principle non-deductible expenses, subject to exceptions.

Companies must make advance payments during the tax year corresponding to their estimated tax liability for the year. In case of insufficient advance payments, the corporate income tax liability is increased.

The corporate income tax liability is reduced by any advance payments and creditable withholding taxes. The real estate "withholding" tax is not creditable but deductible as a business expense.

Foreign tax credit

A foreign tax credit (*quotité forfaitaire d'impôt étranger/ forfaitaire buitenlandse belasting*) could be available for companies receiving foreign interest and royalties which have been subject to corporate tax or non-resident income tax in the source country, subject to derogatory rules under double tax treaties. The FTC is creditable but not refundable; it is therefore credited against the corporate tax liability before other refundable tax credits are deducted.

Filing and Payment Requirements

A tax return must be filed annually. Together with the tax return, the company's financial statements (including the management report of the board of directors) as well as the minutes of the general assembly meeting approving these financial statements must be filed. Corporate tax liability exceeding the amount covered by advance payments and creditable taxes is to be paid within two months of the tax assessment.

Withholding taxes on dividends, interest and royalties

Belgian companies paying or attributing dividends, interest or royalties must in principle retain a withholding tax (WHT).

Dividends: the ordinary WHT rate on dividends is 30% subject to reduced rates and exemptions under domestic law and under double taxation treaties, including with respect to for example dividends paid between related companies in accordance with the Belgian implementation of the EU Parent-Subsidiary Directive.

Dividends distributed by SMEs can under certain conditions be subject to a reduced 15% WHT rate.

The ordinary 30% WHT rate applies on dividend distributions resulting from a company's liquidation (the so-called "liquidation bonus"). Specific derogatory regimes apply as a result of which under certain conditions only a 10% WHT tax applies.

Interests and royalties: the ordinary WHT rate on interest and royalties is 30% subject to reduced rates and exemptions under domestic law or double taxation treaties, including, for example, with respect to payments between related companies in accordance with the Belgian implementation of the EU Interest & Royalties Directive.

The WHT must be paid within 15 days of payment or attribution of the income.

Derogatory Tax regimes

Various types of companies are subject to a derogatory tax regime. Notable examples include certain investment companies subject to corporate tax but on a limited tax base, as well companies in the shipping industry for which a so-called "tonnage tax" may available.

Please note that various tax incentives have been introduced in favor of shipping operators not opting for the tonnage tax regime or qualifying for it; examples include, subject to conditions, accelerated depreciation rules for new ships and equivalent, exemption from capital gains on the disposal of ships, investment deduction on the purchase of a new ship and equivalent.

Miscellaneous Taxes Due

Companies could be subject to regional and municipal taxes depending on their individual circumstances.

Regional taxes on enterprises may include taxes on waste, abandoned economic activity sites, discharges of industrial wastewater, etc.

PERSONAL INCOME TAX

Belgian tax resident individuals are subject to personal income tax on their total net worldwide income. Total income is the sum of (i) real estate income, (ii) movable income, (iii) professional income, and (iv) miscellaneous income, which is a residual category (e.g., capital gains on real estate or profits from occasional ventures). Each category of income is subject to specific rules.

A Belgian tax resident individual is anyone whose place of residence or "center of wealth administration" is in Belgium. A person registered in the National Population Register (i.e. domiciled in Belgium) is deemed a tax resident unless proved otherwise. The tax residence of married persons (or legal cohabitants) is where their household is established.

Under tax treaty law, traditional residence criteria are (a) the individual's permanent home; (b) the center of his vital interests; (c) his habitual abode; and (d) nationality.

Tax Base

Real estate income

A deemed "cadastral income" (*revenu cadastral / kadastraal inkomen*) is assigned to each property located in Belgium. It represents the deemed net annual rental income on the property (in 1975). This cadastral income is yearly indexed. Installations or equipment used for the exploitation of the property and permanently attached to it may also be considered as real estate and hence assigned a cadastral income.

The taxable base depends on the use of the property. If not let, then the taxable base equals the indexed cadastral income of the property plus 40%. If let for commercial purposes, then the taxable base equals the gross rental income less 40% charges. Please note that exceptions exist. Real estate income held by the owner for professional activities will be taxed on the effective rent paid by the lessee.

In addition to the real estate income tax, a regional real estate withholding tax will also be payable as a separate regional tax. This real estate withholding tax is based on the indexed cadastral income. Exemptions or reductions may apply.

Movable income

Income from movable goods is in principle taxed separately and thus not aggregated with other income items subject to the progressive tax rates.

A distinction should be made between:

- income attributed or paid by a Belgian debtor or with the intervention of a Belgian intermediary that is subject to WHT. The WHT withheld is final; hence the relevant income should not be declared in the personal income tax return; and

- income not subject to WHT which must be declared in the personal income tax return. Said income items are taxed at a separate rate equivalent to the WHT.

A municipal surcharge applies on reported movable income. It is not due on reported dividends, interest or royalties originating from EEA member states.

The ordinary WHT for dividends, interest and royalties is 30% subject to reduced rates and exemptions under domestic law and double taxation treaties. Notable domestic examples are interests (up to a fixed amount that is yearly indexed) from regulated savings deposits, and whereby any excess interests will be taxable (15%), dividends from real estate investment companies investing in healthcare real estate (15%), and dividends up to 800 EUR (exempt).

No domestic foreign tax credit is available for individual taxpayers subject to exceptions under tax treaties.

Professional income

Professional income includes (a) business "profits", (b) "gains", (c) "salaries", (d) profits and gains from a former professional activity, and (e) pensions, annuities and other similar payments.

Special rules apply to stock options, profit sharing and savings plans.

a) Profits

"Profits" originate from industrial, commercial or agricultural enterprises, including capital gains subject to exceptions.

Profits also include inter alia salary and fringe benefits attributed to the entrepreneur.

Fringe benefits are in principle valued at fair market value subject to lump-sum valuations under specific rules (e.g., regarding interest-free loans, use of a car or house, etc.).

Profits are subject to taxation on accrual-basis.

Business expenses and charges are deductible according to rules similar to those for corporations. Assets may be depreciated at the ordinary rates. The list of disallowed expenses is more limited compared to companies.

The rules for capital gains are similar to those applicable to corporations. Capital gains on assets used for professional purposes are in principle taxed at the progressive personal income tax rates; however, capital gains on movable and financial assets are taxed at a separate 16.5% rate if the asset has been held for more than five years upon disposal, provided the specific tax deferral regime has not been elected and flat rates. Separate rates of 16.5% or 33% may also apply with respect to capital gains realized on retirement or discontinuation of the professional activity.

b) Gains

"Gains" stemming from liberal professions, offices or appointed positions, or any other profit-seeking activity.

Gains are subject to taxation on cash-basis.

Specific rules may apply for certain types of income such as capital gains and regarding (lump sum) business expenses.

c) Salaries

Salaries include salaries, wages, including fringe benefits, and certain employee allowances, as well as directors' remunerations.

Beneficiaries can elect actual or lump-sum business expenses.

Miscellaneous income

Miscellaneous income is a residual category. Miscellaneous income encompasses inter alia profits from speculative operations as well as profits from operations exceeding the normal management of one's private estate. This is a question of facts and may raise specific questions in practice.

Miscellaneous income also includes short-term capital gains on real estate taxed at a separate rate (16.5% or 33%). Note that capital gains on the taxpayer's principal residence are exempt subject to conditions.

Deduction from the tax base

Certain expenses are deductible from total net taxable income, such as:

- 80% of alimony payments; and
- certain amounts relating to the taxpayer's principal residence.

Calculation of Tax

Safe where income is subject to exemptions or separate tax rates, progressive tax rates apply in principle in the personal income tax.

The rates

For assessment year 2024 (income year 2023), the applicable personal income tax rates are:

Tax brackets	Rate
Below 15,200 EUR	25%
From 15,200 EUR to 26,830 EUR	40%
From 26,830 EUR to 46,440 EUR	45%
Above 46,440 EUR	50%

These tax brackets are increased for every dependent child.

Total taxable income does not include certain types of income, such as:

- certain types of miscellaneous income taxed at a separate flat rate (unless aggregation with other income items more favorable to the taxpayer);
- investment income (dividends, interest, royalties) received or accrued must be reported in the personal income tax return, unless the Belgian WHT has been withheld; if said income is reported, it will be taxed at a separate flat rate unless aggregation with other income items is more favorable to the taxpayer.

Spouses and legal cohabitants are taxed separately. If one partner receives no or little income, up to 30% of the collective income can be attributed to the partner, with a maximum cap of 11,450 EUR. Special rules apply with respect to certain tax exemptions and reductions applicable between spouses.

Tax increases: the municipal surcharge

A municipal surcharge applies to tax on income reported in the personal income tax return, including on professional income under tax treaties. The amount of the surcharge depends on each municipality.

Tax exemptions and tax reductions

Tax exemptions are available depending on the taxpayer's personal and family situation.

A personal tax-free allowance of 10.160 EUR applies to each taxpayer (assessment year 2024 – income year 2013), to be increased subject to conditions.

Tax reductions are aimed at encouraging certain investments such as pension savings contributions, group insurance, life insurance, home-ownership and energy-saving investments, as well as, for example, gifts to recognized charitable and other non-profit organizations.

Filing and Payment Requirements

A tax return must be filed annually.

The income tax due can be reduced by creditable withholding taxes and advance payments. Indeed, self-employed individuals must make advance payments. If these are insufficient, a surcharge is due. As regards employees and directors, the employer must withhold payroll tax which will ultimately be set off against the employee's or director's final personal income tax.

The personal income tax should be paid within two months following the sending of the tax assessment notice.

LEGAL ENTITY TAX

Legal entities not subject to corporate tax are subject to legal entity tax.

Such notable legal entities are:

- the Federal State, Communities, Regions, provinces, metro areas, federations of municipalities, municipalities, public centers for social assistance (*CPAS / OCMW*), and public religious establishments;

- non-profit organizations not subject to corporate tax;

- corporate bodies exempt from corporate income tax (e.g., certain public intermunicipal cooperation associations (*intercommunales*), and some other companies under public control) (hereinafter "exempt companies").

Tax Base

The tax base for legal entities is essentially limited to specific types of income, such as real estate income, including capital gains on real estate, certain movable income, etc.

Calculation

The income tax corresponds in essence to the withholding tax on real estate income and movable income. Separate, flat, tax rates can apply on for example capital gains on real estate subject to conditions (16.5% or 33%).

Filing and Payment Requirements

A tax return must be filed annually.

Any taxes due in excess of the withholding taxes must be paid within two months following the sending of the tax assessment notice.

Exemptions

WHT exemptions are available with respect to movable income. Reductions of or exemptions from real estate tax may also be available.

MISCELLANEOUS TAXES

Tax on stock exchange transactions

A tax on stock exchange transactions is applicable on the purchase and sale (and any other transaction for consideration) in Belgium of certain securities on a secondary market if such transaction is (i) entered into or executed in Belgium through a professional intermediary, or (ii) deemed to be entered into or executed in Belgium, which is the case if the order is directly or indirectly made to a professional intermediary established outside of Belgium by individuals with habitual residence in Belgium or by a legal entity for the account of their seat or establishment in Belgium.

Exemptions apply depending on for example the identity of the investor (e.g. banks) or the specific transaction (e.g. treasury bonds).

Annual tax on securities accounts

The tax on securities accounts is an annual tax on securities accounts with an average value exceeding 1mio EUR during a reference period (12 months).

The applicable tax rate is in principle 0.15%. The tax base is in principle the average value of the relevant financial instruments in a reference period.

Exemptions apply for specific types of accounts held by certain legal entities (e.g. accounts held in their own name by insurance companies).

Annual tax on insurance operations

The annual tax on insurance operations is applicable to insurance operations if the insured risk is deemed to be located in Belgium.

Different rates apply depending on the type of insurance operations. Exemptions are available for certain insurance operations.

GENERAL ANTI-ABUSE PROVISION

Taxpayers can under Belgian law freely conclude any legal acts (without infringing on any of their legal obligations) as long as they accept all consequences of said contract, even if this intended to obtain a more favorable tax regime. This legal act also does not have to be the most common choice. Conversely, simulation or sham is considered tax fraud.

As per a general anti-abuse rule (GAAR) of 2012, the Belgian tax authorities can challenge "tax abuse". The GAAR allows the tax authorities to disregard a legal act or a series of legal acts if they prove that there is tax abuse, which encompasses a legal act or a series of legal acts whereby the taxpayer realizes:

- a transaction by which the taxpayer places himself, contrary to the purpose of a provision of the Income Tax Code or its implementing decrees, outside the scope of such provision;

- a transaction whereby the taxpayer claims a tax advantage set forth by a provision of the Income Tax Code or its implementing decrees and the award of this tax advantage would be contrary to the purpose of that provision and the transaction in essence seeks to obtain that advantage.

The taxpayer must demonstrate that the choice of the legal act or series of legal acts is justified by other motives than tax avoidance. The GAAR applies to income taxation.

Similar anti-abuse-rules apply in the field of registration duties, inheritance taxes, VAT etc.

In addition, specific tax avoidance rules can apply.

TAX TREATIES

Belgium has an extensive tax treaty network of more than 95 tax treaties. Most treaties are based on the OECD Model. Belgium also has its own Model Convention (2010). It is unclear to what extent this Belgian Model is still followed in practice following the OECD's BEPS Action Reports (Base Erosion Profit Shifting) and the introduction of the OECD's Multilateral Instrument (MLI). Belgium has signed and ratified the MLI.

Double tax treaties have direct effect in the Belgian domestic legal system and hence prevail over any conflicting Belgian tax rule.

ADVANCE RULINGS

Taxpayers can seek advance tax rulings to obtain legal certainty regarding the Belgian tax consequences of their envisaged operations.

The decision is in principle binding on the tax authorities subject to exceptions. In practice, a pre-filing procedure is organized allowing the taxpayer to clarify its request or even decide not to proceed in case it appears that the Ruling Commission will not issue the ruling. Advance rulings are generally valid for five years subject to exceptions. They are published in an anonymous

manner although not always in their entirety.

INDIRECT TAXES

VAT

Belgium applies VAT in accordance with the EU VAT directives. As a general rule, businesses qualifying as taxable persons for VAT purposes must apply VAT with respect to taxable transactions. Taxable transactions are the following:

- supply of goods and services for consideration in Belgium by a taxable person (legal or individual);
- import of goods into Belgium, by a taxable person or not;
- intra-EU acquisition of goods for consideration in Belgium, by a taxable person acting as such or by a legal person that is not a taxable person, when the seller is a taxable person acting as such and when the transaction fulfills certain conditions.

A VAT grouping regime is available.

The ordinary VAT rate is 21%. A reduced rate (0%, 6% or 12%) is available in certain situations and subject to conditions.

Various VAT (registration) formalities may apply, including for persons operating outside of the EU with no VAT permanent establishment in Belgium.

A VAT return must be filed periodically, either monthly or quarterly (subject to conditions).

CUSTOMS DUTIES

Since Belgium is a member of the EU, customs (including applicable tariffs) are regulated by the Community Customs Code (Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code), which consolidates the rules, arrangements and procedures applicable to goods traded between the EU and non-member countries.

In Belgium, goods have to be cleared using the administrative single document. Goods can also be cleared through the Paperless Customs and Excise System, which is an online system for e-filing export and import declarations. One of the elements that have to be mentioned in such declaration is the customs value of the goods. Specific rules about the determination of the customs value apply. Customs and excise declarations are generally handled by custom agencies.

REGISTRATION DUTIES

Contributions of capital to companies

Capital contributions upon incorporation or a capital increase, are subject to registration duty at a zero (0) % rate.

Mergers, demergers, transfers of branches of activity or a universality of goods are, as a rule, exempt from registration duties subject to conditions.

Other exemptions are available upon corporate conversions or seat transfers, subject to conditions.

Transfer of real estate

Registration duties are in principle due on the acquisition of real estate, whether by individuals or companies, at a rate between 3% and 12.5% of the higher of the acquisition price or fair market value, depending on the Region and purpose of the real estate. Reduced rates are available subject to conditions

INHERITANCE AND GIFT TAX

INHERITANCE TAX

Inheritance tax applies upon the death of a Belgian resident, while a duty on inheritance transfers applies on real property located in Belgium and owned by a deceased non- resident.

Inheritance tax is a regional tax; the Regions (Flemish, Brussels-Capital and Walloon Region) have the competence to modify the relevant rules including the rates, the taxable basis and any exemptions.

The inheritance tax is principle determined based on the deceased's tax domicile at the time of death. Where the deceased had domiciles in various Regions during the last five years, the law of the Region where he was domiciled for the longest time during that five-year period will apply. The transfer tax upon death is due to the Region where the real property is located.

Determination of the taxable base

Inheritance duties are in principle due on the net asset value of the assets of the deceased, regardless of their location. The assets must be reported at their market value. The debts of the deceased, including funeral expenses, are deductible from the value of the assets.

Foreign inheritance duties (paid abroad in relation to real property located abroad) are creditable against Belgian inheritance tax liability.

The final tax base may vary depending on the applicable regional law.

Tax rates

As a rule, inheritance tax is due by heirs on their share in the inheritance. Each Region sets the applicable rate and exemptions. The rates generally depend on the value of the inheritance and the link between the heir/legatee and the deceased.

Special regimes

Special rules, including reduced rates, apply in the case of death transfers to certain charities and to transfers of businesses.

Procedure

An inheritance tax return must be filed within four months of death if occurring in Belgium, five months if occurring within Europe and six months if occurring outside Europe. Extensions are possible upon request.

Payment of the tax

The inheritance tax must be paid within two months following the expiry of the deadline for filing the tax return.

Anti-abuse measures

The Inheritance Tax Code provides several anti-abuse provisions, including general anti-abuse provision.

Notable examples are the following:

- debts recognized only in the will are considered as bequests and taxed accordingly;

- usufructs held by the deceased expire on his death with the consequence that the naked owner recovers full ownership by operation of law. In order to avoid schemes aimed at reducing the inheritance tax base by splitting rights over the estate, the usufructuary is in several cases deemed to have full ownership, unless contrary evidence; and

- in the case of a stipulation in favor of a third party becoming effective on death, the amounts or assets received are deemed received under a bequest.

GIFT TAX

General rules

Donations must be made in writing before a notary public to be valid under civil law. However, manual and indirect donations (called "Gifts") are possible for movable property. A donation made before a notary public is mandatorily subject to gift tax in Belgium. Gifts granted during the three or five years (depending on the Region) preceding death and on which no gift tax has been paid are subject to inheritance tax.

Each Region has its own rates. The applicable law is determined by the donor's domicile. As a rule, the tax base is the fair market value of the donated assets without deduction of any cost.

Tax rates

Each Region has its own rates and provides for specific exemptions. A difference is generally made between immovable and movable goods. The rates depend on the amount of the gift and the link to the donor. In the case of gifts to collateral relatives or to non-relatives, the rates are high – up to 40% for non-relatives.

Specific regimes

Specific rules apply to gifts to certain public law bodies, charities and to transfers of businesses.

INTRODUCTION: GENERAL OVERVIEW

The Belgian immigration system is fairly straightforward and is heavily influenced by the fact that Belgium is part of the European Union and the Schengen area

At present the European Union has 27 member states. The 14 "old" member states are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden. The 13 "new" member states are the ten countries that joined the EU on May 1, 2004 (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) and the two countries that joined on January 1, 2007 (Bulgaria and Romania). The last country to join the EU was Croatia on July 1, 2013. The UK left the EU on December 31, 2020.

The Schengen area consists of the territory of the countries that have entered into an agreement to create a passport- free travel zone: in principle, the Schengen agreement allows people to travel within the area without being subject to passport checks. At present, the following countries are in the Schengen area: Austria, Belgium, Bulgaria (in part only, namely exclusively at air and sea borders), Croatia, the Czech Republic, Denmark (except Greenland and the Faroe Islands), Estonia, Finland, France, Germany (except Heligoland), Greece, Hungary, Iceland, Italy, Latvia, Lichtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway (except Spitsbergen), Poland, Portugal, Romania (in part only, namely exclusively at air and sea borders only), Slovakia, Slovenia, Spain, Sweden and Switzerland. The UK and Ireland are not part of the Schengen area.

The right of a foreigner to enter and reside in Belgium is mainly determined by his nationality (EU/European Economic Area nationals or third-country nationals), the period of residence (more or less than 3 months) and the basis for residence (work, family or other).

of "first entry". The time spent in any Schengen country on the basis of a residence permit valid for more than three months is not taken into account in determining whether the three months have been exceeded. Interpretations of this "90-day rule" are not always consistent: there tends to be disagreement as to the starting point of the six-month reference period. Pursuant to case law from the European Court of Justice, the notion of "first entry" "refers, besides the very first entry into the territories of the [Schengen-countries] to the first entry into those territories taking place after the expiry of a period of 6 months from that very first entry and also to any other first entry taking place after the expiry of any new period of 6 months following an earlier date of first entry".

For non-EU/EEA nationals, immigration to Belgium is either work-related (as an employee or a self-employed person) or family-based (so-called family reunification). Authorization for family reunification must almost always be applied for from the Belgian consular authorities abroad.

There are no immigration quotas.

IMMIGRATION REQUIREMENTS

The European Economic Area consists of the EU member states, Iceland, Liechtenstein and Norway.

More information on visa requirements can be found on the following website: https://diplomatie.belgium.be/en/travel-belgium

ENTERING BELGIUM AND SHORT-TERM RESIDENCE IN BELGIUM

Notwithstanding the fundamental need to obtaining a visa, an entry permit is not required to enter Belgium.

In order to be able to enter Belgium, the general rule is that any foreigner must possess a valid national passport that includes either:

- a Schengen transit visa, if the foreigner intends to pass through Belgium in order to go to a country outside the Schengen area; or
- a Schengen travel/short-term visa, if the foreigner intends to stay in Belgium for less than three months; or
- a Belgian long-term visa issued by a Belgian embassy or consulate if the foreigner intends to stay in Belgium for more than three months.

For the sake of completeness, we would mention that a Schengen airport transit visa is required for citizens of a limited number of countries.

No visa is required for nationals of EU member states. A valid national identity card or passport is sufficient to enter Belgium.

The requirement for a visa has also been waived for nationals of several non-EU member states (e.g. Australia, Brazil, Canada, Japan and the United States). Citizens of these countries whose stay does not exceed 90 days within a period of 180 days only require having a valid passport.

In the following, we focus on Schengen visas; Belgian long- term visas are described in the section "Long-term residence in Belgium" below.

Issuing a visa

The country that can issue a visa is:

- *the member state whose territory constitutes the sole destination of the visit(s);*
- *if the visit includes more than one destination, the member state whose territory constitutes the main destination of the visit(s) in terms of the length or purpose of stay, or*
- *if no main destination can be determined, the member state whose external border the applicant intends to cross first in order to enter the territory of the member states."*

Applying for a visa

The place where a Schengen visa application must be filed depends on the country or countries of destination of the foreigner. If the investor's main destination is Belgium, a visa must be applied for from the Belgian consular authorities in his home country. The exact documents to be submitted for a visa application depend on the nature of the visa, but the following documents are required in any event:

- a travel document (passport);
- documents indicating the purpose of the journey;
- documents in relation to accommodation or proof of sufficient means of subsistence to cover the accommodation;
- documents indicating that the applicant possesses sufficient means of subsistence, both for the duration of the intended stay and for the return to his country of origin or residence, or for transit to a third country he is certain to be admitted to, or that he is in a position to acquire such means lawfully;
- information enabling an assessment of the applicant's intention to leave the Schengen territory before expiry of the visa being applied for. A reservation for a return or round-trip ticket is sufficient;
- documents proving that the applicant possesses adequate valid traveler's medical insurance to cover all expenses regarding repatriation for medical reasons, urgent medical attention and/or emergency hospital treatment or death.

For business trips, these documents can take the form of an invitation from a firm or authority to attend meetings, conferences or events connected with trade, industry or work (possibly even entry tickets to fairs and congresses) or other documents which show the existence of trade relations or relations for work purposes, together with documents proving the business activities of the company and the foreigner's relationship to the company. The processing time for a visa application should be 15 calendar days from the date the valid visa application is filed; however, the processing time can extend up to a maximum of 30 calendar days (if further scrutiny of the application is needed) or 60 days (if additional documents are required). In principle, visa applications should be lodged no more than three months before the start of the intended visit.

The normal fee for a visa application is EUR 80. For children aged between six and 12, the fee is EUR 40. Additional service fees charged by external providers may be due.

A visa can be refused in the following cases:

- the applicant presents a travel document which is false, counterfeit or forged;
- the applicant does not vouch for the purpose and conditions of the intended stay;
- the applicant does not provide proof of sufficient means of subsistence, both for the duration of the intended stay and for the return to his country of origin or residence, or for transit to a third country into which he is certain to be admitted, or he is not in a position to acquire such means lawfully;
- the applicant has exceeded his stay (he has already stayed three months during the current six-month period on the territory of the member states on the basis of a uniform visa or a visa with limited territorial validity);
- the applicant is a person for whom an alert has been issued in the Schengen Information System ("SIS") for the purpose of refusing entry;
- the applicant is considered to be a threat to public policy, internal security or public health or to the international relations of any of the member states, in particular where an alert has been issued in member states' national databases for the purpose of refusing entry on the same grounds;
- the applicant does not provide proof that he holds adequate valid traveler's medical insurance, where applicable; and
- there are reasonable doubts as to the authenticity of the supporting documents submitted by the applicant or the veracity of their content, the reliability of statements made by the applicant or his intention to leave the territory of the member states before the expiry of the visa applied for.

In the event of a refusal, it is possible to appeal, but this is not the most efficient way to move forward. An appeal is processed by the Belgian Foreigners' Litigation Council: this is an administrative court, which does not re-examine the facts of the case but only checks whether the decision by the authorities complies with the existing legislation. Furthermore, where a visa has been refused, the Foreigners Litigation Council can in principle only set the refusal aside but cannot rule to grant an immediate visa.

Filing a new visa application may be a better option: a recent refusal does not automatically mean that a new visa application will be refused. It will be assessed on the basis of all the available information, which will, of course, include the refusal.

Irrespective of whether or not a visa is required, entry to Belgium can be refused by the border control authorities if certain admission conditions are not met. They are as follows:

- the foreigner must have documents justifying the purpose and conditions of the intended stay;
- he/she must have sufficient means of subsistence, both for the duration of the intended stay and for the return to his country of origin or residence, or for transit to a third country into which he is certain to be admitted, or he is in a position to acquire such means lawfully;
- he/she is not a person for whom an alert has been issued in the SIS for the purpose of refusing entry;
- he/she is not considered a threat to the international relations of Belgium or any other Schengen country; and
- he/she is not considered a threat to the public policy, public order or internal security (including public health) of Belgium.

A non-EU foreigner intending to stay in Belgium for less than three months must inform the municipal authorities of his stay within three working days after entry unless he stays in an hotel. An EU national has ten working days to inform the municipality.

A foreigner who leaves Belgium does not have to obtain an exit permit.

LONG-TERM RESIDENCE IN BELGIUM

A residence permit is generally required for anybody staying in Belgium for more than 90 days.

The residence permit must be applied for separately and is issued by the Belgian Ministry of Internal Affairs.

There are two ways to apply for a residence permit.

In principle, the foreigner first has to apply for a long-term type D visa from the Belgian consular service abroad. The type D visa allows him to get a residence permit in Belgium through his Belgian local authority.

In general the following documents are required for a long- term type D visa application:

- passport (valid for at least 12 months);
- two visa application forms;
- language form (choice of language among Dutch, French or German – the three official languages of Belgium – for further correspondence with the Foreigners' Office (the department within the Ministry of Internal Affairs in charge of immigration matters); the applicant can choose one language or can state that he has no preference);
- medical certificate (a physician must confirm the absence of *"1. illnesses requiring quarantine as stated by international health regulation no. 2 dated May 25, 1951, of the World Health Organization; 2. pulmonary tuberculosis, active or progressive; 3. other contagious or diseases transmittable by infection or parasites if they are subject in the host country to provisions for the protection of nationals"*);
- certificate of good conduct/police clearance certificate;

The time needed to process a long-term type D visa application depends on the embassy/consulate where it is filed.

The fees for most visa applications vary between EUR 220 and EUR 238.

A non-EU foreigner intending to stay in Belgium for more than three months must register with the municipal authorities within eight working days after entry. An EU national must register at the municipality within three months after entry.

Local police will verify whether the foreigner is actually residing at the stated address.

Once this has been verified, a residence permit is issued.

Another way to apply for a residence permit is to apply for a single permit. Please refer to the section on "Work Permits".

EXPATRIATE EMPLOYEES

COST OF LIVING AND IMMIGRATION

Cost of living rankings in Belgium in 2024:

Consumer price	63.0
Rent	21.40
Consumer price + rent	43.30
Groceries	56.10
Restaurant price	67.80
Local Purchase Power	90.7

www.numbeo.com/cost-of-living/rankings_by_country.jsp

The website referred to also gives a cost of living comparison

Driver's Licenses

The situation depends on the investor's driver's license.

- If the investor holds a valid European driver's license, he may drive in Belgium on the basis of that license. The investor can also "exchange" his license for a Belgian driver's license once he has obtained a residence permit in Belgium, provided the European driver's license was issued by the investor's home country before he registered in Belgium.

- A similar situation applies to investors who hold a valid non-European driver's license approved by the Belgian authorities. The "approved" list includes Australia, Brazil, Canada (Alberta, British Columbia, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan), China, Japan, Russia and the USA.

- If the investor has a valid non-European driving license that is approved, he may drive on public roads in Belgium for a maximum period of 185 days from the date of the registration in Belgium.

If the investor stays in Belgium for a longer period, he will have to "exchange" the non-European driver's license for a Belgian one. The "exchange" procedure is initiated with the local authority, which passes the application on to the Federal

Mobility Authorities, and can take up to four or five weeks. Checking the authenticity of the foreign driver's license especially takes time. No examinations are required, either practical or written. Only the costs of issuing the Belgian license should be charged (in principle EUR 16); however, it could be that the municipal authorities charge administrative fees for the "exchange".

An investor who holds a valid non-European driver's license not approved by the Belgian authorities may not drive in Belgium on the basis of that license.

- An investor who has registered with his local municipality and is waiting to be issued with a residence permit must be in possession of an international driver's license in order to lawfully drive in Belgium. An international driver's license can be issued by the investor's home country.

- Once the investor is issued with a residence permit, he has to take practical and written examinations to get a Belgian driver's license.

Education

Types of schools and fees

Nurseries are available for babies and infants aged up to two-and-a-half years. Kindergarten is available from ages two-and-a-half to six. Children attend primary school for six years, during which they study a full range of subjects, with an emphasis on maths and modern languages. They attend secondary school for six years.

Belgian schools: the compulsory school attendance ages in Belgium are from 6 to 18. Education is free, all schools being publicly funded. The teaching language depends on the Region: Dutch in Flanders, French in Wallonia (including in the German community), both French and Dutch in Brussels and in some surrounding municipalities. Belgium has two school systems that operate side by side: one is organized by the State or local authorities, with mainly non-denominational schools; the other is the private school system, mainly Roman Catholic.

International schools: Belgium – and Brussels in particular – has a raft of international schools, which offer the whole gamut of education from nursery to school-leaving age. As they are all private, they are fee-paying, though many companies offer education costs as part of an overseas benefits package. Among these international schools, we can mention: the International School of Brussels; St John's International School in Waterloo; the British School of Brussels; the Antwerp British School, the International School of Ghent.

European schools: education is in the pupil's mother tongue, with a second language being introduced at primary level. A third language is then obligatory from the second year of secondary school, with optional additional languages on offer in later years. The European schools are difficult to get into unless at least one parent works for one of the EU institutions. As they are private, they are fee-paying, though the European institutions or the companies in which one of the parents works offer education costs as part of an overseas benefits package. Among these schools, we can mention: four European Schools in Brussels (I, II, III) and the European School of Mol.

Requirements for enrollment

With regard to Belgian schools, there is no requirement for a child to enroll. However, for international and European schools, there may be special requirements depending on the school.

Housing

Type of housing

Rent Per Month	Avg. (EUR)	Range
Apartment (1 bedroom) in City Center	816.69	650.00-1,100.00
Apartment (1 bedroom) Outside of Center	689.01	550.00-900.00
Apartment (3 bedrooms) in City Center	1,241.24	850.000-1,900.00
Apartment (3 bedrooms) Outside of Center	1,035.00	750.00-1,600.00
Apartment Purchase Price		
Price per Square Meter to Buy Apartment in City Center	3,542.00	2,500.00-5,000.00
Price per Square Meter to Buy Apartment Outside of Center	2,868.92	2,000.00-4,000.00
Salaries And Financing		
Median Monthly Disposable pay (After Tax)	2,437.33	
Mortgage Interest Rate in Percentages (%), Yearly	3.27	1.50-4.00

https://www.numbeo.com/property-investment/country_result.jsp?country=Belgium

Own property

An investor may buy property in Belgium.

There is no obligation for a worker to have found housing before his arrival in Belgium.

Tax benefit

A foreign employee who fulfills all the conditions of the special *impatriate* tax regime for incoming taxpayers (including specific rules for researchers), will be entitled to a tax exemption on certain cost reimbursements made to him by his employer.

Individuals moving to Belgium from another EU country may

IMPORTING PERSONAL POSSESSION WITHIN THE EU

import all their personal belongings free of VAT and import duty, without any formalities, except for motor vehicles.

For alcohol and alcoholic beverages and manufactured tobacco, importation is duty-free if the products were acquired for the individual's own use, thus not for commercial use, are transported by the individual and excise duty has been charged in the EU member state where they were acquired.

To establish whether such products are intended for the individual's own use or for commercial purposes, the tax authorities will take account, *inter alia*, of the quantity of product. Belgium has laid down guide levels for alcoholic beverages and tobacco, solely as an indication. If higher quantities are imported, the tax authorities will ask for proof that the products are being imported for personal use.

The importation of motor vehicles into Belgium is subject to VAT

if the vehicle is new. A car is new where importation takes place within six months of the date of first registration or the vehicle has be driven no more than 6,000 km. A special VAT declaration must be filed.

When a car, old or new, is imported into Belgium, it has to be cleared through customs.

Finally, special restrictions apply to imports of endangered species of animals or plants or products derived therefrom.

FROM OUTSIDE THE EU

Personal property, which is any property intended for the personal use of the persons concerned or to meet their household needs, imported by individuals transferring their normal place of residence from a non-EU country to Belgium is admitted free from import duties and VAT. However, no relief from import duties or VAT is given for alcoholic products, tobacco or tobacco products (except for small quantities imported in the individual's personal luggage, see below), commercial means of transport or articles for use in the exercise of a trade or profession, other than portable instruments of the applied or liberal arts.

Moreover, relief is limited to personal property which has been in the possession of and, in the case of non- consumable goods, used by the person concerned at his former place of residence for a minimum of six months before the date of departure and is intended to be used for the same purpose at his new normal place of residence.

Relief from import duties and VAT is granted only to persons whose place of residence has been outside the customs territory of the Community for a continuous period of at least 12 months.

Relief is granted only in respect of personal property entered for free circulation within 12 months from the date the person concerned establishes his normal place of residence in Belgium.

Until 12 months have elapsed from the date on which its entry for free circulation was accepted, personal property which has been admitted duty- and VAT-free may not be lent, given as collateral, hired out or transferred, whether for a consideration or free of charge, without prior notification to the competent authorities. If the property is lent, given as security, hired out or transferred before the expiry of the 12-month period, the relevant import duties and VAT will be due.

Personal property has to be cleared through customs on arrival.

MEDICAL CARE

WHAT LEVEL OF MEDICAL CARE IS AVAILABLE?

Belgian healthcare is regarded as among the best systems in Europe, renowned for its easy accessibility and high-quality treatment. With 3.3 doctors per thousand inhabitants, Belgium is around the OECD average.[28]

According to the OECD, there is heavy reliance in Belgium on market mechanisms at provider level, with wide patient choice among providers and fairly large incentives to produce high volumes of services, contained by gate- keeping arrangements

NATIONAL HEALTH CARE

In Belgium, the system is the "mutuelle" scheme: it is necessary to join the "mutuelle" insurance scheme in order to benefit from medical cover making treatment accessible. The "mutuelle" covers part of the medical, pharmaceutical and hospitalization costs. Depending on the type of medical care, the patient has to bear a smaller or larger part of the medical cost.

Healthcare insurance is a part of the Belgian social security system. The social security contributions that are to be paid to the National Office for Social Security (see above) include contributions for the healthcare insurance.

For patients, the significant advantages of the Belgian healthcare system are near-complete health insurance cover based on social solidarity; good quality services; low co-payments; free choice of medical professional and insurance fund; and freedom to demand any treatment they choose, as the system is remunerated on a fee-for-service basis. Access to healthcare is in most cases easy and equitable.

[28] Health resources - Doctors - OECD Data

MOVING COSTS

Moving costs vary according to a number of factors such as the country of origin, the number of cubic meters of personal belongings; the number of persons moving, etc.

For a foreign employee who fulfills all conditions to benefit from the special *impatriate* tax regime, certain reimbursement by the employer, including moving costs to Belgium, can be considered an exempt cost reimbursement.

TAX LIABILITY

Personal income tax

It is worth mentioning that a special tax regime exists for some foreign employees coming to work in Belgium, including specific rules for researchers.

WORK PERMITS

Principle

Despite several exemptions, the basic rule is that employment of a foreigner (= non EU national) in Belgium requires an authorization/work permit.

Labor card

If its future foreign employee is coming to work in Belgium for up to 90 days, the employer applies for a work authorization to work. This is done in one procedure, but sometimes separate conditions and procedures apply based on the category to which the foreign employee belongs (e.g., highly skilled, managerial position, shortage occupation, specialised technician, postdoctoral researcher, ...).

If the application is approved, the employer receives the work authorisation and the employee receives a labor card.

Single permit

A single permit is required for a foreign employee (non-EU national) who will be staying and working in Belgium for more than 90 days.

The employer applies for a single permit if the single permit is requested for a definite term. The employer collects the required documents for its application. The documents do not have to be originals; a copy is sufficient.

Separate conditions and procedures apply for each category (as indicated above). If the application is approved, the Immigration Department issues a permit. This contains both permission to work and permission to stay. The employee can only work for the employer who applied for the permit.

For the managerial, highly skilled and intra corporate transferee categories, the prospective employer can apply for a single permit with a validity of three years.

An application must be filed by or on behalf of the employer in one of the three Regions (Brussels, Flanders or Wallonia), depending on the employment location.

The application forms differ slightly for the three Regions, but the content is basically the same. The application must be accompanied by at least a medical certificate (in a prescribed form), an employment contract and a full copy of the applicant's passport. Documents such as diplomas and résumés can be added, plus other relevant information. In the event of secondment, proof of home-country social security cover is needed.

Refusal can be appealed to the Minister of Employment within one month.

WORK PERMITS/PROFESSIONAL CARDS/ BUSINESSVISITORS

PROFESSIONAL CARDS

Principle

Foreign self-employed persons need a professional card in order to carry on business in Belgium, even if their work is unremunerated.

A self-employed person who resides abroad (i.e., outside the EEA and Switzerland) must file his application for a Belgian professional card with his local Belgian consulate or embassy.

Application

Professional cards are a regional competence; for example, the Flemish Region will decide on your professional card if:

- the address of the establishment unit (operating address) of your self-employed professional activity is in the Flemish Region; and
- that address is (or will be) registered with the Crossroads Bank for Enterprises.

It is therefore important to first choose where you want to establish yourself for your self-employed professional activity. Your choice determines whether your application will be processed by the Flemish, Walloon or Brussels-Capital Region or the German-speaking Community.

If the Flemish Region issued you a professional card, the principle of "mutual recognition" applies and you can provide your services in the Walloon Region, the Brussels-Capital Region and the German-speaking Community, without having to apply for an additional professional card there. The principle of mutual recognition also applies in reverse.

The possession of a professional card is mandatory to start the self-employed professional activity. The total procedure does take some time; allow at least two months to complete the entire application process.

Refusal can be appealed to the Flemish Minister for Economy, Innovation, Work, Social Economy and Agriculture, within 30 days.

In principle, the professional card is valid for five years. In practice, however, an initial professional card is generally valid for a limited period, usually two years, but is renewable for a total of five years.

BUSINESS VISITORS

Unless exempt by treaty or other reciprocity agreement, foreign nationals (being nationals who are not an EU resident or resident of Iceland, Norway, Lichtenstein or Switzerland) are generally required to obtain a short-stay type C visa (Schengen visa) prior to entering Belgium for short business visits.

Citizens of certain specific countries (e.g., the United States,

Canada, Japan, Brazil and Mexico) do not need a visa when traveling to Belgium for short-term business purposes. They will be allowed to enter Belgium on the basis of their nationality upon presenting their international passport. The permitted length of stay is up to 90 days in any 180-day period only.

Although no visa is required, the individual must prove the purpose of the trip and demonstrate sufficient means of subsistence if asked by border control (this is, of course, not applicable to EU citizens).

For the self-employed, business travel as defined in the law is permissible without a professional card, but is limited to three consecutive months.

LIEDEKERKE

Founded in 1965 by lawyers committed to legal excellence, Liedekerke is an independent law firm recognised for its leadership and expertise and with an international reputation built upon an unchallenged expertise.

A premium Belgian business law firm for nearly 60 years with offices in Antwerp, Brussels, London, Kinshasa and Kigali, our firm is dedicated to providing a world-class service by consistently delivering the finest assistance and guidance.

The firm has a strong advisory practice based on sector expertise and an in-depth knowledge of Belgian and European law. As an essential complement to its advisory activities, it represents clients in complex litigation before national, European and international courts, both judicial and arbitral, the Court of Cassation, the Council of State and the Belgian Constitutional Courts. Our clients, active a in a broad range of industries, including financial services and financial institutions, energy, real estate and construction, environment, TMT, retail, consumer goods and trade, public authorities and government agencies, automotive, transport, infrastructure and logistics, funds and asset management amongst others rely on us to consistently go above and beyond their expectations. We offer them the finest legal guidance possible, combining the firm's solid international capability with strong local roots and in-depth regional knowledge.

With over 140 lawyers including 31 partners, our goal is not to be the largest firm but to be the firm of choice for clients who require trusted advice and innovative and business-aware legal solutions. Although we excel in minimising conflict, when litigation is unavoidable, we have a record of prevailing in court.

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- Tax
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