AN OVERVIEW OF THE LEGAL CHANGES IN THE BELGIAN NON-PROFIT SECTOR: THE (INTERNATIONAL) NON-PROFIT ORGANIZATION AS AN ENTERPRISE

Date: 15 April 2020

By: Jeroen Smets

In the past two years, several legislative amendments have led to a thorough redrawing of the Belgian landscape of (international) non-profit organizations.

Starting from 1 May 2018, a modernized bankruptcy and insolvency regime became applicable to both companies and the non-profit sector. Since 1 November 2018 a broadened “enterprise” concept has made litigation involving (international) non-profit organizations a competence of the enterprise courts In addition, the Belgian Companies and Associations Code, which governs all legal entities, including (international) non-profit organizations, entered into force, further harmonizing and modernizing the legal framework for both companies and non-profit organizations. The new Companies and Associations Code entered into force on 1 May 2019 for (international) non-profit organizations that are constituted after that date, and on 1 January 2020 for existing non-profit organizations.

THE PERFORMANCE OF COMMERCIAL ACTIVITIES AND THE PURSUIT OF PROFIT

One of the most striking innovations of the new law is the provision stating that non-profit organizations are free to carry out unlimited commercial and/or industrial activities (whether or not they are ancillary) and make profits. The determining factor for an entity to be considered as a non-profit organization is no longer the absence of the pursuit of profit, but the prohibition to distribute any profits directly or indirectly.

Non-profit organizations established in Belgium are now able to carry out commercial activities. However, for organizations that wish to benefit from this new possibility, their statutory purpose should include the pursuit of commercial activities, which will require a change to their the articles of association in most cases.

It should be noted that the legal possibility of pursuing profits and performing commercial activities, does not change the tax implications of such activities. Non-profit organizations that mainly perform commercial activities for a purpose other than the financial support of their main non-profit activities, will be subject to the corporate tax regime as opposed to the (more advantageous) income tax for legal entities regime.

MANAGEMENT AND DIRECTOR'S LIABILITY

The new Companies and Associations Code extends the liability of the directors of (international) non-profit organizations. Directors could, until recently, only be held liable either for their own wrongdoing (consisting either

©2005-2026 K&L Gates LLP. All Rights Reserved.

in the manifestly imprudent management of the organization, the violation of the law or the organization's articles of association) or for the infliction of damages to a third party (tort liability). However, every director can now equally be held liable in the following cases:

- In case the governing body has the form of a collegial board, directors are held jointly liable for any mistakes of the governing body.
- Moreover, directors are held jointly liable, whether or not the governing body has the form of a collegial board, for all damages caused by a violation of the law or the articles of association.

Directors can, however, escape the aforementioned joint liability by proving (i) that they were not part of the decision making process and (ii) that they have notified the mistake to the board of directors or all the other members of the governing body.

The application of bankruptcy and insolvency legislation to non-profit organizations entails additional grounds for liability.

Indeed, in most cases a director or governing body that either (i) has made serious mistakes that has contributed to the bankruptcy of the organization or (ii) has continued the activities of an organization that was clearly unprofitable and have therefore accrued the organization's debts (wrongful trading) can be held (jointly) liable in any bankruptcy procedures.

Non-profit organizations and international non-profit organizations that are considered small from an accountancy perspective are, however, exempt from the abovementioned liability regime in case of bankruptcy.

Furthermore, the new Companies and Associations Code introduces a financial limitation on the director's liability for all the above mentioned liability grounds, provided that the mistake can be considered a simple minor fault (*lichte fout die toevallig voorkomt / faute légère accidentelle*). In this case, the joint liability of the governing body is capped vis-à-vis the non-profit organization as well as third parties in amounts varying between €125,000 and €12 million, depending on the size, turnover and activities of the organization.

FINANCIAL TRANSPARENCY

Every (international) non-profit organization under Belgian law or under foreign law with a Belgian branch office, will be required to keep a Register of all incoming and outgoing gifts coming from and going to foreign countries (all types of donations, legacies, and acts free of charge) at their registered seat or branch office. This gift Register must be filed electronically on a yearly basis with the National Bank of Belgium. As opposed to the annual accounts, the register will not be publicly accessible.

Non-profit associations, which only make or receive foreign donations exceptionally, for an amount of less than €3,000 per financial year, are exempt from keeping and registering the gift register.

Whereas in the past only large non-profit organizations were obliged to file and publish their annual accounts at the National Bank of Belgium, while small to medium organizations only had to file their annual accounts at the clerk's office, all (international) non-profit organizations, regardless of their size, will be obliged under the new legislation to file and publish their annual accounts at the National Bank of Belgium.

MISCELLANEOUS

©2005-2026 K&L Gates LLP. All Rights Reserved.

Some other changes introduced by the new legislation include:

- Registration at the Crossroads Banks for enterprises: since 30 April 2019, non-profit organizations are required to actively register at the Crossroads Bank for Enterprises through the intermediary of a recognized one-stop-shop for enterprises (*guichet d'entreprises / ondernemingsloket*).
- Competence of the enterprise court: any dispute between non-profit organizations and/or companies should be brought before the enterprise court.
- Number of members of the non-profit organization: a non-profit organization will have to have at least two members (as opposed to three under the previous legislation) and the rule, according to which the number of members of the general assembly had to be higher than the number of directors, was abandoned.
- Statutory seat theory and cross-border mobility: from now on, (international) non-profit organizations are subject to the laws of the country of their initial establishment. Non-profit organizations with a statutory seat in a third country will thus be able to keep their foreign legal identity while conducting economic activities in Belgium, and non-profit organizations originally established under Belgian law will keep their Belgian legal identity (from a Belgian perspective) even when moving abroad.
- Electronic communication: (international) non-profit organizations may now include their website and e-mail address in their articles of associations, while members of the organization may communicate their e-mail address through which they can be reached, which will have the value of an official notification.

KEY CONTACTS



JEROEN SMETS
PARTNER

BRUSSELS
+32.2.336.1918
JEROEN.SMETS@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.