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Doing business in Belgium

A comparative guide

July 2023

A guide to doing business in Belgium

Deloitte Legal compiled this guide for Legal 500, providing an overview of the laws and regulations on doing business in a variety of jurisdictions. The following country chapter contains the relevant information on the systems of law, the legal forms through which people carry out business, capital requirements, how entities are operated and managed, expansion possibilities, corporate governance, employment law and more.

No.	Question

A. Legal system and landscape

1 **Is the system of law in your jurisdiction based on civil law, common law or something else?**

The legal system of Belgium is a civil law legal system established by, amongst others, acts of Parliament, decrees, royal decrees, executive orders, harmonized European Union law as it applies to the member states and international law.

B. Entity establishment

2 **What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?**

There are two main types of business structures, multiple other structures exist, but these are used in more specific situations:

- the limited liability company (*"besloten vennootschap" / "société à responsabilité limitée"*) ("**BV**" / "**SRL**"), where the shareholders' liability is limited to the amount they invest. There is no (minimum) capital requirement and it is characterized by its flexibility;
- the open limited liability company ("*naamloze vennootschap*" / "*société anonyme*") ("**NV**" / "**SA**"), where shareholders' liability is limited to the amount they invest. There is a minimum capital requirement and free transferability of shares is the rule, making it the most commonly used legal form for public companies in Belgium.

3 **Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?**

A foreign company may carry on business directly in Belgium by setting up a branch. A branch is not considered as a legal entity. The parent company will be responsible for the branch's obligations and debts. The branch must be registered with the Belgian Register of Legal Entities ("*rechtspersonenregister*" / "*registre des personnes morales*") and obtain a business number. A representative of the branch must be appointed and registered in the Belgian Register of Legal Entities.

4 **Are there are any capital requirements to consider when establishing different entity types?**

For an NV/SA the minimum capital requirement amounts to €61,500.

For a BV/SRL, no (minimum) capital requirement is imposed. However, it is required to make funds available to the company, taking into account other available sources of finance, which are sufficient in the light of the intended activity.

5 How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilize?

Both the NV/SA and the BV/SRL are commonly used in Belgium by investors. Both are established by notarial deed. From the moment of filing of the notarial deed at the Belgian Register of Legal Entities, the company acquires legal personality.

6 How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?

The BV/SRL and NV/SA are managed by directors who make decisions at board meetings or by written resolutions. The management body of a legal entity may also delegate the daily management of the legal entity ("*dagelijks bestuur*" / "*gestion journalière*"). The management body, however, remains responsible for all the acts or failures to act of these delegates.

The management body of the legal entity has the power to perform all acts which are necessary or useful for fulfilling the purposes of the company, except where powers are expressly reserved for shareholders by the Belgian Companies and Associations Code (the **BCAC**) or in the articles of association of the legal entity.

Consequently, certain decisions must be made by shareholders at a general meeting or by a written resolution. Shareholder decisions may pass by ordinary resolution (being approved by over 50% of the shareholders) or by special resolution (being approved by more than 75% of the shareholders) depending on the type of decision, the company's articles of association and the **BCAC**). The company's articles of association may impose more stringent majority quorums.

- The BV/SRL is managed by at least one or more directors. All directors have individual decision making power. The company's articles of association may deviate.
- The NV/SA is managed by a sole director or by one or more collegiate management bodies. Consequently, different governance models may be adopted:
- Monistic governance: governance through a board of directors;
- Dual governance: governance through an executive board ("*directieraad*" / "*conseil de direction*") and a supervisory board ("*raad van toezicht*" / "*conseil de surveillance*");
- Sole director: governance through one director.

7 Are there general requirements or restrictions relating to the appointment of (a) authorized representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?

An individual may become a company director unless the courts have imposed an injunction against holding the office of director, grounds for such injunctions may be:

- A result from a criminal conviction;
- In the context of a judicial dissolution; or
- In the context of a bankruptcy.

A BV/SRL must have at least one director. A NV/SA must have at least one director in a sole director governance model and at least three directors in a monistic governance model (or two directors if the company has less than three shareholders). Directors can both be natural persons or legal entities. No specific qualifications to be appointed as a company director are needed, although directors should be aware of their responsibilities and the resulting directors' liability as a company director before taking the position on. There is no requirement for a director to be based in Belgium.

The BCAC requires at least one shareholder to incorporate a BV/SRL or NV/SA. There is no maximum number of shareholders a company can have. There is no statutory limit to the number of new members who can join a company after incorporation. New members can be added by transferring existing shares from a current shareholder, or by issuing new shares to new members. Without prejudice to the company's articles of association, a company may allot and issue as many additional shares as needed.

There are no local residency or nationality requirements placed on shareholders from a Belgian company law perspective.

8 **Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?**

From a corporate law perspective and without prejudice to the company's articles of association, there are no restrictions in expanding business operations in Belgium. An entity is free to work with trade/commercial agents and resellers.

C. Entity operation

Please answer the following questions only for the most common entity / ies within your jurisdiction:

C1. Governance

9 **Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.**

The Belgian Corporate Governance Code 2020 establishes a number of principles that apply to listed companies:

- The company shall make an explicit choice regarding its governance structure and clearly communicate it;
- The board and the executive management shall remain within their respective remits and interact constructively;
- The company shall have an effective and balanced board;
- Specialized committees shall assist the board in the execution of its responsibilities;
- The company shall have a transparent procedure for the appointment of board members;
- All board members shall demonstrate independence of mind and shall always act in the best interests of the company;
- The company shall remunerate board members and executives fairly and responsibly;
- The company shall treat all shareholders equally and respect their rights;
- The company shall have a rigorous and transparent procedure for evaluating its governance regime;

- The company shall publicly report on the application of the code.

The BCAC provides for more specific governance provisions.

C2. Capital

10 **What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.**

The shareholders of the company may provide working capital by subscribing for further shares in the company.

A company may also consider a loan to finance working capital needs. This could be from the shareholders, another entity within the same company group or from a third party. In addition to this the company may consider overdrafts, revolving credit facilities, debt factoring (or invoice finance), asset refinancing, merchant cash advances, etc.

C3. Return of proceeds

11 **What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.**

Private companies can return value to their shareholders in several ways, as set out below. As a general rule, companies are bound by strict maintenance of capital/equity rules and only subject to certain exceptions, can return value to their shareholders.

Dividends
The most used method of a company returning value to its shareholders is a dividend.

A dividend is a distribution of a company's post-tax profits to its shareholders. As with all distributions, in order for a company to be able to lawfully pay a dividend, it must have sufficient distributable profits.

In an NV/SA, no distributions are permitted if the net assets of the company drop (*i.e.*, have dropped or would drop as a result of the distributions) below the statutory share capital of the company plus any reserves not available for distribution.

In a BV/SRL, each distribution is subject to a double test:

- balance sheet test: (i) no distribution is permitted if net assets are or become negative as a result of such distribution, and (ii) to the extent that there is 'unavailable equity' - no distribution is permitted if the net assets of the company drop (*i.e.*, have dropped or would drop as a result of the distributions) below the unavailable equity (this is done either on the basis of the latest approved annual accounts or a more recent statement of assets and liabilities). In case of a recent statement of assets and liabilities, for companies with a statutory auditor, the statutory auditor must draw up a report on a recent statement of assets and liabilities);
- liquidity test: no distribution is permitted if the company will not be able to pay its debts due within at least one year. The management body must account for the liquidity test in a report and if the company has a statutory auditor, the statutory auditor must draw up a report on financial and accounting data in the report of the management body.

Dividends are usually paid in cash but can also be satisfied by the transfer of non-cash assets. Any dividend paid out by a company will be either an ordinary dividend (*i.e.* dividends paid once a year, decided upon by the general shareholders' meeting, calculated after the annual accounts have been drawn up), an extraordinary dividend (i.e. dividends paid on a different occasion than the general shareholders' meeting by means of an extraordinary shareholders' meeting) or an interim dividend (dividends paid at any time throughout the year calculated before the company's annual earnings have been determined, decided upon by the management body). The company's articles of association should contain the express provision that authorizes the management body to distribute interim dividends.

Share Buybacks

A share buyback is a purchase by a company of its own shares from a shareholder. Company are only permitted to purchase their own shares in accordance with the BCAC.

In summary, the BCAC provides that:

- a prior authorization of the shareholders' meeting with special majority is required (which may, but does not have to be, included in the articles of association);
- the amount allocated for the buyback is available for distribution as explained above;
- the shares being repurchased must be fully paid;
- the offer of the share buyback must be addressed to all shareholders under the same conditions per type of security, unless the shareholders unanimously decide otherwise;
- following the repurchase, the shares must be cancelled or, if financed out of distributable reserves, can be held in treasury. As long as the shares are kept in treasury, an unavailable reserve must be formed equal to the value of the shares;
- the share buyback must be disclosed in the company's annual report.

Capital reductions

A reduction of capital occurs where a company reduces the amount of its share capital. This may be an option when the company has capital that is surplus to its requirements and that it wishes to return to shareholders.

For an NV/SA, a capital reduction is subject to the approval of the company's shareholders during an extraordinary shareholders meeting and must be published in the Belgian Official Gazette. For at least two months following publication in the Belgian Official Gazette, third-party creditors may request a security with respect to their outstanding receivables with the company. The capital decrease may not result in a reduction of the share capital below the mandatory minimum, i.e., EUR 61,500.

As a general rule, amounts contributed to a Belgian company in cash or in kind (paid-up capital) are eligible to be repaid to the shareholdersfree of withholding tax. Nevertheless, a portion of the repayment is considered to be a dividend generally subject to withholding tax, this applies to the extent that the company has taxable reserves that may or may not be incorporated into the capital.

Please note the notion of 'capital' does not exist for the BV/SRL. As a result, only an NV/SA knows the procedure of capital reduction. All ways of reducing the equity in a BV/SRL have to pass the aforementioned tests (balance sheet test & liquidity test).

Loans

It is also possible for a company to lend cash to its shareholders. The terms of such a loan should be closely examined to ensure they do not give rise to any tax or legal issues (e.g. disguised

distributions). As with any decision, the loan must be permitted by the company's corporate object (as mentioned in the articles of association) andjustified by the company's corporate interests.
See also section [35] below regarding the liquidation process.

C4. Shareholder rights

12 **Are specific voting requirements / percentages required for specific decisions?**

As a rule, the general shareholders meeting decides by simple majority. There are different types of resolutions which may be put to a general meeting for which a special majority is required:

For an amendment of the articles of association:

- Attendance quorum: at least half of the capital (NV/SA) or half of the number of issued shares (BV/SRL). If the quorum is not met, a second general meeting must be convened , without attendance quorum.
- Voting quorum: three-quarter of votes, disregarding abstentions.

For the modification of the object of the company:

- Attendance quorum: at least half of the capital (NV/SA) or half of the number of issued shares (BV/SRL). If the quorum is not met, a second general meeting must be convened , without attendance quorum.
- Voting quorum: four-fifth of votes, disregarding abstentions.

For the modification of the rights attached to different classes of shares:

- The same attendance and majority requirements for an amendment of the articles of association apply, as described above.
- With an additional prescription that the voting and attendance requirements must be met within each class of shares issued by the company.

13 **Are shareholders authorized to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?**

It is established by law that the general meeting has residual authority only. This means that the management body is competent for everything except what is explicitly reserved for the general shareholders meeting. The articles of association can deviate from this to a certain extent, but this will not be enforceable towards third parties.

In essence, the general shareholders meeting only has an *a posteriori* power of control over what the management body does. The general shareholders meeting has a right to ask questions to the directors and the directors have a duty to answer (subject to exceptions).

It is the general meeting that appoints and dismisses the directors. In this way, pressure can be exerted (indirectly) on the board.

14 What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?

Employees hired to work in Belgium under a Belgian employment contract will be covered by Belgian employment law. We have set out below a summary of the core employment law rights and protections that employees benefit from in Belgium. This is not exhaustive but covers the core areas. All financial figures are the current figures and are subject to review.

Right / Protection	Details
National Minimum Wage	In Belgium, the minimum wage is not set by the law, but by collective bargaining agreements (CBA) concluded at the industry level. An overall minimum wage is set by the national CBA 43 determining the "*guaranteed average monthly income*" (GAMI). However, in most cases, collective bargaining agreements have been concluded at the industry level providing for a minimum wage higher than the minimum wage fixed by the national CBA 43. The GAMI for full-time employees amounts to EUR 1.954,99 EUR (as from 1st December 2022).
Holiday	Paid holiday entitlements are based on the number of days worked for the current or previous employer in the year prior to the year in which the paid holiday is taken. An employee who works five days a week and who worked for all 12 months of the previous year has a statutory right to 20 days' paid holiday. Belgian employees are further entitled to 10 paid public holidays.
Working Hours	Working hours are strictly regulated in Belgium, including, among other laws, the Law of 16 March 1971, which imposes a maximum working week of 38 hours and a maximum working day of 8 hours. However, under specific conditions, employees are permitted to exceed the maximum specified in the Law of 16 March 1971 or by industry CBA's by working overtime.
Rest Periods	Unless an exemption applies, employees are entitled to the following rest periods : • 11 hours' uninterrupted rest per day; • 24 hours' uninterrupted rest on Sunday; and • a rest break of 15 minutes when working more than six hours per day (unless a rest period is already determined by a CBA or a Royal Decree). Where exemptions apply, compensatory rest will usually have to be given.
Pension rights	**Statutory pension** In Belgium, the retirement age is set at 65. This retirement age will be gradually raised to 66 in 2025 and to 67 in 2030. The employer can terminate the employment contract on the first day of the month following reaching retirement age with a reduced notice period of 26 weeks.

	The statutory pension is paid by the authorities. Part of the employer social security contributions are used to fund the legal pension. The employer has no obligation to pay an additional pension premium. The employer may of course offer an additional pension scheme to all their employees, to a group of employees (collective pension commitment) or, under certain conditions, to a particular employee (individual pension commitment). **Occupational pension** An employer is not required by the law to offer its employees access to an occupational pension scheme. If an occupational pension scheme has been established, all employees who meet the eligibility criteria must become members of the scheme. If a new pension scheme is introduced, employees who are in service at the time have the right to refuse to join it. Employees may also refuse to join an occupational pension scheme should the pension scheme be amended. In addition, some industry-level collective bargaining agreements provide for an occupational pension scheme for all employees who fall within the scope of the applicable joint committee. In general, employers who have an equivalent or more favorable occupational pension scheme can however continue to maintain their own occupational pension schemes.
Discrimination	Employees are protected against discrimination on the basis of the following protected criteria provided for by the anti-discrimination law of 10 May 2007 : • age; • health status • disability; • marital status; • birth; • language; • physical or genetic features; • political beliefs; • religion or philosophical beliefs; • sexual orientation; • social origin; • trade union affiliation and beliefs; and • wealth. Employees are also protected against discrimination on the basis of the following protected criteria provided by the gender law of 10 May 2007, on the basis of the following protected criteria: • sex ; • pregnancy ; • medically assisted reproduction • childbirth

	• breastfeeding • motherhood • family responsibilities • gender identity; • gender expression • sexual characteristics; • and sex change. In case of discriminatory dismissal on the basis of one of the above mentioned legislations, the employer may have to pay a lump sum equivalent to 6 months' salary.
Maternity Leave / Pay	Employees are entitled to take up to 15 weeks' maternity leave (17 weeks or 19 weeks in case of multiple births). Employees are entitled to a maternity allowance paid by the Public Health Insurance: • for the first 30 days, employees will receive 82% of their normal gross salary uncapped; and • from the 31st day and in the event of an extension, employees will receive 75% of their normal gross salary capped. Employees who take a maternity leave are protected against dismissal. The employee may only be dismissed for reasons unrelated to the maternity leave. If this protection is not observed, the termination of the employment contract will be considered unlawful. The employer will then be liable to pay compensation in lieu of notice as well as a lump-sum redundancy payment equivalent to 6 months' salary. These two indemnities can, in principle, be cumulated.
Paternity Leave	Eligible employees are entitled to take up to 20 days' paternity leave since 1st January 2023. Employees are entitled to a paternity allowance: • the first 3 days, employees will receive their normal gross salary fully paid by the employer; and • the following days, employees will receive a paternity allowance paid by the Public Health Insurance, equivalent to 82% of their normal gross salary. Employees who take a paternity leave are protected against dismissal. The employee may only be dismissed for reasons unrelated to the paternity leave. If this protection is not observed, the termination of the employment contract will be considered unlawful. The employer will then be liable to pay compensation in lieu of notice as well as a lump-sum redundancy payment equivalent to 6 months' salary. These two indemnities can, in principle, be cumulated.

<table>
<tr>
<td>Shared Parental Leave</td>
<td>Eligible employees are entitled to take up to 4 months of full-time equivalent parental leave until the child reaches the age of 12.
Employees are entitled to a parental lump-sum allowance paid by the National Employment Office of EUR 978.24 (amounts as at 1st December 2022).

Employees who take a parental leave are protected against dismissal.

The employee may only be dismissed for reasons unrelated to the parental leave. If this protection is not observed, the termination of the employment contract will be considered unlawful. The employer will then be liable to pay compensation in lieu of notice as well as a lump-sum redundancy payment equivalent to 6 months' salary. These two indemnities can, in principle, be cumulated.</td>
</tr>
<tr>
<td>Statutory sick pay</td>
<td>An employee who is unable to work because of sickness will continue to receive his or her salary paid by the employer (“guaranteed salary”).
For a white-collar worker, this guaranteed wage will correspond to his/her normal wage for a period of 30 days.

For a blue-collar worker, this guaranteed wage will correspond to :

his normal wage, for the first 7 days;
85.88% of his/her normal wage from the 8th day to the 14th day; and
25.88% of his gross capped wage and 85.88% of the wage above the cap from the 15th to the 30th day of illness.

Should the incapacity extend beyond 30 days, the employee will be entitled to an allowance paid by the Public Health Insurance.</td>
</tr>
<tr>
<td>Statutory Notice Periods</td>
<td>The length of the notice period – amount of the indemnity in lieu of notice - is since 1 January 2014 determined by the law based on the employee’s length of service with the employer and is expressed in weeks. The notice period as from 1 January 2014 until the date of termination must be calculated using the notice period table below:

<table>
<tr><th>Length of service</th><th>Notice period</th></tr>
<tr><td>< 3 months</td><td>1 week</td></tr>
<tr><td>≥ 3 months < 4 months</td><td>3 weeks</td></tr>
<tr><td>≥ 4 months < 5 months</td><td>4 weeks</td></tr>
<tr><td>≥ 5 months < 6 months</td><td>5 weeks</td></tr>
<tr><td>≥ 6 months < 9 months</td><td>6 weeks</td></tr>
<tr><td>≥ 9 months < 12 months</td><td>7 weeks</td></tr>
<tr><td>≥ 12 months < 15 months</td><td>8 weeks</td></tr>
<tr><td>≥ 15 months < 18 months</td><td>9 weeks</td></tr>
<tr><td>≥ 18 months < 21 months</td><td>10 weeks</td></tr>
<tr><td>≥ 21 months < 24 months</td><td>11 weeks</td></tr>
<tr><td>≥ 2 years < 3 years</td><td>12 weeks</td></tr>
</table>
</td>
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≥ 3 years < 4 years	13 weeks
≥ 4 years < 5 years	15 weeks
From the 5th year onwards	Increase of 3 weeks per additional year of service
From the 20th year onwards	Increase of 2 weeks per additional year of service
From the 21st year onwards	Increase of 1 week per additional year of service

Statutory notice period in case of a termination of the employment contract by the employee :

Length of service	Notice period
<3 months	1 week
≥ 3 months < 6 months	3 weeks
≥ 6 months < 12 months	4 weeks
≥ 12 months < 18 months	5 weeks
≥ 18 months < 24 months	6 weeks
≥ 2 years < 4 years	7 weeks
≥ 4 years < 5 years	8 weeks
≥ 5 months < 6 years	9 weeks
≥ 6 months < 7 years	10 weeks
≥ 7 years < 8 years	12 weeks
8 years or more	13 weeks

Unfair dismissal

Since 1 April 2014, the motivation/justification of dismissals is a legal obligation in application of CBA n° 109, published on 12 February 2014. In short, the employer has:

no obligation to justify a dismissal during the first six months of the employment contract;

to justify a dismissal after six months' employment if the employee asks for it within two months of the end of his/her employment contract (if the employer fails to provide a justification within two months from the employee's request , the employer will be required to pay the employee additional compensation equal to two weeks' salary);

in case of dispute over the motivation, the case will be brought before the Labor Court and both employer and employee will bear the burden of proof;

a risk of being ordered to pay additional compensation of between 3 and 17 weeks' salary (depending of the degree) if the Labor Court decides that the

	dismissal is 'obviously unreasonable'. This will be the case if the dismissal is based on reasons not related to the skills or behavior of the employee or the operational needs of the company and if the decision would not have been taken by a "normal and reasonable" employer.
Statutory Redundancy Payment	In the case of dismissal with a notice period to be served, no compensation in lieu of notice must be granted to the employee at the end of the notice period. An employer may, however, decide at any time to terminate an employment contract immediately in return for payment of compensation in lieu of notice. This compensation in lieu of notice is equivalent to the remuneration including benefits that the employee would have received if he/she had served his/her notice period. The employer can also start with a notice issuance and switch to an immediate termination, paying out the balance of the notice period.
Statement of particulars	N/A

15 On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?

Statutory termination

An employer can at his choice terminate the employment contract for an indefinite duration of an employee either by giving a notice period that has to be performed (the employee continues to work during the notice period) or by immediate termination of the employment agreement with payment of an indemnity in lieu of notice (the employment relationship is immediately terminated).

- If an employer opts to end the employment contract with a notice period, the following formalities must be respected:
- The start and duration of the notice period must be mentioned in the notice letter.
- The notice period will start on the Monday following the week in which the notice is issued.
- The notice by the employer has to be sent by registered mail or by bailiff. If notice is sent by registered mail, the notification takes effect on the third working day following the day that the letter is sent. Consequently, the letter must be sent on Wednesday at the latest if the employer would like to it to commence on the next Monday (note Saturday is always considered a working day irrespective the individual's working schedule).
- If the employer does not respect these formalities, the employer will be considered to have terminated the employment contract with immediate effect and will have to pay compensation in lieu of notice.
- If an employer opts for immediate termination of the employment contract paying an indemnity in lieu of notice (equivalent to the remuneration incl. all benefits that the employee would have earned during the notice). Such termination with immediate effect can occur at any time, even during sick leave (but the reason for termination cannot be based on the illness itself).
- If correct notice is served, no compensation in lieu of notice is due at the expiration of the notice. The employer can start with a notice issuance and switch to an immediate termination, paying out the balance of the notice period.

Unfair dismissal
The national CBA 109 provides a specific unfair dismissal framework, enabling the employee to request written confirmation of the grounds for dismissal, subject to certain formalities (timing and the use of registered letters).

Under CBA 109, a dismissal is considered manifestly unfair when it is based on grounds that:

- (i) have no connection with the employee's ability or conduct or that are not based on the needs of the functioning of the company, establishment or service; and
- (ii) no "normal and reasonable" employer would have made the same decision.

The judge has limited powers regarding such a dismissal. Only the manifest unfairness of the dismissal can be reviewed, not the circumstances surrounding the dismissal.

These rules are only applicable to employees with an open-ended employment contract. Certain categories of employees, like employees with less than six months' service, students, or temporary employees, are also excluded.

If the dismissal is found to be manifestly unfair, the employer faces compensation equivalent to a minimum of 3 weeks and a maximum of 17 weeks' remuneration, depending on the degree of unfairness of the dismissal.

Associated Costs
The costs of a dismissal will depend on the reason for the dismissal and the nature of the termination of the employment contract. Potential costs will include:

- compensation in lieu of notice (see above);
- holiday pay at leave (mandatory to pay);
- a pro-rata 13th month (depending of sector CBA conditions);
- a pro-rata bonus (depending of bonus plan conditions);
- possible clientele indemnity (for sales representative) ;
- other possible compensation for manifestly unfair/discriminatory dismissal or other applicable protections (see above).

Collective dismissals
When the employer intends to proceed with a collective dismissal, he must beforehand inform the works council and provide all the relevant information about the measures envisaged and its consequences for the employees. The committee for prevention and protection at work or the trade delegation will take over the competences of the works council in case there is none in the company.

The employer must consult the works council on the possibilities to avoid or reduce collective dismissals as well as the possibilities to mitigate their consequences (no fixed period, approximatively 2-4 months depending on employee numbers and circumstances). The works council can ask questions, make proposals or comments. The employer must consider and respond to these questions, proposals or comments.

The competent authorities should also be notified of the intention to proceed with a collective dismissal.

A breach of this information and consultation obligation in the context of a collective dismissal may result in an obligation to reinstate the employees concerned.

16 **Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?**

There are three main categories of employee representative bodies in Belgium:

- Works council (WC) with a focus on economic and social information
- Committee for prevention and protection at work (CPPW) with a focus on health and safety
- Trade union delegation (TD) with a focus on individual/collective rights (e.g. concluding CBAs)

The need to establish a WC and/or CPPW is evaluated each 4 years during the social elections (i.e. elections held at company level whereby employees can be candidates to become an employee representative in the WC or CPPW). Next elections will be organized as from 13 May 2024 to 26 May 2024.

Social elections for a WC and/or CPPW only have to be organized by companies averaging:

- ≥ 100 employees (WC)
- ≥ 50 employees (CPPW)

Specific rules apply to determine (i) the "company" in the meaning of this legislation and (ii) the calculation of the average number of employees.

Candidates (both elected and non-elected candidates) are protected against dismissal as from 30 days before the posting of the election date until the installation of the successors (thus in principle on average 4 years' protection)

During this protection period, the protected employees may only be dismissed:

- For serious cause, agreed to in advance by the labor courts
- For economic or technical reasons, accepted in advance by the competent Joint Committee (or by the labor courts)
- If not, high protection indemnities depending on the seniority and the remaining duration of the mandate are due (up to max. 8 years of salary)

A TD can be established upon request of the unions in every company provided that the minimum number of employees required to set up a TD (which is set at industry level) is reached.

The members of the TD will not be elected but appointed by the representative employee organizations.

C6. Anti-corruption / bribery / money laundering / supply chain

17 **Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?**

Yes, corruption is regulated in the Belgian Criminal Code (BCC), including the following offenses:

- Domestic bribery (private to public) under Articles 246 to 252 BCC;
- Domestic bribery (private to private) under Articles 504bis and 504ter BCC;
- Corruption of foreign public officials under Article 250 BCC;

- Facilitation payments (i.e. making payments to a government official to facilitate or expedite the performance of a routine governmental action) which also falls under Articles 246 to 252 BCC.

In this sense, fraudulent conduct that is likely to be relevant in the context of acts of bribery or corruption are regulated under the BCC.

There is also a standalone anti-money laundering legislation in Belgium in the form of the Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash (Anti-Money Laundering Law of 18 September 2017). This Belgian law is a transposition of the Directive 2014/95/EU of the European Union and of the Council of 22 October 2014 amending Directive 2013/34/EU.

The Belgian law concerning anti-bribery or anti-corruption does have extraterritorial application in certain circumstances. Article 250 BCC concerns corruption of foreign public officials. This Article is without prejudice to the applicability of applicable foreign laws regarding anti-corruption where relevant. The penalties that apply to public bribery also apply when the bribery concerns a person holding a public office in a foreign state or in a public international organization.

18 What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?

See responses to question 17, above.

The main economic crimes are regulated under the Belgian Criminal Code, the Income Code of 1992 and the Anti-Money Laundering Law of 18 September 2017.

Obliged entities (credit institutions, insurance companies, payment institutions, financial institutions ...) are legally obliged to combat money laundering and must report suspicions of money laundering to CTIF-CFI (i.e. Cellule de Traitement des Informations Financières – Cel voor Finaniële Informatieverwerking) (see below, art. 47-54 of the Anti-Money Laundering Law of 18 September 2017 and art. 22 of the Anti-Money Laundering Regulation of the National Bank of Belgium). This obligation to report only applies to individuals or organizations operating in certain regulated sectors, such as banks, accountancy practices, estate agents, ...

19 How is money laundering and terrorist financing regulated in your jurisdiction?

Money laundering and terrorist financing are regulated by:

- the Anti-Money Laundering Law of 18 September 2017 (amended by the law of 22 July 2020 to implement the fifth Anti-Money Laundering Directive [AMLD5]), which requires diverse due diligence obligations such as identity verification, detection and reporting of suspicious transactions (preventive aspect);
- the Anti-Money Laundering Regulation of the National Bank of Belgium of 21 November 2017 (preventive aspect);
- article 505 of the Belgian Criminal Code (repressive aspect).

20 Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?

Belgium is currently working on the adoption of specific rules regulating compliance in the supply chain in Belgium.

In this sense, a legislative proposal entitled "*Proposition de loi instaurant un devoir de vigilance et un devoir de responsabilité à charge des enterprises tout au long de leurs chaînes de valeur*" or "*Wetsvoorstel houdende de instelling van een zorg- en verantwoordingsplicht voor de ondernemingen, over hun hele waardeketen heen*" (the Belgian Vigilance Proposal) has been introduced in the Belgian Chamber of Representatives on 2 April 2021.

This proposal was last amended on 8 August 2022, but a final version has not yet been adopted.

C7. Compliance

21 **Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.**

At the end of each financial year, the management body has to establish the annual accounts and its annexes and submit them to the annual general meeting of shareholders for approval. The management body will also draft an annual report each year. This is not required as long as the company is considered a small company under the BCAC.

In principle, if the company has an auditor, the management body should submit the financial reports to him before the annual shareholders' meeting (including the management report and the annual accounts). The auditor must prepare an audit report at least 15 days before the annual shareholders' meeting. The appointment of an auditor is obligated if certain thresholds, as stipulated in the BCAC, are met.

The annual accounts, the management report and the auditor's report must be filed with the National Bank of Belgium within 30 days of the approval of the annual accounts by the annual shareholders' meeting and no later than seven months after the closing date of the financial year.

22 **Please detail any corporate / company secretarial annual compliance requirements?**

Please also see question 21. What follows is a summary of corporate/company secretarial annual compliance requirements (without being exhaustive):

- At the end of each financial year, the management body has to establish the annual accounts and its annexes and submit them to the annual general meeting of shareholders for approval;
- As a rule, the board of directors must draft an annual report each year (exemptions may apply for small companies);
- If the company has an auditor, the management body should submit the documents to him one month before the annual general meeting of shareholders (including the management report and the annual accounts);
- The annual accounts, annual report of the management body and the audit report has to be submitted to the annual general meeting of shareholders (that must be held within six months after the end of the financial year);
- The annual accounts, the management report and the auditor's report must be filed with the National Bank of Belgium within 30 days of the approval of the annual accounts by the AGM and no later than seven months after the closing date of the financial year;
- Companies and legal entities are required to collect and maintain adequate, accurate and up-to-date information on their beneficial owners.

23 Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?

Under Belgian law, at least one annual meeting of shareholders must be organized.

At the annual shareholders' meeting, the shareholders will/can:

- take note of the annual board report (if applicable);
- take note of the report of the auditor (if applicable);
- approve the annual accounts and decide on the appropriation of the results;
- (re)appoint members of the board;
- dismiss members of the board
- grant discharge to the director(s) and to the auditor(s).

Under various circumstances, an extraordinary shareholders' meeting must be organized in order to decide on matters that belong to the (exclusive) powers of the shareholders' meeting (e.g. change of the articles of association, capital increase, capital decrease, ...).

24 Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners ("UBO") of entities? If yes, please briefly describe these requirements.

Companies and legal entities are required to collect and maintain adequate, accurate and up-to-date information on their beneficial owners. The information shall include at least the name, date of birth, nationality and address of the beneficial owner and, in the case of a company, the nature and extent of the economic interest held by it. The beneficial owner shall provide the undertaking or legal person of which he/she is the beneficial owner with all the information which that undertaking or legal person needs to fulfil the requirements.

1st category	*2nd category*	*3rd (residual) category*
The natural person(s) who directly or indirectly hold(s) a sufficient percentage of the voting rights or of the ownership interest in this company (indication of a sufficient percentage: more than 25%) is (are) considered to be a UBO of the 1st category.	The natural person(s) (jointly) controlling a company by other means (e.g. a shareholders agreement) will be considered as UBO(s) of the second category.	In case no UBO(s) of the first or second category can be identified, the senior management staff of the highest controlling (intermediate) entity must be registered as UBOs of the residual category.

Exemptions are in place for listed companies and 100% subsidiaries of listed companies. The company itself is responsible to keep the UBO-register up-to-date. This also implies a yearly confirmation of the current UBO-register.

25 **What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?**

A Belgian resident company is liable to corporate income tax on its worldwide profits, including capital gains, less allowable deductions. Companies may deduct all business expenses when calculating taxable income, subject to the general conditions that they relate to the taxable period, sufficient documentation is available, are legitimate (i.e., incurred or borne to obtain or retain taxable income) and are not explicitly disallowed based on Belgian domestic tax rules.

Taxable profit also includes profits attributed to the Belgian company under the controlled foreign company (CFC) legislation. Furthermore, the company will also be taxed on adjustments following non-arm's length transactions it has been involved in.

Although subsidies are, in principle, part of the taxable income, certain job creation subsidies, capital grants, and interest rate subsidies are exempt for corporate income tax purposes. Income from foreign real estate or branches located in countries with which Belgium has concluded a tax treaty is exempt (except for a very limited number of countries where the relevant treaty grants only a proportional reduction of Belgian tax).

A non-resident company is taxed only on Belgian-source income. A non-resident company without a PE in Belgium is liable to a final withholding tax on Belgian-source dividends, interests and royalties, and to the non-resident's tax on Belgian real estate income. Certain other payments (e.g., service fees or fees for technical assistance) made to non-resident companies (or individuals) without a Belgian PE or Belgian establishment (as defined under Belgian legislation) may, under certain circumstances, be subject to a 12.5% withholding tax (unless the rate is reduced under a tax treaty).

The standard corporate income tax rate is 25%. Small and medium-sized companies (SMEs) are subject to tax at 20% on the first EUR 100.000 of income provided certain conditions are satisfied. These include that:

- the company must qualify as an SME under company law
- no more than 50% of the company's shares may be held by other companies
- the company must pay one of its executives at least EUR 45.000 annually (unless the remuneration of one or more directors is at least equal to the company's taxable profits).

The corporate income tax rate applies to both subsidiaries and branches.

26 **Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)**

Participation exemption: a 100% DRD (dividend reduced deduction) applies for dividends received by a Belgian company from a domestic or foreign company. Dividends qualifying for the DRD may not be fully deductible if the recipient company is in a lossmaking position or has insufficient available profits. However, excess DRD may be carried forward indefinitely. The offset of the DRD carried forward and some other tax attributes is limited to EUR 1 million plus 70% of the taxable base.

The following requirements must be met to be eligible for the DRD:

- the shareholders must hold at least 10% of the share capital of the payer company or the participation must have an acquisition value of at least EUR 2.5 million
- the shareholder must continuously have (or have had) full legal ownership of the qualifying shares for an uninterrupted period of at least one year
- the payer company must be subject to corporate income tax on the profits out of which the distribution is made (subject to tax requirement).

Innovation income deduction (IID): the Belgian IP Box regime providing for a substantial reduction (85%) of the effective rate of taxation on qualifying net income from patents, supplementary protection certificates, qualifying protected software, and various other intellectual property (IP) rights. Qualifying income, calculated using a nexus formula, also includes capital gains derived from the sale of qualifying IP, embedded royalties, and infringement compensation. Current year IID can be offset without restriction. Unused IID may be carried forward, although the offset of IID carryforwards is limited to EUR 1 million plus 70% of the taxable base.

Partial payroll withholding tax exemption for R&D employees: The partial withholding tax exemption for research and development grants an exemption of 80% of the withholding tax of eligible employees to Belgian employers, in case certain conditions are met. As a result, the employer is only required to transfer 20% of the withheld taxes to the authorities. The remaining 80% remains with the employer as a benefit which can be invested in new innovative and R&D investments.

Investment deduction (ID) : the investment deduction is a regime that exists in addition to normal tax depreciation. The following requirements must be met:

- depreciable tangible or intangible fixed assets that are amortized over at least three years
- that are newly acquired or achieved
- during the calendar year or tax year
- and used in Belgium for professional activities.

The deductible share is calculated on the basis of the investment or cost value of the fixed assets, which also serves as the basis for calculating the amortization.

Certain industry specific tax incentives are also available. For instance, Belgium has introduced the 'tax shelter regime', a beneficial tax incentive for companies that invest in the production of audiovisual works, performing arts or the video gaming industry.

27 Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

As a preliminary remark, it should be noted that Belgium has a comprehensive treaty network and, as a matter of principle, does not impose a branch remittance tax nor any exchange controls.

However, passive income is, as a rule, subject to withholding tax (WHT) as follows:

Dividends

The default withholding tax rate on dividends paid to both residents and non-residents is 30%. Under the Belgian implementation of the EU parent-subsidiary directive (and subject to certain formalities), no tax is withheld on dividends paid to a company established in Belgium or another EU member state that holds directly at least 10% of the Belgian distributing company, provided the participation is held for an uninterrupted period of at least one year. Subject to the same participation and holding period requirements, the exemption also applies to dividends paid to qualifying corporate shareholders established in an EEA member state or a country with which Belgium has concluded a tax treaty containing a qualifying information exchange clause. If no exemption would be available, a reduced withholding tax rate can still apply under the applicable tax treaty.

The withholding tax on liquidation dividends also amounts to 30%. An exemption may apply if the parent company is located in the EU (because the distribution is classified as a dividend and Belgium has extended the benefits of the EU parent-subsidiary directive to such cases) or in a non-EU country that has a qualifying tax treaty with Belgium.

In a SME context, beneficial WHT regimes may be applicable, amongst others :

- If the SME would opt for the liquidation reserve regime, following which – subject to certain conditions – only 5% additional withholding tax is due upon the later (i.e. after five years) payment of a dividend to individual shareholders provided an anticipative 10% tax is prepaid upon the creation of the reserve.
- If the dividends are paid to shares issued in exchange for cash contributions into the SME after 1 July 2013. The rate is 30% for dividends distributed before the second accounting year after the cash contribution, 20% for dividends distributed during the second account year after the contribution, and 15% for dividends distributed in the third accounting year after the contribution and subsequent years.

Capital decreases (and reimbursements of assimilated issue premiums) are in principle not subject to WHT, unless the company has also retained earnings / reserves. In such a case, the capital decrease will trigger an anticipative WHT as it will, to that extent, be treated as a dividend distribution for income tax purposes. The capital decrease is allocated to fiscal capital and to reserves according to a pro rata coefficient. The portion allocated to fiscal capital is excluded from the "taxable dividend" definition and exempt from tax. To the extent the capital decrease is allocated to reserves, a withholdable dividend payment has to be recognized (for which an exemption / reduction can potentially be applied). Besides, corporate tax may be due to the extent the capital decrease is allocated to tax-free reserves incorporated into capital.

Interest

Interest paid to a resident or non-resident generally is subject to 30% withholding tax (15% for interest on specific government bonds and regulated savings deposits exceeding certain thresholds) unless (i) an exemption applies under domestic law, (ii) the rate can be reduced under a tax treaty or (iii) an exemption applies under the EU interest and royalties directive (IRD).

Under Belgium's implementation of the IRD – and provided certain formalities are fulfilled – interest is exempt from withholding tax if the recipient is an associated company of the payer company and is resident in another EU member state or is a PE of such company located in another member state. Two companies are associated for these purposes if, for a continuous period of at least one year, one company holds directly or indirectly at least 25% of the capital of the other company, or a third EU company holds directly or indirectly at least 25% of the capital of each of the two companies. To be eligible for the IRD exemption; the companies must also have a legal form listed in the annex to the IRD and be subject to corporate income tax.

The exemptions under domestic law for interests paid to non-residents include interest paid by certain listed holding companies or holding companies owed by a listed company, interest paid by a Belgian bank or other financial institution, and interest paid to financial institutions in treaty countries. Specific conditions must be met.

Royalties

The withholding tax rate on royalties paid to both residents and non-residents generally is 30%, reduced by a standard expense deduction of 15%. Besides, the rate is reduced from 30% to 15% for certain income relating to literary and associated rights (copyrights) not exceeding EUR 62.550 (for tax year 2022).

However royalty payments are exempt from withholding tax under (Belgium's implementation of) the IRD pursuant to the same conditions as mentioned supra for interest payments.

Fees for technical services

If a Belgian company pays a fee for services rendered by a foreign associated company, a professional withholding tax may be due under specific conditions (i.e. the recipient is located in a tax heaven country or in a country with which Belgium has concluded a double tax treaty that grants taxing jurisdiction to Belgium). The professional withholding tax amounts to 25%; however, the effective withholding tax rate is reduced to 12.5% by virtue of a standard expense deduction of 50%. Further reductions may be available under the applicable tax treaty.

28 Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

Transfer tax

In Belgium, transfer (or registration) taxes apply to the transfer of real estate located in Belgium. As from 1 January 2022, the standard rate for companies is 12% or 12.5% depending on the region in which the property is located.

Stamp duty

Stamp duties are imposed only in a limited number of cases, e.g., stock exchange tax on transactions in public securities and other financial instruments (at rates from 0.12% to 1.32%) and the duty on insurance premiums (at rates ranging from 1.1% to 9.25%).

C9. M&A

29 Are there any public takeover rules?

Yes. The framework governing public takeovers in Belgium comprises:

- the Law of 1 April 2007 on Takeover Bids;
- the Royal Decree of 27 April 2007 on Takeover Bids;
- a number of ancillary regimes depending on the specific situation.

Given the complexity and wide-ranging nature of Belgian public takeover rules, any person intending to acquire or dispose of a public company in Belgium should obtain professional advice.

30 Is there a merger control regime and is it mandatory / how does it broadly work?

Belgium has a mandatory merger control regime governed by Book IV of the Belgian Code of Economic Law, enforcement of which is overseen by the Belgian Competition Authority (the "**BCA**").

The BCA has jurisdiction over 'concentrations', which take place when a lasting change in the quality of control over an undertaking results from:

- a merger of two previously independent (parts of) undertakings; or
- an acquisition, by an undertaking or a person already controlling an undertaking, of control over (part of) another undertaking.

The creation of a joint venture between two or more undertakings, which performs all the functions of an autonomous economic entity on a lasting basis, also qualifies as a 'concentration'.

Prior to their implementation, concentrations should be notified to the BCA insofar as the following turnover thresholds are satisfied:

- the aggregate turnover in Belgium of all undertakings concerned exceeds 100 million EUR; and
- at least two of the undertakings concerned each generate a turnover in Belgium of at least 40 million EUR.

Ahead of a formal notification to the BCA, it is common practice for notifying parties to engage in pre-notification discussions with the BCA. The notifying parties can also request the application of a simplified procedure, which is frequently accepted, if the concentration is unlikely to raise competition problems. A simplified procedure allows for a faster decision-making process by the BCA and for less information to be shared.

If the criteria for a simplified procedure are not fulfilled, parties may have to notify under a regular 'Phase One' procedure. The appointed Prosecutor of the BCA may request additional information from the notifying parties as well as relevant third parties (such as suppliers, customers or competitors). The Competition College of the BCA is the competent body to decide over concentrations notified under the regular procedures. The Competition College can conditionally or unconditionally clear the concentration if the latter would not significantly impede effective competition on (a substantial part of) the Belgian market, which will be the case if the undertakings concerned do not jointly control more than 25% of the relevant market.

The Competition College of the BCA can also initiate 'Phase Two' proceedings if there exist serious doubts with respect to the permissibility of the concentration. An additional investigation is carried out in that case, at the end of which the Competition College can conditionally or unconditionally clear the concentration or declare the concentration impermissible insofar as it would significantly impede competition.

Fines of up to 10% of an undertaking's worldwide turnover can be imposed when a notifiable concentration is executed without prior clearance by the BCA or if the undertakings concerned fail to comply with the BCA's decision(s). The BCA can also impose periodic penalty payments of up to 5% of an undertaking's average daily worldwide turnover. Furthermore, the BCA can impose a fine of up to 1% of the worldwide turnover for undertakings who fail to cooperate during the investigation procedure.

Concentrations targeted by EU Merger Regulation 139/2004 do not fall under the Belgian merger control regime, unless the case is referred back to the BCA.

31 Is there an obligation to negotiate in good faith?

Under Belgian law, the legal doctrine of *culpa in contrahendo* should be taken into account. This is an error committed in the pre-contractual phase.

Legal doctrine and established case law had long accepted that parties have an obligation to negotiate in good faith. When damage occurs because of a wrongful action committed by one party during negotiations (e.g. the unilateral termination when the impression was given the contract would be concluded), the party may be obligated to indemnify the damage caused.

The (new) Belgian Civil Code explicitly stipulates that parties who have entered into negotiations must conduct themselves in a manner consistent with the requirements of the "good faith". Parties to the negotiation must provide each other with the information that the law, good faith and custom, in light of the parties' capacity, their reasonable expectations and the object of the contract, require them to provide.

Parties may incur extra-contractual liability towards each other during negotiations. When negotiations are faultily broken off, this liability requires putting the aggrieved person back in the situation he would have been in had negotiations not taken place. Where there was a legitimate expectation that the contract would definitely be concluded, this liability may include recovery of the loss of the expected net benefits from the non-concluded contract.

The breach of the information duty (mentioned above) can lead not only to pre-contractual liability but also to the nullity of the contract if certain requirements are met (and the contract has been concluded).

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32 What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?

The rights of employees in the context of a transfer of undertakings are protected by the CBA 32*bis*, which transposes the European directive 2001/23 of 12 March 2001.

In order for the CBA 32*bis* to be applicable, certain conditions must be fulfilled:

- The transfer of an undertaking must imply a **change of employer**. This is the change in the natural or legal person who is responsible for carrying on the business and who incurs the obligations of an employer towards employees of the undertaking. The change of the employer can be the result of different kinds of agreements (merger, sale, take-over, lease, etc.).
- The transfer of undertaking must be the result of a legal transfer. In CBA 32*bis*, it is provided that **the transfer must take place "*by agreement*"** – meaning there must be contractual relations between the transferor and the transferee.
- The transfer must concern an **undertaking, business, or part of an undertaking or business**. A transfer of business is "*the transfer of an economic entity which retains its identity, meaning an organized grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary*".
- The (part of the) transferred undertaking or business must **keep its identity** after the transfer. The European Court of Justice decided that this is the most important element to determine whether an undertaking is transferred.

The application of CBA 32*bis* has the following consequences for employees:

Automatic Transfer – All rights and duties arising from employment contracts existing at the date of the transfer will automatically be transferred from the transferor to the transferee. The transferee will then have to take over the employees with all existing employment conditions.

After the transfer date, the transferee will have to respect all essential employment conditions (salary, seniority, working time regulation, function,...). The transferee will not be entitled to amend these essential employment conditions unilaterally after the transfer date.

If the employer unilaterally modifies an essential element of the employment contract, he will be presumed to have unilaterally and immediately terminated the employment contract. In such case the employee will be entitled to a severance indemnity equivalent to the notice period which should have been taken into account.

Safeguarding of the terms and conditions agreed in individual and collective agreements – The transferee will have to comply with the terms of all collective bargaining agreements, both concluded at industry-level as well as at company level, on the same terms applicable to the transferor.

In general, the compliance with CBA's at industry-level will not pose any particular difficulties if the transferor and transferee belong to the same joint committee. But, if the joint committee of the transferor and the transferee differs, as of the transfer, the applicable industrial CBA's will change. All salary and working conditions provided in the industrial CBA's (e.g. maximum working time, minimum salary, year-end premium, other benefits) might then change.

Protection against dismissal – Transferred employees cannot be dismissed because of their transfer. Therefore, employees dismissed due to a business transfer can claim a compensation in lieu of notice and a compensation for unfair dismissal.

An exception is made to the protection against dismissal for an urgent cause or for economic, technical or organizational reasons involving a change of employment. In these circumstances, the normal rules regarding terms of notice and indemnities apply.

Obligation to inform and consult – Both the transferor and the transferee will have to inform and consult the works council (or, in its absence, the trade union delegation or, in its absence, the committee for prevention and protection at work) on the following topics :

- date of the transfer ;
- reasons for the transfer ;
- economic, financial and social consequences of the transfer ; and
- measures envisages vis-à-vis employees.

The information and consultation process will have to be take place before the decision is actually implemented.

There is no fixed timing for the information and consultation process under CBA 32*bis*. No written binding agreement with the works council has to be concluded between the employer and the works council – as the works council only has a consultative voice. The employer will have to engage in a meaningful consultation with the works council with a view to seeking their agreement to the relevant measures envisaged. But, even if an agreement is not reached, the employer will still be allowed to go ahead with the transfer.

Failure to comply with the information and consultation obligations will render the employer liable to administrative or criminal fines ranging from EUR 200 to EUR 4.000, multiplied by the number of employees concerned.

The deal, which initiates the transfer, could also be suspended following a court order obtained in summary proceedings until the information and consultation obligations have been fulfilled.

Share deal
A simple transfer of shares does not constitute a transfer of undertakings, insofar as the employer remains the same legal entity. Therefore, the CBA 32*bis* will not be applicable as the first condition is not met. However, the works council will have to be informed of the contemplated transaction if it is likely to have a significant impact on the company.

Asset deal
CBA 32*bis* may apply to an asset deal provided the above conditions are met.

33 **Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.**

In Belgium, a foreign direct investment ("**FDI**") screening mechanism is established at the Flemish level and a draft FDI screening mechanism is pending at the (inter-)federal level. Both instruments are further discussed below.

Flemish FDI framework

Flanders established a regional FDI screening mechanism (the "**Flemish Screening Mechanism**") to protect strategic interests of the Flemish Region and the Flemish Community. This mechanism is enshrined in Articles III.59-60 of the Flemish Governance Decree of 7 December 2018.

The Flemish Screening Mechanism does not impose *ex ante* filing requirements or mandatory prior approvals. Instead, the Flemish Screening Mechanism empowers the Flemish government to declare null or inapplicable or suspend any legal act of certain public authorities under its control insofar as:

- that legal act causes a natural person or legal entity established outside the European Economic Area to acquire control over, or decision-making power in, that public authority; and
- the strategic interests of the Flemish Community or the Flemish Region are threatened as a result.

As mentioned above, the Flemish Screening Mechanism applies only when the investor attempts to gain control over a public authority under control of the Flemish government. Such public authorities include:

- the Flemish government itself, excluding the Flemish Parliament and the services and institutions associated with the latter;
- local public authorities in Flanders; and
- entities with legal personality established for the specific purpose of meeting needs in the general interest, insofar as the Flemish government and/or Flemish local public authorities hold more than half of the voting rights in the respective board of directors or supervise the respective management.

(Inter-)federal FDI draft framework

At the Belgian (inter-)federal level, a draft legislative text was agreed upon by the federal and regional governments in 2022 aiming to introduce an FDI screening mechanism in accordance with EU Regulation 2019/452 (the "**Belgian Screening Mechanism**"). The Belgian Screening Mechanism is expected to enter into force on the 1st of July 2023, though amendments are still possible throughout the legislative procedure.

Upon entry into force, the Belgian Screening Mechanism will create a mandatory prior notification and screening mechanism for FDI projects meeting one of the following notification thresholds:

- acquisitions of 10% or more of the voting rights in Belgian entities that are active in the defence (incl. dual-use products), energy, cybersecurity, electronic communication or digital infrastructure sectors and have realised a turnover of at least EUR 100 million in the preceding financial year;
- acquisitions of 25% or more of the voting rights in Belgian entities active in specific industries such as critical infrastructure for water or private security; and

- acquisitions of 25% or more of the voting rights in Belgian entities that are active in the biotech sector and have realised a turnover of at least EUR 25 million EUR in the financial year preceding the investment.

If a foreign investor is obliged to notify an intended investment, an Inter-Federal Screening Commission (the "ISC" – composed of nine representatives from the federal, regional and community authorities) would screen the investment in order to assess its impact. A screening would involve the following phases:

- The pre-notification phase, in which the secretariat of the ISC will conduct a preliminary assessment and can, if needed, request additional information from the parties. This phase lasts until the parties are informed that the secretariat of the ISC considers their notification to be complete.
- The Phase I procedure which starts once the notification is considered complete and lasts for 30 days. This time limit can be suspended and/or stopped, for instance, when the ISC requests additional information or when the European Commission or other EU Member States wish to comment on the notification or seek additional information. If the high-level review during the Phase I procedure does not reveal potential risks to public order, national security or strategic interests, the ISC can authorise the investment.
- The Phase II procedure is initiated if the Phase I procedure revails potential risks to public order, national security or strategic interests. This procedure involves an in-depth screening and takes at least 28 days, which can be significantly extended (for instance, in the context of remedy discussions or oral hearings).

Parties can offer remedies/commitments in order to address identified risks, such as the appointment of one or more compliance officer(s) in charge of dealing with sensitive information.

Failure to notify a reportable investment or the provision of incorrect or misleading information may lead to fines of up to 30% of the value of the investment.

34 Does your jurisdiction have any exchange control requirements?

Belgium does not impose foreign exchange limitations on the transfer of capital or profits, save for exceptional situations (for instance, relating to international sanctions).

D. Entity closure

35 What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.

Belgian law recognizes two types of liquidation processes:

A normal liquidation process must be agreed by the company's shareholders in an extraordinary shareholders' meeting and must include the appointment of a liquidator (cleared by a competent court in the event of a liquidation with deficient means to repay all creditors). Theliquidator is responsible for liquidating the company, (i.e. realizing assets and paying outstanding debts). As soon as the assets have been realized and the outstanding debts have been settled, the liquidation can be closed. If the debts of the creditors cannotbe repaid in full, the liquidator must in certain cases submit the distribution plan to the competent court for approval prior to the closing of the liquidation.

A simplified liquidation process requires the company to have no (third party) liabilities at the time it is put into liquidation, or - to the extent there are outstanding liabilities - the creditors have to agree with such liquidation. Insuch an instance, the company's shareholders can decide unanimously to initiate the liquidation during an extraordinary shareholders' meeting, and immediately complete the liquidation without appointment of a liquidator and without court intervention.

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