

Country Guide

Belgium

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Guide to doing business in Belgium

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CONTENTS

THE COUNTRY AT A GLANCE	2
GENERAL CONSIDERATIONS	4
INVESTMENT INCENTIVES	16
FINANCIAL FACILITIES	18
EXCHANGE CONTROLS	21
IMPORT/EXPORT REGULATIONS	23
STRUCTURES FOR DOING BUSINESS	24
REQUIREMENTS FOR THE ESTABLISHMENT OF A BUSINESS	31
OPERATION OF THE BUSINESS	32
CESSATION OR TERMINATION OF BUSINESS	36
LABOR LEGISLATION, RELATIONS AND SUPPLY	43
TAX SYSTEM	58
IMMIGRATION REQUIREMENTS	74
EXPATRIATE EMPLOYEES	78
LIEDEKERKE	84

“Doing business in Belgium” is a Liedekerke guide intended to provide a general and simplified overview of the country’s main laws on Tax, Corporate and Finance, Labor and Commercial law aspects.

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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 11,000,000
Surface:	30,528 km ²
Time zone:	GMT +1
Currency:	Euro
GDP:	€ 368,758 bn (2012)*
GDP per capita	€ 27,935 ***
Labor Force	4.85 million***
Unemployment:	7.6% (2012)*
Growth rate:	-0.1% (2012)*
Budget deficit:	-3.9% of GDP (2012)*

* NBB (Nationale Bank van België/Banque Nationale de Belgique): <http://www.nbb.be/>

** Eurostat: <http://epp.eurostat.ec.europa.eu>

*** IMD: <https://www.worldcompetitiveness.com/OnLine/App/Index.htm>

CONTENTS

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. There are no particular cultural or religious influences or prohibitions on business conduct.

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 70,000). All three communities are located in 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 3 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.

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.

Due to its history as one of the world’s leading actors in the heavy coal and steel industry, Belgium was very soon (1835) able to develop a dense, nationwide communications network comprising both railroads and roads, as well as fluvial and maritime ports. Due to its central position in Western Europe, road transportation in Belgium is highly developed. International naval and fluvial transportation is also important, the best example being the port of Antwerp, accessible to capesize ships. The port of Antwerp is the second-largest port in Europe.

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 are Brussels international airport, Charleroi international airport and Liège airport.

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.

Traditionally, the Belgian authorities have a fairly high involvement in the economy (banking, energy, heavy industry, etc.). However, under pressure from Europe’s regulators, the energy market (gas, electricity) has recently been partly privatized. In short, the commercial aspect of energy supplies has been privatized, whilst grid management remains a national and local monopoly.





GENERAL CONSIDERATIONS

INVESTMENT POLICIES

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

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

Invest in Belgium <http://invest.belgium.be>

Invest in Brussels (Brussels Invest & Export)
<http://www.investinbrussels.com>

Invest in Wallonia (AWEX)
<http://www.investinwallonia.be>

Flanders Investment & Trade
<http://www.flandersinvestmentandtrade.be>

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, 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 "BCE-KBO" (*Banque Carrefour des Entreprises/Kruispuntbank Ondernemingen*), which is a body responsible for registering business activities in Belgium. Registration is required *inter alia* in order to obtain a VAT number.

There are no general restrictions on foreign ownership of businesses or real property. However, access to a number of activities (such as building and construction) requires registration with the competent authorities. Also, even though setting up a business in itself generally does not

require any authorization, legislation does exist concerning the location and construction of industrial plants. For instance, in order to build a plant, a municipal building permit may be required, which will require compliance with local building regulations.

DIPLOMATIC RELATIONS

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 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 <http://diplomatie.belgium.be/en/>.

GOVERNMENT

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;
- 589 municipalities

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. As 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 three main political families in Belgium: left-wing socialists (PS and SP.a), Christian democrat centrists (CDH and CD&V) and liberals (MR and Open VLD). Over the past few years, the Flemish nationalists of the N-VA have formed a new force to be reckoned with.

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 years in favor of the House. Today, it works more as a “think-tank”, and it will be further reformed to function 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 four years. As a result of ongoing political negotiations, it is likely that, as from 2014, elections for the federal parliament will be held every five years, so as to coincide with those for the federated entities. Members of parliament are

elected 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 and Senate, can issue royal decrees, which are executive acts (secondary legislation) required to execute (primary) federal legislation.

The Belgian federal state retains important competences such as foreign affairs, national defense, justice, finance, social security, parts of 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 extend over 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-related” matters: cultural matters, scientific and cultural institutions, museums, sports, tourism, education, and so forth.

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, 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.

¹ The Regions' powers in terms of economic policy do not, however, cover general commercial law, monetary issues, etc., which remain matters of federal competence.

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 orders (*décret/decreet/Erlass*). They rank equally with the acts of the federal Parliament.

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.

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, labour and commercial matters, the judiciary comprises the following courts:

- local justices of the peace (small claims and lease matters);
- police courts (prosecution of road traffic offences and petty crimes);
- courts of first instance (full competence over civil and commercial matters, appellate jurisdiction for decisions rendered by justices of the peace and police courts);
- commercial courts (courts at first instance in commercial matters, with exclusive jurisdiction over insolvency and some corporate matters such as conflicts between shareholders);

- labour courts (specializing in labour matters);
- courts of appeal (five across Belgium, which hear appeals from the courts of first instance and the commercial courts);
- labour courts of appeal (appellate jurisdiction in labour matters);
- the Supreme Court (*Cour de Cassation/Hof van Cassatie*), which is the highest court in the land. The Supreme Court does not judge any case on its merits, since it merely has the power to quash appellate decisions in which the law has been misapplied.

The Belgian legal system also includes (i) a Constitutional Court, before which the constitutional validity of federal, regional or community legislation may be challenged and (ii) a Supreme Administrative Court (sometimes called by a literal translation of its French or Dutch name: 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. It should nevertheless be noted that, depending on the value of the case, the losing party will be ordered to pay a fixed amount to cover the legal fees of the winner.

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

Foreign judicial decisions

Because Belgium is a member of the EU, foreign judicial decisions by courts in other member states are recognized and can be enforced fairly quickly and at low cost thanks to Regulation (EC) 44/2001. 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. Arbitral awards can be declared enforceable by the courts.

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.

It should be noted, however, that the Supreme Court has disregarded arbitration clauses in exclusive distribution contracts, which are subject to specific legislation in Belgium.

Choice of law and jurisdiction clauses

Generally speaking, in application of article 23 of EC Regulation 44/2001, parties may contract a jurisdiction clause by which disputes are to be settled by a foreign court; European and Belgian international private 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. At present, the green parties play a part in the government coalitions in two of Belgium's three regions.

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 activity or 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.

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 need only 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) 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 and Walloon Regions, environmental permits are issued for a maximum of 20 years. 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 and approved by the regional authority (note that the Walloon Region's regulations in this respect were not yet fully operational in December 2011);
- the regional authority can require soil surveys to be filed further to a soil clean-up project and, ultimately, 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. In each, the owner of the waste is responsible for managing it in compliance with all applicable provisions such that he does not harm the environment or human health. Either the holder 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 asbestos, the energy efficiency of buildings, water, air, etc.

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

- Walloon Region: <http://environnement.wallonie.be/>
- Flemish Region: <http://www.milieuinfo.be/>
- Brussels-Capital Region: <http://www.bruxellesenvironnement.be>

INTELLECTUAL PROPERTY

TRADEMARKS

Legislation

Trademark law in Belgium is governed by the Benelux Convention on Intellectual Property of February 25, 2005. The Benelux countries constitute one single jurisdiction for trademark purposes. It is not therefore possible to obtain trademark protection just in Belgium.

Belgium has adopted several international conventions on trademarks:

- the Paris Convention for the Protection of Industrial Property of March 20, 1883;
- the 1967 Nice Convention on the international classification of goods and services for the registration of trademarks;
- the Madrid Agreement (1891) and Protocol (1989) for the international registration of marks, administered by the International Bureau of WIPO.

It is important to note that it is also possible to register a community trademark (CTM). The CTM system provides uniform trademark protection throughout the whole EU territory² and is administered by the Office for Harmonization in the Internal Market.

Nature of a trademark

A trademark right is a temporary (but renewable), exclusive right by which the trademark owner distinguishes goods or services using a specific sign. In order to qualify for trademark protection, the sign must be capable of graphic representation and must distinguish the goods or services of one undertaking from those of another.³

¹ This Treaty was adopted in Belgium in its 1967 Stockholm version by the Act of September 26, 1974.

² The Community Trademark is governed by Council Regulation (EC) No. 40/49 of December 20, 1993, (OJ 1994 L 11/1), as amended by a regulation of December 22, 1994.

³ Article 2(1) Benelux Convention.

The sign that constitutes the trademark may consist of one or more words, names, drawings, designs, letters, numbers or colors, the shape of a product or its packaging, or a combination of these.¹ However, shapes resulting from the nature of the product, that give substantial value to the product or that are necessary to obtain a technical result are excluded from trademark protection.² Note that scents and sounds are not, as such, denied trademark protection.

Acquisition of trademark rights

Applications to register Benelux trademarks may be filed with the Benelux Intellectual Property Office or one of the local Benelux offices. In Belgium, this is the Ministry for Economic Affairs in Brussels.³

A trademark can also be acquired by filing an international registration application under the Madrid Agreement and Protocol with the International Bureau of WIPO. However, the applicant must already have had his trademark registered in one of the member states of the Madrid Agreement.⁴ Note that an international trademark registration has the same effect as a Benelux trademark registration if the Benelux countries are designated in the international application.

In certain circumstances, trademark registration will be refused if it falls within one of a number of categories. The first is that of absolute grounds to refuse registration of a trademark (i.e. refusal is automatic): (a) the sign is not capable of being represented graphically or solely comprises a shape imposed by the nature of the product, that gives the product substantial value or that is necessary to obtain a technical result; (b) the trademark is devoid of any distinctive character; (c) the trademark is descriptive (i.e. it comprises only signs or indications that may be used in trade to indicate the kind, quality, quantity, intended purpose, value, geographical origin or time of manufacture of the product or provision of the service, or other characteristics thereof); (d) the trademark is generic (i.e. it comprises only signs or indications that have become customary in everyday language or in the *bona fide* and established practices of the trade); (e) the trademark is contrary to morality or public policy, is likely to mislead the public, or is a trademark for wines/spirits

that includes a geographical indication identifying wines/spirits that originate there.⁵

Additionally, there also exist relative grounds to refuse to register a trademark (i.e. refusal is the result of an application by an affected party). The owners of earlier trademarks can file opposition on the basis of relative grounds for refusal within two months following publication of a Benelux trade mark application. The owner of an earlier trademark may object to registration of a later trademark if that later trademark is: (i) an identical trademark filed for identical goods or services; (ii) an identical or similar trademark filed for identical or similar goods or services, where there exists in the public mind a likelihood of confusion that includes the risk of association with the earlier trademark; (iii) a similar trademark filed for goods or services that are not similar, where the earlier trademark enjoys a reputation in the Benelux, and where use without due cause of the later mark would take unfair advantage of or be detrimental to the distinctive character or the repute of the earlier mark.⁶

Duration and scope of trademark protection

Trademark protection lasts for ten years from the filing date of the application for registration.⁷ Registration can be renewed for further ten-year periods, but requires payment of a renewal fee. It is important to mention that registration can be renewed indefinitely. However, if, without due cause, a trademark owner does not genuinely use his trademark for a continuous period of five years or within five years of registration, the right to his trademark may be declared to have lapsed by a court.⁸

The trademark owner has an exclusive right to use the trademark. He may prevent third parties acting without his consent from:⁹ (a) using in business a sign that is identical to the trademark for goods or services that are identical to those for which the trademark is registered; (b) using in business a sign in respect of which, because it is identical or similar to the trademark and because the goods or services covered by the trademark and the sign are identical or similar, there is a risk of confusion in the mind of the public which includes the risk of association between the sign and the trademark; (c) using in business

1 Article 2(1)(1) Benelux Convention.

2 Article 2(1)(2) Benelux Convention.

3 Article 2(2) Benelux Convention.

4 Article 2(10) Benelux Convention.

5 Article 2(11) Benelux Convention.

6 Article 2(14) Benelux Convention.

7 Article 2(9) Benelux Convention.

8 Article 2(26) Benelux Convention.

9 Article 2(20) Benelux Convention.

a sign which is identical or similar to the trademark for goods or services which are not similar to those for which the trademark is registered, where the trademark enjoys a reputation in the Benelux territory and where use of the sign without due cause would take unfair advantage of or be detrimental to the distinctive character or the repute of the trademark; (d) using a sign for purposes other than those of distinguishing the goods or services, where use of the sign without due cause would take unfair advantage of or be detrimental to the distinctive character or the repute of the trademark.

Assignment and licenses

A trademark may be assigned or licensed in respect of some or all of the goods or services for which it is filed or registered.¹ In order to be valid, the assignment or license must be in writing and for the entire Benelux territory.² If these requirements are not met, the assignment or license is considered to be null and void. The contracting parties are free to determine the terms of their licensing agreements. Furthermore, such assignments or licenses are only enforceable against third parties if registered.³

COPYRIGHT

Legislation

In Belgium, copyright is regulated by the Act on Copyright and Related Rights of June 30, 1994 (the Copyright Act).⁴ The Copyright Act is supplemented by the Act on the Protection of Computer Programs,⁵ and by several royal decrees on reprography⁶ and private copying.⁷ It is important to mention that databases are protected under the Databases Act of August 31, 1998,⁸ and sections 20bis to 20quater of the Copyright Act.

¹ Article 2(31) and (32) Benelux Convention.

² Article 2(31) and (32) Benelux Convention.

³ Article 2(33) Benelux Convention.

⁴ Official gazette (*Belgisch Staatsblad/Moniteur belge*) of July 27, 1994.

⁵ Official gazette of July 27, 1994. This law implements the EC Directive of May 14, 1991, on the legal protection of computer programs (OJ L 122/42, May 17, 1991).

⁶ Royal Decree of October 30, 1997, implementing sections 59 and 60 Copyright Act (official gazette of November 7, 1997) as amended by subsequent Royal Decrees of December 13, 2002 (official gazette of January 14, 2003) and April 4, 2003 (official gazette of May 12, 2003).

⁷ Decree of March 28, 1996, implementing section 55 of the Copyright Act (official gazette of April 6, 1996), as amended by the Royal Decree of April 4, 2003 (official gazette of April 30, 2003).

⁸ Official gazette of November 14, 1998. This law implements the EC Directive of March 11, 1996, on the legal protection of databases (OJ L 77/20, March 27, 1996).

Belgium has signed the following international copyright treaties:

- the Berne Convention for the Protection of Literary and Artistic Works. The Berne Convention is applicable in Belgium in its last revised, 1971 version (Paris Act of July 24, 1971);
- the International Convention for the protection of Performers, Producers of Phonograms and Broadcasting Organizations of October 26, 1961 (the Rome Convention). The Rome Convention was ratified in Belgium by the Act of March 25, 1999, and came into force on November 20, 1999;
- the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) of April 15, 1994. The TRIPs agreement was ratified in Belgium by Act of December 23, 1994, and came into force on January 1, 1996;
- the WIPO Copyright and WIPO Performances and Phonograms Treaties of December 20, 1996, which were approved in Belgium by Act of May 30, 2006, and came into force on August 30, 2006.

Copyrightable work

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 (e.g. to facilitate the presumption of authorship deriving from section 6(2) of the Copyright Act).

Only original work can be protected. Since July 16, 2009, there has been a common standard of originality in Europe. Originality was defined in the European Court of Justice's *Infopaq* judgment. It was held that the work must be the intellectual creation of the author of that work.⁹ It is not usually difficult to meet the originality requirement. Courts tend to take a lenient view of originality. Consequently, the scope of copyright protection is very wide in Belgium.

Mere ideas, concepts and theories are not protected by copyright. Only the expression of an idea, fixed in a certain form (i.e. something material or audible) can be protected (provided the originality requirement is met).

There is no definition or list in the Copyright Act of what types of creations can be protected by copyright. It is

⁹ ECJ, July 16, 2009, *Infopaq International AIS v. Danske Dagblades Forening*, C-5/08, point 37.

not even stated what the substantive requirements for protection are. Article 2 of the Berne Convention sets out a non-exhaustive list of the types of works that are protected. This includes books, pamphlets and other writings, lectures, addresses and sermons, dramatic works, choreographic works, musical compositions, paintings, architecture and photographic works.

Databases and computer programs can also be protected by copyright if they constitute an intellectual creation by their author.¹ According to the Databases Act of August 31, 1988, the content of a database is protected by a *sui generis* right if the collected data is the result of a substantial investment to obtain, verify or present it.²

Finally, the Copyright Act also confers related rights over performances, sound recordings, audiovisual works and broadcast programs. Although these related rights are quite similar to copyright, they provide less protection. The provisions of the Copyright Act dealing with related rights should be read together with the Rome Convention. If the Rome Convention provides more extensive protection, it will prevail over the Copyright Act.

The duration and scope of copyright protection

In principle, copyright protection lasts for the life of the author and for 70 years after his death.³

The author enjoys two kinds of rights: economic rights and moral rights.

The author's economic rights are movable. Economic rights automatically pass to the author's heirs on his death, unless he disposes of them during his lifetime in favor of a third party.⁴

The primary economic right of an author is the right of reproduction. The author has an exclusive right to authorize or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part.⁵ The right of reproduction also comprises the right of distribution, the right of adaptation and the right to authorize the loan or rental of his work.⁶

In respect of the original of their work or copies thereof, authors have the exclusive right to authorize or prohibit any form of distribution to the public by sale or otherwise.⁷ The second economic right of an author is the right of communication. This is the exclusive right to authorize or prohibit any communication to the public of a work, by wire or wireless means, including making the work available to the public such that members of the public may access it from a place and at a time individually chosen by them.⁸

Authors enjoy three inalienable moral rights.⁹ First is the right of first publication. This is the right to decide whether a work is suitable for publication and when and how this publication should take place. The right of attribution is the author's second moral right. This is the right to claim or to refuse authorship of his work. The third moral right of the author is the right to integrity of the work. This means that the author has the right to demand respect for his work and the right to object to any alteration and any distortion or mutilation of his work.

Assignments and licenses

The author may assign or license his economic rights. The general rules of the Belgian Civil Code apply to such assignments and licenses, unless the Copyright Act provides otherwise. Note that the rules concerning transfer of the author's economic rights are more flexible if the contracting party is the author's employer.

Moral rights cannot be assigned, but contractual stipulations relating to the use of a moral right are permitted in certain specific cases.

PATENTS

Legislation

In Belgium, patents are protected by the Patents Act of March 28, 1984.¹⁰ The Patents Act has been amended by the Act of April 28, 2005, implementing Directive 98/44/EC on the legal protection of biotechnological inventions. It has also been amended by the following acts: the Act

1 Sections 20bis to 20quater Copyright Act and section 1 Act of June 30, 1994, on the legal protection of computer programs.

2 Section 4 Databases Act of August 31, 1998.

3 Section 2 Copyright Act.

4 Sections 3 and 7 Copyright Act.

5 Article 2 Directive 2001/29/EC of the European Parliament and of the Council of May 22, 2001, on the harmonization of certain aspects of copyright and related rights in the information society.

6 Section 1(1) Copyright Act

7 Article 4 Directive 2001/29/EC of the European Parliament and of the Council of May 22, 2001, on the harmonization of certain aspects of copyright and related rights in the information society.

8 Article 3 Directive 2001/29/EC of the European Parliament and of the Council of May 22, 2001, on the harmonization of certain aspects of copyright and related rights in the information society.

9 Section 1(2) Copyright Act.

10 Official gazette of March 9, 1985. The Patents Act came into force on January 1, 1987.

of March 6, 2007, the Act of May 9, 2007, and the Act of May 10, 2007.

The Patents Act has been also amended by the new Act on Patents of January 10, 2011,¹ which implements the Patent Law Treaty (PLT) of June 1, 2000, and the Act revising the Convention on the Grant of European Patents (European Patent Convention – EPC) of November 29, 2000. This new law harmonizes the Belgian Patents Act of March 28, 1984, with the two international treaties (the PLT and the EPC 2000), as well as modernizing the Patents Act.

Belgium has signed the following international patent treaties:

- the European Patent Convention of October 5, 1973, (EPC) as well as the revised “European Patent Convention 2000” (which came into force on December 13, 2007);²
- the Paris Convention of March 20, 1883, for the Protection of Industrial Property (Paris Convention, 1967 Stockholm version);³
- the Strasbourg Convention of November 27, 1963, on the Unification of Some Principles of Patent Law;⁴
- the Patent Cooperation Treaty of June 19, 1970 (PCT);⁵
- the Strasbourg Arrangement of March 24, 1971, concerning International Patent Classification;
- the Budapest Treaty of April 28, 1977, on International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure;
- the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) of 15 April 1994. TRIPs was ratified in Belgium by the Act of December 23, 1994, and came into force on January 1, 1996;⁶
- the Patent Law Treaty (PLT) of 1 June 2000.

Patentable invention

A patent is a temporary, exclusive right to prevent third parties from exploiting the patented invention. The invention must meet three requirements in order to be patentable: a patent may be granted for any invention that is new, is the result of an inventive step, and is capable of industrial application.⁷ Furthermore, the invention cannot be one that is excluded. The Act rules out certain matters from qualifying as inventions, namely: discoveries, scientific theories and mathematical methods; aesthetic creations; schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers or ways in which information is presented.⁸

An invention is new when it is not yet part of the state of the art. The state of the art includes everything that is made available to the public by any means whatsoever (by written or oral description, by use or in any other way), anywhere in the world, before the filing date of the patent application.⁹

An invention involves *an inventive step* if, for a person skilled in the art, it does not obviously follow from the state of the art.¹⁰

An invention is *suitable for industrial application* if it can be manufactured or used in any kind of industry, including agriculture.¹¹ Diagnostic methods or surgical and therapeutic methods for treating humans or animals are not regarded as inventions susceptible to industrial application. However, products, substances or compositions used in any such method can be patentable inventions.¹²

Acquisition of patent right and duration of patent protection

In principle, patent protection lasts for 20 years from the filing date.

Applications for registration of a Belgian patent must be submitted to the patent office. In Belgium, this is the Industrial Property Department of the Ministry of Economic Affairs in Brussels.

In deciding whether to grant the patent, the patent office only checks if the formal requirements for a valid application have been met. The patent application must contain:

1 Official gazette of February 16, 2011.

2 See section 8 of the Act revising the Convention on the Grant of European Patents (European Patent Convention) of November 29, 2000. See also <http://www.epo.org/patents/law/legislative-initiatives/epc2000/new.html>.

3 The Paris Convention was ratified in Belgium by the Act of September 26, 1974.

4 This Convention was ratified in Belgium by the Act of July 8, 1977.

5 The PCT was ratified in Belgium by the Act of July 8, 1977.

6 See footnote 9 p9

7 Section 2 Patents Act.

8 Section 3 Patents Act.

9 Section 5 Patents Act.

10 Section 6 Patents Act.

11 Section 7(1) Patents Act.

12 Section 7(2) Patents Act.

a request for the grant of a patent, a description of the invention; one or more claims characterizing the invention; any drawings referred to in the description or the claims; and an abstract of the invention.¹

The patent is granted at the applicant's sole risk, without prior verification of the patentability of the invention.² The Belgian patent office will not assess whether the requirements of novelty, inventive step and industrial application are fulfilled. Only the courts are competent to assess these requirements in relation to any dispute regarding the validity of a patent. However, the European Patent Office will do a search into the state of the art and issue a non-binding opinion on the patentability of the invention.

Note that the whole patent application file is made available to the public.³

Scope of patent protection

The patent owner has the exclusive right to exploit the invention, including the right to prevent third parties from:

- producing, selling, using, holding or importing a patented product for any such purpose;
- using or offering a patented process;
- selling, using, holding or importing a product that has been produced outside Belgium but is directly produced by a process patented in Belgium; and
- delivering or offering to deliver, in Belgium, means for use of the invention in Belgium if such means concern an essential element of the invention and the third party offering or delivering such means knows or ought to know that the means are to be used for that purpose (indirect patent infringement).⁴ There is no patent infringement if the means are widely available in the course of trade, except if the delivering or offering party induces the buyer to infringe the patent.

Assignments and licenses

A patent owner can assign or license all or part of his rights, exclusively or otherwise. Such agreements must be in writing and must be recorded with the patent office in order to be enforceable against third parties.⁵

Taxation of patent income

There is one important fiscal incentive in Belgium that is worth mentioning, allowing for the deduction from the corporate tax base of 80% of the patent income.⁶

As a consequence, patent income is now subject to a very favorable tax rate of approximately 6.8% (which is one-fifth of the Belgian statutory corporate tax rate of 33.99%).

The patent income deduction can be claimed by any Belgian resident company or Belgian establishment of a foreign company.

The deduction can be applied to income from (Belgian and foreign) patents and to income from supplementary protection certificates.

TRADE SECRETS

In Belgium, there is no specific legislation on trade secrets and industrial know-how, except for two provisions.

Section 17(3°) of the Employment Contracts Act of July 13, 1978, prohibits an employee from disclosing trade secrets, business secrets and the know-how of his company either during or after the end of his employment.⁷

Section 309 of the Criminal Code lays down penalties in the case of disclosure of industrial/trade secrets by an employee of a company to a party not employed by that company.

Know-how or trade secrets are not as such protected as an intellectual property right under Belgian law. However, know-how and trade secrets can be protected indirectly under the general principles of tort or by including confidentiality clauses in contracts. Furthermore, the Act of April 6, 2010, on market practices and consumer protection⁸ prohibits any act contrary to fair commercial practices. In certain circumstances, unauthorized use of a competitor's know-how or trade secrets may be considered an act of unfair competition.

¹ Section 15 Patents Act.

² Section 22(3) Patents Act.

³ Section 23 Patents Act.

⁴ Section 27 Patents Act.

⁵ Sections 44 and 45 Patents Act.

⁶ Section 86 Act of April 27, 2007; section 205(1)(1°) Income Tax Code.

⁷ Official gazette of August 22, 1978.

⁸ Official gazette of April 12, 2011.

DESIGNS

Applicable legislation

Designs in Belgium are governed by the Benelux Convention on Intellectual Property of February 25, 2005.

The Benelux countries constitute one single jurisdiction for design purposes. Thus, it is not possible to obtain design protection only in Belgium.

Belgium has also adopted international conventions in the field of designs:

- the Hague Agreement concerning the International Deposit of Industrial Designs of November 28, 1960;
- the Paris Industrial Property Convention of 1883 (1967, Stockholm version);
- the Design Directive, 98/71/EC of October 13, 1998, on the legal protection of designs;
- EC Regulation No. 6/2002 of December 12, 2001. This regulation introduced a single, Community-wide system for the protection of designs, which exists in parallel with the Benelux system.² Designs can be registered with the Office for Harmonization in the Internal Market. This system provides for two kinds of design protection: registered Community designs and unregistered Community designs.³

Nature of designs

A design is defined as the appearance of all or a part of a product resulting from the characteristics of its lines, contours, colors, shape, texture or the materials of the product itself or its ornamentation.⁴

To qualify for design protection, a design has to be novel and have individual character.⁵

A design will be regarded as novel if, on the filing or priority date, no identical design had been made available to the public.⁶

A design will be regarded as having an *individual character* if the overall impression that the design produces on

the informed user differs from that which any design disclosed to the public prior to the filing or priority date has on that user. In order to evaluate individual character, the creator's degree of freedom in preparing the design will be taken into account.⁷

Acquisition of design rights

A distinction must be drawn between a Benelux filing and an international filing. The exclusive right to a Benelux design is acquired by registering the filing with the Benelux Intellectual Property Office (Benelux filing) or the International Bureau (international filing).⁸

An applicant may file his design within the Benelux with the Benelux Intellectual Property Office or with national offices. In Belgium, the national authority is the Ministry for Economic Affairs in Brussels, which forwards Benelux filings to the Benelux Office. Benelux filings may comprise either a single design (single filing) or several designs (multiple filing).⁹

Registration does not confer any right over a design where: (a) the design is in conflict with a prior design disclosed to the public after the filing or priority date and protected since a prior date by an exclusive right deriving from a Community design, registration of a Benelux filing or an international filing; (b) a prior trademark is used in the design without the consent of the owner of that trademark; (c) a work protected by copyright is used in the design without the consent of the copyright owner; (d) the design is contrary to morality or public policy in one of the Benelux countries; or (e) the filing does not sufficiently reveal the characteristics of the design.¹⁰

Duration of design protection

Benelux design protection lasts for five years from the date of filing. It may be renewed for up to a maximum of 25 years.¹¹

Scope of design Protection

The exclusive right in a design allows the owner to challenge use of a product in which the design is incorporated or to which the design is applied that has an identical appearance to the design as filed or does not produce a different

1 OJ 1998 L 289/28.

2 OJ 2002 L 3/1.

3 Article 1(2)(a) EC Regulation No. 6/2002.

4 Article 3(2) and 3(3) Benelux Convention.

5 Article 3(1) Benelux Convention.

6 Article 3(3)(1) Benelux Convention.

7 Idem. Article 3(3)(1) Benelux Convention

8 Article 3(5)(1) Benelux Convention.

9 Article 3(9)(1) Benelux Convention.

10 Article 3(6) Benelux Convention.

11 Article 3(14)(1) and (2) Benelux Convention.

overall impression on an informed user having regard to the creator's degree of freedom in preparing the design. Use means, in particular, manufacture, offer, marketing, sale, delivery, hire, importing, exporting, exhibiting, use or holding for one of those purposes.¹

The restrictions on the exclusive right to a design are listed in the Benelux Convention.²

Assignments and Licenses

A design can be subject to a license agreement. The parties are free to determine the terms of their license agreements since there are no formal requirements.³

A design can also be assigned, but only if the assignment is in writing and is made for the entire Benelux territory.⁴

In order to be enforceable against third parties, assignment or license agreements must be registered.⁵

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS IN BELGIUM

A trademark owner, a copyright owner and the patentee and owner of a design right can enforce their rights by suing infringers before the courts. The enforcement of intellectual property rights is regulated under the Act of May 9, 2007, on the civil aspects of intellectual property protection, the Act of May 10, 2007, on the judicial aspects of intellectual property protection and the Act of May 15, 2007, on the counterfeiting and piracy of intellectual property rights.

LICENSES

There are European regulatory guidelines regarding licenses in the Block Exemption Regulation. This is Regulation n°. 772/2004 of the Commission of April 7, 2004.

Furthermore, Belgian competition law applies to licenses.

In Belgium, there are no specific rules to determine when royalties from licenses are deemed excessive. The principle of contractual freedom applies.

SPECIFIC LEGISLATION IN RELATION TO PARTICULAR PRODUCTS

Supplementary protection certificates for medicinal products are governed by European Community Council Regulation No. 1768/92 of June 18, 1982. It is directly applicable in Belgium but was supplemented by the Belgian Act of July 29, 1994.⁶

On January 10, 2011, a new act came in to protect Belgian plant variety rights.⁷ The new Plant Varieties (Protection) Act brings Belgian law into line with the 1991 act on the International Convention for the Protection of New Varieties of Plants (UPOV).

1 Article 3(16) Benelux Convention.

2 Article 3(19)(1) Benelux Convention.

3 Article 3(26) Benelux Convention.

4 Article 3(25) Benelux Convention.

5 Article 3(25) and (26) Benelux Convention.

6 Official gazette of September 6, 1994.

7 Official gazette of February 25, 2011.



INVESTMENT INCENTIVES

In Belgium, the Regions are competent for external trade relations. The three Regions, Flemish, Walloon and Brussels-Capital, have signed a cooperation agreement in this respect.

Besides the Belgian Foreign Trade Agency, a federal agency set up to support the three Regions and the federal government in promoting international trade, each Region has its own trade agency.

The regional agencies provide support to enterprises in expanding their businesses abroad. Support consists of financial aid and services.

For the Flemish Region, the independent external Flemish Investment and Trade Agency (FIT) offers subsidies for a range of initiatives companies might take to this effect, such as doing business or travelling to prospect for business outside the EEA, taking part in a foreign trade fairs, setting up a prospecting office outside the EEA, and so forth. This form of financial aid is limited to SMEs.

FIT also gives financial aid to business federations and business clubs for projects aimed at generating specific international business opportunities for individual companies.

For the Walloon Region, the government's Walloon Export and Foreign Investment Agency (AWEX) aims to promote Walloon enterprises worldwide and attract foreign investors to Wallonia by giving technical assistance to Walloon firms (information on foreign markets, public contracts, organizing market development missions) in the form of financial security to export business, special assistance to foreign investors, etc.

For the Brussels Region, the government's Brussels Invest and Export provides support to businesses located in Brussels, especially SMEs, and also individual entrepreneurs and certain non-profit associations, helping them expand their business abroad. For example, it offers grants to

take part in training and seminars, obtain the services of experts in international trade, prospect markets outside the EU, set up collective representation offices, take part in international fairs, etc.

Besides the regional trade agencies, other bodies also offer incentives for foreign trade.

Finexpo, an inter-ministerial advisory committee monitored and managed by the Foreign Affairs Department, grants aid in the form of export credits to either reduce or stabilize the cost of financing, whether to banks or to exporting companies.

The Belgian Corporation for International Investments, a limited company held 63% by the State and 37% by banks and private investors, provides capital and know-how for international investments by Belgian private-sector companies. It particularly provides medium and long-term co-finance to business ventures by Belgian private companies abroad.

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

Belgium is a founding member of GATT, as well as of the EEC (now EU).


Belgium is also 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.

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 compiles 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 customs agencies.





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*, (4) *insurance companies* and (5) *institutions for occupational retirement provision*.

A *credit institution* is defined under the Act of March 22, 1993, on the legal status and regulation of credit institutions as a Belgian or foreign undertaking whose business is to receive deposits or other repayable funds from the public and grant credit for its own account. Before commencing operations in Belgium, a credit institution must be authorized by the Belgian National Bank, irrespective of wherever else it might carry on business. The authorization conditions are laid down in section 7(22) of the 1993 Act. Sections 23-45 of the act lay down requirements on credit institutions for them to carry on business.

An *investment firm* is defined under the Act of April 6, 1995, on the legal status and regulation of investment firms, intermediaries and investment advisors (implementing MiFID) as an undertaking governed by Belgian law whose normal business is to provide third parties with investment services in the course of its business, and undertakings governed by the law of another State that carry on such business in Belgium. Investment services are any of the following services that are provided to a third party:

- (a) receipt and transmission, on behalf of investors, of orders in relation to one or more financial instruments;
- (b) execution of such orders other than for its own account;
- (c) bringing two or more investors into contact in order to make it possible for those investors to effect a transaction in relation to a financial instrument;

- trading any financial instrument for its own account;
- managing portfolios of investments in accordance with instructions given by investors on a discretionary, client-by-client basis, where such portfolios include one or more financial instruments;
- underwriting in respect of issues of any financial instrument and/or the placing of such issues.

Before commencing operations in Belgium, investment firms must obtain one of the following two types of authorization: (1) authorization as a stockbroking firm from the Belgian National Bank; or (2) authorization as a portfolio management company from the Financial Services and Markets Authority.

Stockbroking firms may provide all the investment services referred to above. Portfolio management companies may provide the following core investment services: (a) receipt and transmission, on behalf of investors, of orders in relation to one or more financial instruments; (b) execution of orders other than for their own account and the management of portfolios of investments in accordance with instructions given by investors on a discretionary, client-by-client basis, where such portfolios include one or more financial instruments. Portfolio management companies can also provide investment advice.

A third type of financial institution is the *management company of an collective investment undertaking* (CIU). Management companies of CIUs are companies governed by Belgian law whose usual business is professional collective management of portfolios of public collective investment undertakings, as well as foreign companies performing this business in Belgium. To be able to start trading, management companies need to be authorized by the Financial Services and Markets Authority. The legal rules on Belgian collective investment undertakings are to be found in part II, division II, of the Act of July 20, 2004.

Insurance companies governed by the Act of July 9, 1975, are companies that carry on life or non-life insurance business. It is prohibited for a given insurance company to provide both life and non-life insurance services. Companies that exclusively offer reinsurance services are not called insurance companies under the Act of July 9, 1975. To access the market as an insurance company, authorization is required from the Belgian National Bank. In the course of their business, insurance companies have to meet certain legal obligations concerning solvency, technical reserves, tariffs, etc.

Finally, *institutions for occupational retirement provision* ("pension funds") are dealt with in the Act of October 27, 2006. They need to be authorized by the Belgian National Bank in order to access the market.

BANK ACCOUNT IN BELGIUM

A bank account or postal checking account with a credit institution or other financial institution is a prerequisite for setting up an undertaking, regardless of whether the activity in question is that of an individual (natural person) or a company (legal person). The account must be separate from any private account and must be used exclusively for operations related to the business activity of the self-employed individual or company. The account number must feature on all commercial documents (letters, invoices, etc.) along with the name of the company and the financial institution.

REQUIREMENTS FOR OPENING A BANK ACCOUNT

The requirements for opening a bank account are governed by the general terms and conditions laid down by the credit institution in question. The law does not provide standard terms and conditions.

The Act of January 11, 1993, to prevent use of the financial system for the purposes of laundering money and financing terrorism requires credit institutions to verify the identity of the applicant (know-your-customer rule). Natural persons have to provide the bank with their full name, address and date and place of birth. Legal persons are identified by their name, the address of their head office, their directors, their corporate form and the natural persons that are their ultimate beneficiaries. Information is also required regarding the purpose and nature of the transactions for which the bank account is opened.

RESTRICTIONS ON THE INVESTOR'S USE OF THE ACCOUNT

On condition that the investor complies with the money-laundering legislation and subject to the contractual rules set out in the terms and conditions, there are no restrictions on how an account is used.

STRUCTURE OF THE BANKING SYSTEM

As of 2011, there are 48 or so Belgian credit institutions and 455 credit institutions active in Belgium under the European passport regime (with or without a branch in Belgium). In addition, there are about 44 Belgian investment firms and several hundred of investment firms active in Belgium under the European passport regime (with or without a branch).

The structure for regulating the financial sector changed with the Act of July 2, 2010, on regulation of the financial sector and financial services. Now, the Belgian National Bank (BNB) carries out both micro- and macro-prudential oversight. Micro-prudential supervision means verifying the financial soundness of financial institutions by imposing requirements regarding solvency, liquidity and profitability. With macro-prudential supervision, the BNB tries to manage systemic risk and regulates systemically relevant financial actors.

The Financial Services and Markets Authority (FSMA), which replaced the Banking, Finance and Insurance Commission (CBFA), oversees financial intermediaries and the functioning, transparency and integrity of the market. It verifies compliance with codes of conduct by financial-market actors.

STOCK MARKETS

As of 2011, the following regulated markets exist:


- the "NYSE Euronext Brussels" market and the Euronext Brussels SA/NV market for derivative products;
- the regulated off-exchange market in linear bonds, split securities and Treasury certificates of the Belgian State.

NYSE Alternext offers market access with fewer obligations and is intended primarily for small and medium-sized companies, making them available to a wide range of investors. The market is a multilateral trading facility (MTF) and not a regulated market.

The Free Market is also an MTF and provides small companies with easy access to an IPO and a framework suited to their specific needs. This market is in principle open to any company, regardless of size, performance, maturity or industry. The criteria for admission to the market are much simpler (compared to Alternext) and listing costs are low.

BANK LOANS

There is no legal restriction. However, to the extent that the Belgian Companies Code applies, financing by a public limited-liability company (SA or NV; possibly through bank loans) of acquisition of its own shares by a third party is subject to certain conditions.





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 his domicile, habitual residence or the *seat of his wealth* is located in Belgium. Seat of wealth is not the place where assets (wealth) is situated but the place where the assets are managed. Companies or associations are Belgian residents where their registered office or principal place of business is situated in Belgium. The residence criterion is relevant for tax purposes.

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

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

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 traders 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.

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 November 14, 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 November 14, 2007).

INVESTMENT CONTROLS

There is no discrimination between domestic and foreign companies or between branches and subsidiaries. Thus, foreign entities have the same legal obligations and rights as domestic entities. Both domestic and foreign entities may sell or buy interests in and establish companies.

MONEY TRANSFERS

EXCHANGE RATES

Exchange rates are determined 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.

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.





IMPORT/EXPORT REGULATIONS

Generally speaking, there are no restrictions on imports and exports of goods. There are only a few cases in which some goods may be subject to licensing requirements for import or export purposes. Some products are subject to specific restrictions under certain rules such as technical standards, anti-pollution standards, health and safety rules and labour or consumer protection rules.

Being a member of the EU, Belgium applies the European Common External Tariff to goods entering the Union into Belgium. Customs duties are levied on an *ad valorem* basis. Goods originating from countries with which no agreement or established relations exist with the EU are subject to custom duties. The circulation of goods within the EU is exempt from custom duties.

Special rules apply to goods originating from countries associated with the EU (European Free Trade Association, Lomé agreement with former dependencies, etc.). Goods originating from such countries can in certain circumstances be exempted from customs duties or benefit from preferential rates. In most cases, Belgian exports to such associated countries can be effected on a reciprocal basis.

In some cases, particular goods can be exempted from duties, such as goods imported for R&D purposes, or goods imported for transit only. There are also special rules in terms of different types of bonded warehouses in Belgium.



STRUCTURES FOR DOING BUSINESS

Belgium has traditionally both invited and encouraged investment from abroad. 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. Alternatively, to operate a business in Belgium, a foreign company must register its business as a branch office. The most common forms chosen by foreign investors for operating a subsidiary in Belgium are either the NV/SA or the BVBA/SPRL. More recently, foreign investors have also been looking at setting up an SE, which stands for Societas Europaea or European Company.

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 privée à responsabilité limitée (BVBA/SPRL)*)
- co-operative society with limited liability (*coöperatieve vennootschap met beperkte aansprakelijkheid/société coopérative à responsabilité limitée (CVBA/SCRL)*)

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 BVBA/SPRL are the most widely used forms.

Limited liability companies must be constituted by notarial deed, which means that the founders must sign the articles of incorporation before a notary. The founders 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.

An excerpt of the articles of association must be filed with the registry of the Commercial Court (*dienst akten van vennootschappen/service des actes de sociétés*) in whose jurisdiction the registered office of the company is located. Filing the deed with the registry of the Commercial 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 15 days of incorporation. Finally, the company has to be registered with the Central Businesses Data Register (*Kruispuntbank voor ondernemingen/Banque-carrefour des entreprises*) 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 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, warrants, beneficiary shares (which do not represent the issued capital) and non-voting stock).

A public limited liability company is founded by at least two members, who may be natural or legal persons, together contributing at least EUR 61,500 to its capital, which must be fully paid up. Furthermore, one-fourth of the contributions in cash or in kind represented by the shares has to be fully paid up upon incorporation. If all the shares end up in the hands of one shareholder, the sole shareholder may, within one year, decide to transform the company into a BVBA/SPRL or to wind it up.

Stock is freely transferable in principle. However, the articles of association or private agreements may limit the free transferability of shares, although provisions preventing the assignment of shares must be limited in time and must be justified at all times by the interests of the corporation.

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, provided the NV/SA has been incorporated by two shareholders or the company's general meeting has officially acknowledged that the number of shareholders has been reduced to two, but only provided that possibility is explicitly provided for in the by-laws. 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. Residents who are not nationals of an EU country and wish to act as directors need a professional card (*beroepskaart/carte professionnelle*) unless their visits qualify as 'business trips' and are short-term only. If the directors are companies, the company has to appoint a permanent representative entrusted with carrying out the directorship duties on behalf

of the company. Permanent representatives have to meet the same conditions as if they were individuals entrusted with management duties. Permanent representatives bear the same liability as the directors (by definition, companies) whose tasks they carry out.

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 by-laws, 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

The BVBA/SPRL is considered a private limited liability company: its shares are not readily negotiable since new shareholders must be accepted by the general meeting.

A BVBA/SPRL is founded by at least two members, who may be natural or legal persons. A BVBA/SPRL that has only one shareholder is called a sole proprietorship limited company (*éénpersoons besloten vennootschap met beperkte aansprakelijkheid/société privée à responsabilité limitée unipersonnelle (EBVBA/SPRLU)*). A BVBA/SPRL requires a minimum starting capital of EUR 18,550, of which EUR 6,200 – and EUR 12,400 in the case of an EBVBA/SPRLU – needs to be paid up at the time of incorporation. Furthermore, one-fifth of each share has to be fully paid up upon incorporation.

Management

The BVBA/SPRL is managed by one or more directors (*gérants/zaakvoerders*), who may be individuals or companies. Each manager may in principle do whatever is necessary or useful for achieving the company's purpose and represents the company in dealings with third parties,

unless the by-laws grant one or more of them power to represent the company alone or jointly. Daily management of the company may not be entrusted to individuals or corporations.

Similar to an NV/SA, the directors do not need to be Belgian residents. Residents who are not nationals of an EU country and wish to act as directors need a professional card (*beroepskaart/carte professionnelle*) unless their visits qualify as “business trips” and are short-term only. If the director is a company, the company has to appoint a permanent representative entrusted with the directorship duties on behalf of the company. The permanent representative has to meet the same conditions as any individual entrusted with management duties. 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 BVBA/SPRL 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 WITH LIMITED LIABILITY (COÖPERATIEVE VENNOOTSCHAP MET BEPERKTE AANSPRAKELIJKHEID/SOCIÉTÉ COOPÉRATIVE À RESPONSABILITÉ LIMITÉE (CVBA/SCRL))

A limited liability cooperative can only be formed by three or more persons, who may be natural or legal persons. The share capital of a limited cooperative consists of fixed and variable parts. The fixed part may not be less than EUR 18,550, of which at least EUR 6,200 must be paid up upon incorporation. Furthermore, one-fourth of each share has to be fully paid up upon incorporation.

The transfer of shares is strictly regulated. The shares are transferable to other members 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 CVBA/SCRL 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 Companies Code lists various forms of unlimited liability companies with legal personality:

- general partnership (*vennootschap onder firma/société en nom collectif (VOF/SNC)*)
- limited partnership (*gewone commanditaire vennootschap/société en commandite simple (Comm.V/SCS)*)
- partnership limited by shares (*commanditaire vennootschap op aandelen/société en commandite par actions (Comm.VA/SCA)*)
- unlimited co-operative society (*coöperatieve vennootschap met onbeperkte aansprakelijkheid/société coopérative à responsabilité illimitée (CVOA/SCRI)*)
- (European) economic interest grouping (*((Europees) economisch samenwerkingsverband/groupement d'intérêt économique (européen) ((E)ESV/GIE(E))*)

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 commercial court with jurisdiction over the location of the company's registered office.

COMPANY FORMS WITHOUT LEGAL PERSONALITY

The Companies Code also lists three company forms which do not have legal personality: unregistered partnership (*maatschap/société de droit commun*), temporary commercial company (*tijdelijke handelsvennootschap/société momentané*), and silent company (*stille handelsvennootschap/société interne*).

The unregistered partnership is the default form of company. If two or more persons carry on business together without filing their agreement with the commercial court and without adopting the legal form of a temporary commercial company or silent company, 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.

Temporary commercial companies are frequently used by construction companies that join forces for large projects (building a tunnel or airport, extending rail networks, etc.). The partners of a temporary commercial company are considered as traders (acting in *re mercatoria*) and will be jointly and severally liable for all the debts of the partnership.

Silent companies are companies in which persons acting in their own name manage operations in which other, undisclosed persons have an interest. Silent companies should be used with the greatest of care, as improper use triggers partners' liability if the undisclosed partner carries on business for the association.

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 a trader and foreign partners must therefore 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 by-laws grant one or more partners power to represent the company alone or jointly.

LIMITED PARTNERSHIP (GEWONE COMMANDITAIRE VENNOOTSCHAP/SOCIÉTÉ 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

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

PARTNERSHIP LIMITED BY SHARES (COMMANDITAIRE VENNOOTSCHAP OP AANDELEN/SOCIÉTÉ EN COMMANDITE PAR ACTIONS (COMM.VA/SCA))

Similar to a limited partnership (Comm.V/SCS), a partnership limited by shares has two types of shareholders with a distinct legal status: (i) managing shareholders, who are jointly and severally liable along with the company for the company's obligations; and (ii) silent shareholders, who only commit to their stake in the company.

As a matter of principle, the rules applicable to NV/SAs also apply to the Comm.VA/SCAs, apart from the two types of shareholders and the fact that they only require to have (but must have at least) one director. The director must be a shareholder, and his liability is unlimited. He is in a very strong position, as he cannot be removed from office by the other shareholders except by a court order founded on "just cause." Irrespective of how many shares he holds and unless the articles of association provide otherwise, he can veto those decisions by the general meeting that have a bearing on the company's relations with third parties or that might amend the company's articles of association.

ECONOMIC INTEREST GROUPING

Belgian law provides for two types of economic interest grouping. The first is a European economic interest grouping (EEIG) (*Europees economisch samenwerkingsverband/groupement d'intérêt économique européen (EESV/GIEE)*), which is governed by the Act of July 12, 1989, complementing EC Regulation 2137/85 of July 25, 1985. The second type is an economic interest grouping (EIG) (*economisch samenwerkingsverband/groupement d'intérêt économique (ESV/GIE)*). The provisions applicable to EIGs also apply to EEIGs in the absence of specific rules in the EEIG legislation. Both are very similar, except that, unlike the EIG, the EEIG requires different nationalities: to incorporate an EEIG, members must be residents of different EU Member States.

An (E)EIG is a group comprising two or more individuals or legal entities. It combines the interests of its members

while maintaining their individuality and autonomy. (E)EIG members are associated for a certain period to promote or develop their economic activity and improve their results. The activity of an (E)EIG must be ancillary to that of one of its members. An (E)EIG may neither make profit for itself nor hold shares in a commercial company nor publicly issue bonds or shares.

Under Belgian law, (E)EIGs are separate legal entities, which are 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 Commercial Court.

The members' liability is unlimited, which may be justified by the fact that an (E)EIG can be set up without equity.

EUROPEAN PUBLIC LIMITED LIABILITY COMPANY (SOCIETAS EUROPAEA OR SE) (EUROPESE VENNOOTSCHAP/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 two-tier or a one-tier board system. Under Belgian law, SEs are mainly governed by the provisions applicable to NV/SAs.

PARTNERSHIPS, GENERAL OR LIMITED

In Belgium, the term "company" includes all profit-making entities, i.e. corporations (*kapitaalvennootschappen/sociétés de capitaux*) and partnership-type companies (*personenvennootschappen/sociétés de personnes*). Under Belgian law, business enterprises will, as a principle, take the form of a company with or without legal personality, and with limited or unlimited liability for the shareholders or partners.

The Companies Code lists the following "partnerships" without legal personality: unregistered partnership (*maatschap/société de droit commun*), temporary commercial company ("*tijdelijke handelsvennootschap/société momentanée*") and silent company (*stille handelsvennootschap/société interne*). The Companies Code lists the following "partnerships" with legal personality, on the other hand: general partnerships (*vennootschap onder firma/société en nom collectif*), limited partnerships (*commanditaire vennootschap/société en commandite simple*), and partnerships limited by shares (*commanditaire vennootschap op aandelen/société en commandite par actions*). These company forms have been briefly discussed above.

JOINT VENTURES

Although not as such a concept under the Belgian Companies Code, 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

SOLE PROPRIETORSHIPS

The incorporation of a company by a single shareholder (an individual or a corporation) is only possible in the form of a BVBA/SRPL, which then takes the form of an EBVBA/SPRLU. However, if a sole shareholder of an EBVBA/SPRLU also owns all the shares of another EBVBA/SPRLU, he may be held severally liable for all that second company's debts until there a second shareholder signs up or until the company is wound up.

An EBVBA/SPRLU is governed by the same rules that apply to a company incorporated in the form of a BVBA/SPRL.

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 he represents, even if his 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 the same legal requirements as apply to Belgian companies. A branch is established in Belgium by filing a certified copy of the articles of incorporation and an extract of the resolution to establish a branch with the register of the Commercial Court. A branch manager must be appointed as the legal representative of the foreign company in Belgium. A translation of the documents must be filed and excerpts published in the Belgian Official Gazette, 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 the Central Businesses Data Register is required. For this, certain specific information must be disclosed such as – though not always required – the number of the bank account opened by the company in Belgium. In addition, but only if an 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.

Operating a Belgian branch of a foreign company means all of the company’s assets are liable for its debts. The liability of the manager or legal representative is similar to that of a manager of a Belgian company.

The Belgian branch of a foreign company must pay corporate taxes. The branch must also publish the annual accounts of the 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.

product safety regulations, certification requirements, etc. Procedures to obtain permits may entail significant consulting costs.

ANTITRUST LAWS

Competition policy in Belgium falls under the jurisdiction 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.

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 national controls 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. In that case, the transaction is subject to EU jurisdiction.

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.

Certain businesses, whether owned by Belgian nationals or otherwise, are subject to specific approval or screening rules (for example, private security firms, road haulage, insurance companies, credit institutions and investment funds, travel agencies, retail businesses, production or sale of food, the hotel trade, the cutting of precious stones, and the sale of weapons).

The Economic Expansion and Foreign Investment Department of the Ministry of Economic affairs cooperates with Belgian embassies and consulates to advise potential investors on the advantages offered when an investment is made in Belgium.

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



OPERATION OF THE BUSINESS

CONSUMER PROTECTION, MARKET PRACTICES AND ADVERTISING

The Act of April 6, 2010, on market practices and consumer protection (MPCP Act), repealing a previous act of 1991, entered into force on May 12, 2010.

The MPCP Act sets out the major rules and principles governing market practices, advertising and promotional activities for marketing goods and services. The goal is to ensure fair competition between traders and adequate information and protection for consumers.

The outline of this Act is set out below.

CONSUMER INFORMATION & ADVERTISING

The second chapter of the MPCP Act concerns the right of consumers to obtain certain information regarding goods and services offered.

There are 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 name, composition and labeling of goods and services, (iv) information on quantities (v) comparative advertising and (vi) promotions, such as sales.

The general purpose is that, even before the sale, traders offering products or services to consumers must provide the consumer with all relevant information on the product or service and on the contractual conditions of purchase.

Section 19 of the MPCP Act regulates comparative advertising. An advertisement is considered "comparative" if, even implicitly, it refers to competitors or products or services sold by competitors. Comparative advertising is allowed provided it meets certain conditions aimed at ensuring that a comparison between two products

is relevant and verifiable and does not cause harm or confusion in the market.

CONSUMER CONTRACTS

Chapter 3 of the MPCP Act regulates consumer contracts. There are quite a lot of mandatory rules in this respect, regarding *inter alia*:

- Distance sales: these are contracts entered into between traders and consumers at a distance in accordance with a system set up by the trader (e.g. mail, television, brochures, etc.). There are extensive information obligations (identity of the trader, features of the product, price, costs of delivery, delivery periods, payment method, return of unwanted items, etc.). Distance contracts can also be cancelled by consumers over a minimum period of 14 calendar days as from delivery.
- Sales contracted outside of the trader's premises, which are subject to certain mandatory rules;
- Combined offers are allowed, provided no part of the offer is a financial service. Combined offers are defined as situations in which, to acquire products or services, for consideration or otherwise, the consumer has to acquire other products or services.
- Unfair contract terms: the MPCP Act contains a list of unfair or abusive contractual terms which may, in certain cases, be deemed null and void. Restricted clauses 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, etc.

FORBIDDEN COMMERCIAL PRACTICES

Chapter 4 of the MPCP sets out the rules concerning restricted commercial practices, being (i) Unfair commercial practices towards consumers (ii) Unfair commercial 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 must meet the following requirements:

- It may not figure in the list of restricted commercial practices set out in the MPCP;
- It must not be misleading or aggressive in light of the particular circumstances;
- It cannot be contrary to the professional diligence nor materially distort or be likely to distort the economic behavior of the average (group of) consumer(s) reached or addressed.

Unfair practices towards non-consumers comprise practices which such as misleading or aggressive advertising, or advertising that leads to the identification of another undertaking without legitimate motive.

CEASE AND DESIST ORDER

In case of an infringement of the MPCP by a trader, there is a possibility to act as in summary proceedings before the president of the competent commercial Court in order to obtain a cease and desist order against the concerned trader.

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.

One should be aware that Belgian law regulates some business contracts quite stringently. This is especially the case with distribution agreements that are of effect in Belgium, even if only partly. This special legislation generally provides a high degree of protection for the party considered as the “weaker” party under the distribution agreement and often provides for various (potentially important) heads of compensation upon the contract being terminated by

the principal without cause. The following statutes are of relevance:

- The Act of July 27, 1961, on the unilateral termination of exclusive open-ended distribution agreements: this act, unique to Belgium, imposes termination notice periods and in some cases goodwill compensation due to a distributor terminated without cause.
- The Act of April 13, 1995, on commercial agency agreements (which is the transposition in Belgium of EC Directive 86/653) protects self-employed commercial agents against unilateral termination of their contracts by providing for notice periods and goodwill compensation in favor of an agent terminated without cause.
- The Act of December 19, 2005, on pre-contractual disclosures in the framework of commercial partnership agreements provides pre-contractual disclosure obligations in various types of agreements (mainly franchise agreements), which, if disregarded, can entail the nullity of the agreement or of some provisions of the agreement.

When setting up a distribution network, a foreign investor may therefore want to consult with specialist local counsel.

Under both Belgian and European international private law, contracts can be made subject to foreign law. However, some mandatory Belgian laws will still be applied by a Belgian court in certain circumstances (if the situation referred to it breaches Belgian international *ordre public*).

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. Usually, an hourly fee will be charged, generally ranging between €100 and €500, depending on the attorney's degree of specialization.

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 labour 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;

- 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, opinions are obtained from various bodies and/or a public inquiry is held prior to any decision being taken on the application;
- appeal is always possible against a refusal to grant a building permit.

Obtaining a building permit often takes between two and six months, depending on the type of construction works, the location and the opinions or public inquiries needed. If an administrative appeal is filed, the procedure is extended by an additional period of up to six months.

The most important fees required for filing a building permit application are those of the architects and the technical and legal consultants.

An Act of January 22, 1945, on economic regulation and prices, as further amended, provides for a system of price controls for goods and services.

Under the Act, the price controls refer to the "normal price" of goods and services. Selling goods or services above the "normal price" is prohibited. Whether a price is normal or abnormal must be assessed by the court on the basis of cost-structure, profit margin and market conditions.

It should be noted, however, that judicial review of prices is only resorted to in cases of excess profit margins.

"Program contracts" can be entered into between the Minister of Economic Affairs and individual companies and business or industrial groups (e.g. for gasoline products). In these contracts, the "normal" prices are set out for the sector concerned. They can only be altered as set out in the agreement in question.

Prices are also controlled by means of a legislation on price increases. Some business enterprises must advise

and report on price changes to the Ministry of Economic affairs. Others must apply to increase their prices (e.g. taxi companies, water distribution, medicines, TV).

Another means of control over prices is a prohibition against indexation clauses. An Act of March 30, 1976, generally prohibits any price increase based on fluctuations in any given index. Exemptions can however be granted by the Minister of Economic Affairs.

PRODUCT REGISTRATION

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

Generally speaking, products 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 <http://www.health.belgium.be>).

REDUCTIONS OR RETURN ON CAPITAL

Shareholders can reduce the capital of their company whilst it is still ongoing.

Such an operation, however, will be subject to certain rules and limitations set out in the Company Code. 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 notary public's intervention 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.

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 BUSINESS

DISSOLUTION AND LIQUIDATION OF A COMPANY

A public or private limited-liability company (NV/SA or BVBA/SPRL) 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.

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 incorporation, i.e. a quorum of half the stated capital 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 but his 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 the district attorney: if the company fails to file annual accounts with the Belgian National Bank for three consecutive years; or
- on a petition by a shareholder: if there is evidence of continual, serious dissent between shareholders or for any other reason that renders the functioning of the company unduly burdensome; or
- on a petition by any interested party: if, following losses, the net assets of the company are less than the statutory minimum capital.

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 pursuant to the common rules.

Liquidation distributions are not subject to any corporate income tax charge 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 distributed dividends.

Liquidation distributions are deemed to result, successively, from: (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. Therefore, 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 surpluses, i.e. the difference between the amount distributed and the par value of the (revalued) paid-up capital, are in principle subject to 10% personal property withholding tax. The

withholding tax rate on liquidation surpluses will increase from 10% to 25% as of October 1, 2014.

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 must submit the liquidation 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's 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, three types of insolvency proceedings can be distinguished:

- judicial reorganization, governed by the Business Continuity Act of January 31, 2009 (the "BCA"), which superseded the Judicial Compositions Act of July 17, 1997;
- bankruptcy, governed by the Bankruptcy Act of August 8, 1997; and
- the (deficit) dissolution and liquidation procedure

governed by the Companies Code, and accepted by the courts.

The first of these procedures is aimed at maintaining all or part of the company's business or activities as a going concern, while the latter two are predicated on liquidation of the company's assets.

Scope

Judicial reorganization applies to traders, including commercial companies, and certain non-commercial companies in a commercial form.

Bankruptcy is restricted to traders (including commercial companies).

The (deficit) dissolution and liquidation procedure applies to certain types of commercial companies that have legal personality (e.g. BVBA/SPRLs and NV/SAs).

It should be added that individuals not engaging in commercial activities can petition under the collective debt procedure introduced by the Act of July 5, 1998.

Jurisdiction

The jurisdiction of the commercial court, which has exclusive competence to issue bankruptcy orders, grant judicial reorganizations or approve the appointment of a liquidator and a liquidation plan, is founded on the principal domicile of the trader, i.e. its principal place of business (the center of its main interests). The court has full jurisdiction over the organization and settlement of the bankruptcy and all acts occurring in the context of judicial reorganizations and (deficit) liquidation procedures. Fraudulent bankruptcy is a criminal offence, which is prosecuted before the criminal courts.

Detection of traders in financial distress

The commercial investigation offices established within the commercial courts administration collect and examine economic data evidencing that businesses under their jurisdiction are experiencing financial difficulties (repeated summons for payment by creditors, default judgments against the trader, annual reports, judgments declaring a commercial lease dissolved on grounds for which the trader is liable, etc.). If appropriate, an investigating judge cites the trader to a hearing in chambers in order to gain information regarding its financial situation. The investigating judge does not have power to declare the trader bankrupt, but may

forward the case to the district attorney if he considers that the conditions for bankruptcy or judicial winding-up are met.

Liability in relation to insolvency proceedings

In the context of insolvency proceedings, directors can be held liable for wrongful acts (section 1382 Civil Code), failure in the management of the company (section 527 Companies Code), breach of the provisions of the Companies Code, the articles of incorporation or the accounting rules (section 528 Companies Code) and general penal law.

In addition, various specific provisions in the Companies Code and the Bankruptcy Act provide for particular liability on the part of traders and directors in the context of insolvency proceedings. The most important of these provisions can be summarized as follows:

- A trader's bankruptcy can constitute criminal offences. Depending on the fraudulent intent of the trader or the directors of the company, they can be sent to prison for up to five years. In addition, the court can ban a trader or a director from carrying on a commercial profession or acting as a company director.
- Any director or "de facto director" can incur penal liability in a case of willful misuse of company assets (*misbruik van vennootschapsgoederen / abus de biens sociaux*).
- The founders of a company are jointly liable to any interested third party for the debts of the company in the event it goes into bankruptcy within three years following its incorporation if it appears that the stated capital on the date of incorporation was manifestly inadequate for normal exercise of the intended activities for a period of at least two years.
- If a company goes into bankruptcy and its liabilities exceed its assets, the court can hold all and any of the directors and *de facto* directors personally or jointly liable for all the unpaid debts of the company if it is evidenced that a given (*de facto*) director "manifestly committed a serious mistake contributing to the bankruptcy" (e.g. failure to ensure the company pays its taxes or social security liabilities when it is able to, organizing a fraudulent tax ploy, etc.). There is no need to prove a formal causal link between the mistake and the bankruptcy and, in practice, once they are satisfied that a mistake is manifestly serious, the courts are generally willing to find that it contributed to the bankruptcy.

- 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 the general obligation for employers to regularly inform employee representatives of the financial and economic situation of the enterprise, they 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.).

During a judicial reorganization

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

During bankruptcy proceedings

The Bankruptcy Act 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 need not follow

the relevant procedures. Likewise, it is arguable that the trustee need not comply with the special information and consultation obligations in the event of a “collective dismissal” or “closure of enterprise”;

- 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. The maximum (before taxes) is €25,000.

Voluntary winding-up and liquidation

In a case of voluntary winding-up and liquidation, 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 accorded to the dismissed employees.

The company can, under certain conditions, apply to the Minister of Labour 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 BCA contains various (extra-)judicial instruments intended to allow traders in financial distress to continue all or part of their business as a going concern.

Extra-judicial instruments

These are:

- appointment by the court of a **company mediator** at the request of the trader to facilitate reorganization of his business;
- appointment by the court of one or more **court administrators** at the request of any interested party if it appears that gross, unmistakable shortcomings by the trader in managing the business threaten its going-concern status and such appointment would be liable to maintain it as a going concern; and
- the possibility to negotiate an **extra-judicial settlement agreement** with two 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 its parties and it is not binding on third parties. The agreement and the resulting transactions are, however, 'bankruptcy-proof' to some extent.

Judicial reorganization

At the request of the trader, the court will order a judicial reorganization provided certain conditions are met. The order will lay down the length of the suspension period during which the trader should use one of the following judicial instruments provided for in the BCA to secure all or part of his business as a going concern:

- negotiation, under judicial supervision, and execution of an agreement with at least two creditors;
- drafting of a scheme of reorganization to be approved by a majority of all the creditors holding undisputed claims confirmed by the court (the scheme will be binding on all creditors, regardless of whether their claim is preferential); or
- transfer under judicial authority of all or part of the business to one or more third parties (following the sale, the creditors can enforce their claims over the proceeds of sale).

These instruments can pertain to the entire business or to certain activities. The instrument resorted to for each business unit may differ. They can also be changed during the course of the procedure.

During the judicial reorganization procedure, the trader remains in possession of his assets but the court may appoint a provisional administrator in the event of manifest serious error or manifest bad faith on his part.

Opening of a judicial reorganization procedure

Conditions

A trader can petition for a judicial reorganization if the continuity of the business is or will be threatened and the petition is accompanied by certain documents. Continuity is deemed to be compromised if the company's net assets have fallen below half its registered capital. Even if a trader is virtually bankrupt (irremediable cessation of payments), he can obtain the protection of a judicial reorganization.

The implications of the petition

From the lodging of the petition until the decision by the court on its admissibility and merits, the trader enjoys limited protection from his creditors. Thus:

- no movable or immovable assets can be sold on the demands of the creditors;
- the trader cannot be declared bankrupt;
- the company cannot be judicially liquidated.

Commencement of a judicial reorganization

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

- for a certain period, the trader is protected against (most of) his creditors by dint of a stay of enforcement measures (*opschorting/sursis*). This principle relates only to due debts (including interest, costs, etc.) dating from before the court's judicial reorganization order;
- 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 circumstances, decide to no longer execute an existing agreement;
- the debtor can pay certain creditors voluntarily.

BANKRUPTCY

Conditions

The Bankruptcy Act provides that a trader is bankrupt if :

- he has persistently ceased making payments, i.e. the trader can no longer pay his debts as they fall due; and
- his credit is exhausted, meaning that the creditors' confidence is tainted and they are no longer willing to grant him credit.

Balance sheet insolvency is insufficient for the purposes of bankruptcy as long as the trader can pay his debts as they fall due. A wound-up company whose debts exceed its assets is only in a state of bankruptcy if the creditors lose confidence in the liquidators (see below). If the conditions for bankruptcy are met, the trader can still choose to request a judicial reorganization or continuation of an existing judicial reorganization if the relevant conditions are (still) fulfilled.

Procedure

(Optional) provisional administrator

Prior to the official bankruptcy order and in a case of absolute necessity in which there is cogent evidence that the conditions for bankruptcy are met, the president of the commercial court can issue an interlocutory ruling ordering provisional dispossession of the debtor's assets. This measure can be applied for by any person showing sufficient interest.

Initiating the bankruptcy procedure

The bankruptcy procedure can be initiated either by the trader or the district attorney and any creditor.

The trader must file for bankruptcy if the relevant conditions are met (see above). The petition must be filed within one month of the conditions being met. Failure to file for bankruptcy within this time limit can result in the trader being liable for the increase in his debts.

Consequences of a bankruptcy order

Appointment of trustees

The bankruptcy order divests the bankrupt of his capacity to administer his property and the court appoints one or more trustees (*curator/curateur*) to administer and liquidate the bankrupt's estate.

The trustees operate under the supervision of a judge-commissioner, appointed by the court. If the assets of the

debtor are insufficient to pay the costs of the proceedings, the trustee or the court itself can immediately close the procedure.

The trustee must handle all transactions so as to preserve the bankrupt's rights against his debtors. The trustee draws up an inventory of all the bankrupt's assets and, if necessary, a balance sheet. He may settle all disputes with creditors. The bankrupt's attendance may be requested in order to facilitate operations. The trustee, under the supervision of the judge-commissioner, liquidates the estate by selling the assets and paying the debts with the proceeds of sale. The proceeds are distributed among the creditors after payment of the costs and expenses of the proceedings and administration and the payment of alimony to the bankrupt and his family.

Closure of the bankruptcy entails automatic dissolution of the company.

Creditor's claims – classes of creditors

From the date of the bankruptcy order, the claims of the individual creditors are stayed and all debts of the bankrupt become immediately payable. All assets and income of the bankrupt form a separate estate.

The creditors must lodge their claims at the office of the clerk of the commercial court. The creditors are notified of the bankruptcy procedure by publication in the official gazette and two local newspapers. Creditors known to the trustee are personally informed of the bankruptcy. Each claim must state the full name, occupation and official address of the creditor, the amount of the claim and the consideration for the claim, as well as any liens, mortgages, pledges and personal sureties relating to the claim. This claim is deemed irrevocable. The bankruptcy order states the place, date and time of the meeting at which the formal record of debts is drawn up. Thereafter, the trustee can start with liquidating the debtor's assets.

There are two classes of creditors:

- those whose claims are secured by specific property; and
- those with unsecured claims or a general security.

The proceeds from the realization of assets covered by a fixed security do not form part of the bankrupt estate. Creditors benefiting from a fixed security are paid directly out of the proceeds from realization of the property covered by the fixed security. If the proceeds

prove to be insufficient, these creditors are admitted as unsecured creditors for the balance of their claims, provided that they have been declared and accepted. Creditors with a prior-ranking mortgage can pursue forced realization of the mortgaged property as from the date the admitted or contested debts are formally recorded. However, the trustee can petition the court for a stay of one year if this is in the interests of the estate and does not jeopardize the claims of the mortgage creditors.

Void acts after the date of bankruptcy – suspect period

All acts performed by the bankrupt with respect to his estate after the date of the bankruptcy are void.

Moreover, if the circumstances clearly demonstrate that the trader ceased his payments before the bankruptcy order, the court will fix that date, which cannot be earlier than six months before the date of the bankruptcy judgment, as the start of the period known as the “suspect period”, which runs until the date of the actual bankruptcy order.

Arrangements, transfers and payments made by the bankrupt trader can be declared void by the bankruptcy court under certain circumstances, on an application by the trustee. The main rules governing the circumstances in which transactions, payments, etc. will or can be set aside (i.e. declared ineffective against the bankrupt estate and the creditors) can be summarized as follows:

- any transaction entered into during the “suspect period” will be declared ineffective if the value given by the bankrupt trader significantly exceeds that which he received as consideration;
- any security granted during the suspect period will be declared void if it is intended to secure a debt that existed prior to the date on which the security was granted;
- payments of debts that were not yet due as well as payments other than in money or equivalent financial instruments (i.e. checks or promissory notes) are void;
- any transaction entered into during the suspect period can be set aside if the counterparty to the transaction was aware of the cessation of payments;
- any transaction or payment made with fraudulent intent to prejudice the rights of the creditors will be set aside irrespective of when it was entered into or made (i.e. within or outside the suspect period).

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

DEFICIT DISSOLUTION AND LIQUIDATION

The courts and legal scholars accept that a dissolved company can be liquidated even though its debts exceed its assets provided the following conditions are met:

- the decision to dissolve the company did not involve any fraud;
- 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 conducted duly and properly to the satisfaction of most of the creditors who were informed; and
- the creditors have not lost confidence in the liquidator.

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



LABOR LEGISLATION, RELATIONS AND SUPPLY

EMPLOYER/EMPLOYEE RELATIONS

GENERAL REMARKS ON LABOUR REGULATIONS

The body of labour legislation strictly governing employment and labour relations is large. 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 Labour 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 regulations and individual contracts contain additional agreed conditions. Custom and tradition play a subsidiary role.

MAIN SETS OF RULES GOVERNING EMPLOYER/EMPLOYEE RELATIONS

Labour 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 collective bargaining agreements may set a higher level of protection.

- The third set of rules concerns collective labor relations and governs the organization of trade unions, employees' representation and the mechanisms of collective bargaining.

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 recently 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.

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

In 1998, the “social partners” (comprising employees’ and employers’ representatives) acknowledged the importance of developing vocational training. They agreed to set an average expenditure objective of 1.9% of the wage bill for training employees and an additional 0.10% of the wage bill for training target groups. In specific terms, this means that all employers have to complete the “training” page in their annual labor report and thereby evidence that they have spent at least 1.9% of their wage bill on employee training.

If the 1.9% objective is not reached, a fine of the wage bill must be paid by the employer to the educational sabbatical funds.

NATIONALS OF THE COUNTRY

There is no obligation for investors to hire Belgian employees. However, if foreign employees are hired (other than citizens of EU member states), a work permit is required and a residence card may be necessary. Generally speaking, a self-employed person who is not an EU resident requires holding a valid professional card instead of a work permit.

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

MINIMUM WAGE

According to the Pay Protection Act,¹ “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 salary-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 may have to partially/ totally pay social security contributions for his employees.

Unless otherwise stated in an international agreement (whether multilateral – such as European Regulation 883/2004 – or bilateral),² 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.³ The social security system for wage and salary-earners covers: sickness and disability benefits, unemployment benefit, old-age and survivors’ benefits, family allowances and annual vacations.

² Belgium has bilateral social security treaties with Algeria, Australia, Canada, Chile, Congo (DRC), South Korea, Croatia, the United States of America, India, Israel, Japan, Yugoslavia (which still applies to the former Yugoslav Republics of Bosnia-Herzegovina, Kosovo, Montenegro and Serbia), the former Yugoslav Republic of Macedonia, Morocco, the Philippines, San Marino, Tunisia, Turkey and Uruguay.

³ 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.

¹ Pay Protection Act of April 12, 1965.

The contributions of both employer and employee are based on salary, 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 2014, compulsory social security contributions are 13.07% of gross salary with respect to the portion owed by blue-collar or white-collar employees (not taking into consideration any applicable reduction programs). With regard to the portion owed by the employer for white-collar employees, the rate is around 35% (depending on the number of employees on the payroll, special contributions to be paid on top of ordinary contributions or, by contrast, any reductions in social security contributions). For blue-collar employees, the employer's rate minus single holiday pay (10.27%) is around 40% due to the addition of vacation pay contributions borne by the employer.

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 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, where *working time is annualized*, 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. In the case of shift work, 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 Public Holidays Act¹ defines public holidays as New Year's Day; Easter Monday; May Day (May 1); Ascension Day; Whit Monday; Flemish Community Day (July 11) in Flanders; National Day (July 21); Assumption Day (August 15); French Community Day (September 27) in Wallonia; All Saints' Day (November 1); Armistice Day (November 11); and Christmas Day.

Normal pay is due on each public holiday. If they fall 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 16.27% of the gross wage, rounded up to 108%. It is paid by a vacation fund to which the employer must contribute. **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. Until April 1st, 2012, employees were entitled to four weeks of holidays after they had worked a full year, which meant that when they started working in Belgium, they were entitled to annual vacation but were not compensated in the first year. As from April 1st, 2012 however, the employees who are starting their career or restarting their activities after a long time off are now entitled to additional holidays after an introductory period of three months. Under some conditions, the employees benefit, by virtue of the new regime, called "additional holidays' regime"², from holiday pay that is equal to their regular salary

¹ Public Holidays Act of January 4, 1974.

² Royal Decree of June 19, 2012, which brings Belgian Legislation in line with European Law.

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.¹

During the first month of sick leave, the employee is entitled to a guaranteed wage payable by the employer. To compensate for the fact that payment is now due as from the first day of incapacity, the newly adopted Unified Employment Status Act (UES Act)² has improved the right for the employer to verify the incapacity to work. The UES Act explicitly provides for the possibility to foresee, at sector or company level (through a collective bargaining agreement) or through a provision in the work rules, a time range of four consecutive hours between 7am and 8pm during which the employee who is absent due to incapacity must be available for an examination by the examining physician at his domicile or place of residence as communicated to the employer. In case of absence during this time range, the employee will lose his right to guaranteed salary for the days preceding this examination. The employee regains his right to guaranteed salary once she/he has undergone examination.

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 investor to give nationals certain positions.

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. 38,³ which lays down mandatory obligations concerning how employees are to be recruited and selected. 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: 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 later than the commencement of employment.

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

¹ Section 31(1), Employment Contracts Act of July 3, 1978.

² 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).

³ Collective bargaining agreement no. 38 of December 6, 1983, on the recruitment and selection of employees.

Different rules apply to blue-collar and white-collar employees. However, the new UES Act¹ which came into effect on January 1st, 2014, is 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.² 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.

Specific contract clauses

Trial clause

The UES Act provides for new notice periods for termination applying to all (white and blue-collar) employees, which are relatively short during the first year of service (see below point 8). According to the legislator, this makes it meaningless to have a trial period. For this reason, the UES Act abolishes 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.

However, a transitory regime is foreseen for trial periods which were contained in employment contracts entered into force before that date: the old rules which were applicable until December 31, 2013 will remain applicable to these trial periods, of which the consequences are also maintained until the expiration of the trial period³.

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. From now on, 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

A contractual obligation not to compete with the employer either during the contract or after its end 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 (€65,771 in 2014, indexed annually by royal decree);⁴ and
- 2 the clause is not enforceable if the contract is terminated during the first six months, - instead of during the trial period under the old rule - 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

¹ 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).

² Act of March 5, 2002, establishing the principle of non-discrimination for part-time employees.

³ Pursuant to the old rules, for blue-collar employees, the minimum trial period is seven days and the maximum fourteen days. During the minimum trial period, the parties may terminate the contract by giving seven days' notice. After the minimum period has expired but before the end of the trial period, termination may occur without notice. For white-collar employees, the minimum trial period is one month. Trial periods for white-collar employees may not exceed six or twelve months, depending on whether the annual gross remuneration exceeds a specific threshold that is indexed on a yearly basis (€39,422 in 2014). The notice period for terminating a white-collar contract during that period is seven days. A seven-day notice served during that first month will only take effect after the last day of that month.

⁴ For employees whose annual gross pay lies between €32,886 and €65,771 (in 2014), such clauses are only valid for positions set down in a collective bargaining agreement.

7 the clause must provide for upfront payment of compensation to the employee corresponding to at least half the pay the employee would have otherwise been entitled to over the duration of the prohibition.

Clauses failing to meet requirements (v) and (vi) (i.e. geographical scope and duration) are allowed if they are agreed between a white-collar employee who has directly or indirectly obtained information whose use could be harmful to the undertaking and an undertaking with international activities or important economic, technical or financial interests in international markets and/or that has its own research service. This clause can be made enforceable in all cases of termination.

Non-competition clauses for sales representatives are subject to special rules.

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 worthy of brief mention:

- 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. Under the new 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 the following reasons : (i) to take care of his child until

he is eight years old, (ii) to provide palliative care, (iii) to provide care to a member of the household or the family who is seriously ill, and (iv) for training. Full or part-time leave is allowed for such reasons provided a CBA is concluded at the sectoral level or within the undertaking.

- a maximum break of 48 months is allowed for the following reasons: (i) to provide care to his disabled child until he is 21, (ii) to assist or provide care to his child who is seriously ill or to any child who is seriously ill and is part of the household.¹

4 *Parental leave* is governed by EC Directive 96/34 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:

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

As of January 1st, 2014, new 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.

¹ Royal Decree of December 28, 2011, published in the Belgian State Gazette of December 30, 2011 and collective bargaining agreement no. 103.

² Collective or lay-offs 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.

TERMINATION BY NOTICE

Except in the case of serious misconduct 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. 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. If the contract is terminated by the employer, notice must be served by certified mail or by a bailiff.

All notice periods are now expressed in a number of weeks.

A notice period must be served by registered mail. Notices served by Wednesday of a given week at the latest, will take effect from the Monday of the following week.

No termination formalities require to be complied with if a party terminates an employment contract with immediate effect and pays compensation in lieu of notice. However, since the new notice periods are expressed in weeks instead of months, the indemnity in lieu of notice will also correspond to the pay the employee would have earned during the notice period, including statutory and contractual or fringe benefits, but for a certain number of weeks. The conversion rule for the calculation of the weekly remuneration for employees who are paid on a monthly basis is set as follows:

- the gross monthly remuneration is converted to a quarter by multiplying it by 3;
- the gross quarterly remuneration is then divided by 13 (number of weeks in a quarter).

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

The new 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 remuneration or the age of the employee is no longer of any importance for determining the applicable notice period. The new 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	2 weeks
3 - 6 months	4 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	18 weeks
6 - 7 years	21 weeks
7 - 8 years	24 weeks
8 - 9 years	27 weeks
9 - 10 years	30 weeks
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	63 weeks
22 - 23 years	64 weeks

The employee gives notice

The new 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

Length of service	Notice period
4 - 5 years	7 weeks
5 - 6 years	9 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

A sales representative has to be treated like a white-collar employee. In addition, if he is dismissed by his employer, has more than one year's service as a sales representative and proves that he has increased the clientele or turnover to the benefit of the employer, he is entitled to supplementary compensation ("goodwill indemnity") 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 pre-retirement 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).

Furthermore, the UES Act explicitly stipulates that, as of January 1st, 2014, it will not be possible to deviate from the

new notice periods by sectoral-level CBAs anymore. This applies in both events of notice by the employer and notice by the employee.

It will however be possible to deviate from the new 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 new 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) or by the employee (resignation) 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 salary 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 1 and step 2 here above.

Step 1

• White-collar employees

- For 'low level' white-collar employees (i.e., with a gross annual remuneration on December 31, 2013 < €32,254), the rule of three months notice per started period of five years of service applies. When a white-collar employee resigns, he has to respect a notice period of 1,5 months if he has less than five years of service, and as of five years, the notice period amounts to three months being the maximum. If this maximum of three months is reached, there is no step 2.
- For 'high level' white-collar employees (gross annual remuneration on December 31, 2013 > €32,254), the following fixed determined notice periods apply:
 - if notice is given by the employer: 1 month per started year of service, with a minimum of three months;

- If notice is given by the white-collar employee: 1,5 months per started period of five years of service, with a maximum of 4,5 months if his gross annual salary did not exceed € 64.508, or 6 months if his gross annual salary exceeded € 64.508 (if the maximum of 4,5 months or 6 months is reached, there is no step 2).

• 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.

However, the UES Act foresees two specific corrections in case of resignation by a white-collar employee:

- when the applicable ceiling is reached under step 1, nothing has to be calculated for step 2, namely:
- ceiling for the 'low level' white-collar employee : 3 months
- ceiling for the 'high level' white-collar employee: 4,5 months if his gross annual salary did not exceed €64.508, or 6 months if his gross annual salary exceeded such amount;
- if this ceiling is not reached under step 1, also step 2 has to be calculated, but the sum of both parts may not exceed 13 weeks.

Transitory Measures for Certain Industries

Transitory measures apply to blue-collar employees of certain industries. to which, on December 31, 2013, a Royal Decree applied fixing the notice periods to be respected by the employer and which are lower than those fixed by the UES Act (e.g. construction, timber and furniture, clothing, diamonds industry, etc.). Exceptional measures are also foreseen for blue-collar employees who execute certain activities on so called temporary and mobile work places.

• Dismissal Compensation Indemnity for Blue-collar 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 foresees the granting of an additional dismissal compensation indemnity paid by the Belgian National Employment Organization (NEO) provided that they meet 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 30 years on publication date of the UES Act in the Belgian Official Gazette;
 - 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.

Blue-collar employees who fall within the scope of the exception under point (iv.2) above can however not benefit from this rule.

Also, the dismissal allowance that was paid by the NEO to dismissed blue-collar employees will no longer be paid to the blue-collar employees whose employment contract took effect on or after January 1st, 2014. Such dismissal allowance will fade out progressively as the above-described system of the dismissal compensation indemnity gradually enters into force.

• Notice during or before the suspension of the contract

If notice is served by the employer on the contract when it is temporarily suspended, it only takes effect after 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 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 salary 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 salary 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 require to continue performing the contract. However, during the notice period, the employee retains the right to look for another job 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 outplacement support will then be taken during the solicitation leave.

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 their contractual term with payment of an indemnity equal to the amount of the remuneration due until the end of the contractual term. However, the indemnity can never amount to more than twice the remuneration 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 now possible to terminate a fixed-term employment contract by serving a notice or paying an indemnity in lieu thereof in accordance with the new 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 the long-awaited CBA (CBA No.109) on the motivation of the dismissal. By doing so, the social partners took a new step towards the harmonization of the employment status of blue and white-collar employees. 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.

Up till now, Belgian employment law adhered to the principle that an employer was not obliged to inform the employee of the reason for his dismissal or to provide proof hereof, except in specific cases. The most typical exceptions are the dismissal for serious cause and the dismissal of employees who benefit from a special protection against dismissal.

Also in this regard, an important distinction between blue-collar and white-collar employees existed. An employer who dismissed a blue-collar employee had to be aware of the rules on "arbitrary dismissal" (Employment Contracts Act of July 3, 1978, art. 63). In case of violation of these rules by the employer, the blue-collar employee was entitled to an indemnity of six months of salary. White-collar employees, however, did not benefit from the same protection. They could call upon the theory of "abusive dismissal", but this placed them in an inferior position compared to blue-collar employees in terms of burden of proof.

The UES Act was meant to abolish this distinction. However, the implementation of this intention, expected from the social partners, took some time. The CBA No.109 introduces a unified regime on the motivation of the dismissal, around the next guiding 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. 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 salary;

- 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 for an amount between 3 and 17 weeks of salary. The height of damages is meant to depend on the degree of unreasonableness;
 - the fact that the dismissal must be "manifestly" unreasonable implies a marginal check by the courts of the unreasonable character of the reason for dismissal. As a consequence, the labor courts must not assess the opportunity of the employer's policy;
 - the CBA No.109 mentions a considerable number of exemptions, such as employees dismissed during the first six months of their employment or in the frame of collective lay-off or closing down. Exceptions are also provided for blue-collar employees subject to lower notice periods for a limited (e.g. diamonds industry, timber and furniture, clothing) or unlimited (construction) period of time. For them, the rules on "arbitrary dismissal" remain (temporarily) applicable;
 - according to the advice of the NLC, the lump-sum civil fine and the amount of damages would be exempted from social security contributions.
- *Service of notice on 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
 - *Intimation of the reasons justifying dismissal for serious cause, sent by certified mail*: within three days after the first deadline, unless the employer has stated these reasons in the termination letter. In such a case, the termination letter must be sent by certified mail within the first three-day deadline.
 - *Special dismissal procedures*
Some categories of employees enjoy special protection from dismissal: members of and unelected candidates to the employees' representation bodies, pregnant employees or employees on maternity leave, trade union delegates, employees under a special work-suspension scheme, etc. As a consequence, special procedures have to be gone through and special grounds cited by employers wishing to dismiss protected employees. In addition, protection indemnities are provided for if these conditions are not fulfilled.

CONTINUING OBLIGATIONS TOWARDS DISMISSED EMPLOYEES

Documents

If an employer dismisses a employee, he must issue the following documents:

- *employment certificate*, indicating the date of termination and the nature of the work;
- *unemployment certificate* (so-called "form C4"), 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 contributions*.

Outplacement

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

As from January 1st, 2014, 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 (option to refuse is granted to the employee until December 31, 2015), four weeks may be deducted from such indemnity, in consideration for the outplacement support.

For dismissed employees whose notice period (or indemnity in lieu thereof) does not reach 30 weeks, the old outplacement regime remains applicable under the same 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

"Bridge pension", or a "conventional early retirement scheme" is a special unemployment arrangement for dismissed employees, which was initially intended to encourage older employees to take early retirement to make room for youngsters. 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 agreement no. 17 of December 19, 1974, and many other collective agreements at sector and undertaking levels. A number of conditions must be met. However, the general philosophy of the system is now being questioned and a radical overhaul is being implemented in order; inter alia,

to harden the conditions with respect to age and career, as from January 1st, 2012. The name of this system has also been changed as follows: "*regime of unemployment benefits with an additional company allowance*".

LABOR AVAILABILITY

All kinds of labour 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 both an external and an internal health and safety service. These 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, which must be sent to the labour inspectorate.

Internal health and safety service: an *internal health and safety advisor* must be appointed to advise on safety in the workplace. He 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: affiliation to such a service is mandatory.² This service is entrusted with all health and

¹ Royal Decree of April 26, 2012, published in the Belgian State Gazette of April 30, 2012; the Program Act of March 29, 2012, published in the Belgian State Gazette of April 6, 2012.

² If the undertaking employs 50 persons or more, it may choose to set up an internal medical service.

safety details that are not the required responsibility of the company's internal health and safety service: assistance of a health and safety advisor on psycho-social aspects of work, bullying and sexual harassment; assistance to the employer in preparing an overall health and safety plan; inspecting the workplace for health and safety aspects, etc.

HEALTH AND SAFETY AT WORK COMMITTEE

A health and safety at work committee is required for all companies that employ an average of 50 employees or more. The committee's brief covers health, safety and welfare issues.¹ For further information, please see "Unions", below.

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. In practice, many employees and employers are affiliated to unions.

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 labour 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.² If the complement is less than this figure, the tasks of the works council are carried out by the health and safety 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).³

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

In the labour 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,⁴ employment matters (e.g. work organization and conditions, productivity, educational measures, paid educational leave, time-credit, collective lay-offs or closure of the undertaking, insolvency and bankruptcy procedures, early retirement issues, etc.).

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

² Act of September 20, 1948, on the organization of the economy.

³ RD of November 27, 1973, on economic information to be disclosed to works councils.

⁴ Collective bargaining agreement no. 9 of March 9, 1972, concluded within the National labour Council, rendered binding by the RD of September 12, 1972.

to abide by these protection rules can result in liability to pay very substantial amounts of compensation.

HEALTH AND SAFETY 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.¹ 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 Labour Council)² and by collective bargaining agreements adopted at sector level.

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

The principles on which a European works council (EWC) may be set up are laid down in CBA no. 62, implementing European Directive 94/45/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 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. They 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

¹ Section 60, Welfare at Work Act of August 4, 1996.

² Collective bargaining agreement no. 5 of May 24, 1971, on trade union delegates.

respective rights and obligations.¹ They are entered into at various levels: national collective bargaining agreements are issued within the National labour 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 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 labour 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 upon: the representative organizations (and their members) and employers which have entered into the agreements; and the representative organizations (and their members) and employers which have signed up to the agreement; employers that join a representative organization which is bound by the agreement; and all employees of an employer which is bound by an agreement.

In addition, a collective bargaining agreement agreed within the National labour 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.

¹ Act of December 5, 1968, on collective labour agreements and joint committees.



TAX SYSTEM

The Belgian tax system combines direct and indirect taxes.

Direct taxes mainly include income tax and other taxes of lesser importance. As regards indirect taxes, value-added tax is governed by the VAT Code, which implements the EU VAT directives. Inheritance duties and registration duties are governed by special codes. The federal taxes include excises (for which there is some harmonization at an EU level).

The Regions, provinces and municipalities have limited taxing powers. The Regions are also granted a share of tax revenue received at a federal level.

GENERAL CONSIDERATIONS ON THE BELGIAN TAX SYSTEM

GENERAL PRINCIPLES OF TAX LAW

The Belgian tax system is founded on basic principles which are guaranteed by the Constitution or result from general practice.

Some of the recognized general principles include the fact that tax law is a matter of public policy, the fact that the rules of civil/ordinary law apply unless otherwise specified by tax law, the territoriality principle of tax law, and the principle that tax law may not be retrospective. Regarding the rules governing the interpretation of tax law, reference must be made successively to the interpretation of the letter of the law and interpretation according to parliament's intention; no analogous, teleological or equitable interpretation is allowed. In cases of doubt as to the meaning of a provision, the text is to be interpreted in favor of the taxpayer (the doctrine of *in dubio contra fiscum*).

The Supreme Court¹ has recognized the primacy of an international legal norm having direct effect in the municipal legal system where it conflicts with a municipal legal norm as a consequence of the very nature of international law. Double taxation treaties are recognized as having direct effect in the municipal legal system; a taxpayer can therefore claim application of the international norm as prevailing over a municipal rule.

Certain other principles are laid down in the Belgian Constitution.

Under the principle of legality, no tax may be levied for the benefit of the State except by way of a statute, which must specify the rules for fixing the tax base, the tax rates, any exemptions, the relevant taxpayers and the taxable event. This principle extends to each level of devolved power (Regions, Communities, provinces, municipalities) able to levy taxes.

According to the cut-off principle,² taxes must be voted annually and are valid for one year unless renewed. This principle also applies to all taxing powers.

The equality principle prohibits any privileges in tax matters; no tax exemption or reduction can be accorded other than by statute.³ As a consequence, all taxpayers in a like situation must be treated alike and taxpayers in different situations must be treated differently.

The Constitutional Court is competent for testing newly enacted laws on their compatibility with the constitutional rules governing the rights and freedoms of Belgian nationals and especially the above principles.

¹ Supreme Court, May 27, 1971, Pas., 1971, 886.

² Article 171 Constitution.

³ Article 172 Constitution.

ADVANCE RULINGS

Advance rulings entitle taxpayers to get agreement from the tax authorities regarding how tax law will apply to a given set of facts or a transaction that has not yet generated any tax effect. The decision is binding on the tax authorities on condition that the taxpayer does not in practice alter the facts or the transaction as submitted to them. In practice, a pre-filing procedure is organized before the formal ruling application is introduced, allowing the taxpayer to clarify its request or even decide not to proceed should it appear that a ruling would not forthcoming. Advance rulings are valid for five years. They are published on a no-name basis.

GENERAL ANTI-ABUSE PROVISION

Freedom to choose the “least-taxed route” has been recognized by the Supreme Court¹: there is no dissimulation, and therefore no tax fraud, if, in order to benefit from a more favorable tax regime, the taxpayer exercises the freedom of contract, without infringing any legal obligation, to set down legal acts, all of whose consequences he accepts, even if the legal form adopted by these acts is not the most common. Conversely, sham is deemed to be tax fraud.

A general anti-avoidance rule was however introduced into the Income Tax Code in 1993.

In 2012, a new general anti-abuse provision was introduced², broadening the possibilities for the tax authorities to challenge “fiscal abuses”. Under that new provision, a transaction or series of transactions cannot be opposed against the tax authorities if they prove that there is a tax abuse.

A “tax abuse” encompasses:

- transaction(s) whereby the taxpayer avoids the application of a tax provision, so as to reduce its tax burden, in a manner that is not compatible with its objectives, or
- transaction(s) whereby the taxpayer claims a tax benefit which is contrary to the legislative intent of the provision, with the essential aim of benefiting the tax advantage.

The taxpayer is then allowed to prove that the transaction(s) has(ve) other relevant objectives than tax avoidance.

The new rule applies in the fields of income taxation, registration duties, inheritance taxes and VAT.

TAX TREATIES

As a founder member of the OECD, Belgium follows the OECD Model Tax Convention. It has recently published its own Model, based on the OECD's, which serves as a basis for treaty negotiations (2010 version).

Belgium has an increasing network of double taxation treaties, with more than 90 in force.

INCOME TAXES

INCOME TAXES – GENERAL OVERVIEW

Income tax covers personal income tax, corporate income tax and income tax on other legal persons that are Belgian tax residents; it also includes income tax on non-resident taxpayers, whether they are individuals, corporations or other foreign legal entities.

Income tax on Belgian residents is due on their worldwide net income; income tax on non-residents is computed only on their Belgian-source income.

CORPORATE INCOME TAX

Corporate tax is levied on Belgian-resident companies. A resident company has legal personality, is engaged in business or profit-making activities and has its tax residence in Belgium. The tax residence of a company is defined as its registered office, its principal establishment or its seat of management or administration, i.e. the effective seat of its day-to-day and policy management. Some entities are specifically excluded from corporate taxation and instead are subject to legal persons income tax (i.e. so-called “*intercommunales/intercommunale vennootschappen*” – associations of local authorities).

Tax base

General

The taxable income of a company results from (a) the gross income derived from its business operations, less its business expenses and (b) the increase or decrease in the net value of its assets over a given taxable period. The valuation rules for tax purposes may differ from the accounting rules.

¹ Supreme Court, June 6, 1961, Pas., 1961, I, 1082.

² New Section 344, para. 1 ITC introduced by a Law of 29 March 2012.

The tax basis so determined is then reduced by:

- foreign profits exempt according to double taxation treaties (i.e. profits from foreign permanent establishments and foreign real estate) and gifts granted by the company up to 5% of its net taxable income up to a maximum of €500,000;
- the dividends-received deduction;
- the deduction for patent income;
- the notional interest deduction;
- previous losses;
- the deduction for investment.

Valuation rules

Unless otherwise specified in the Income Tax Code, accounting principles applied for balance sheet purposes will also be recognized for tax purposes. The enterprise is deemed to run its business on a going concern basis; it will take into consideration the specific features of its business in order to define the accounting principles for its inventory, depreciation, write-downs, revaluations and provisions for liabilities and charges. Accounting principles must be applied consistently from one period to another. Assets acquired by the company are valued at their acquisition cost, i.e. their purchase price, production cost or assigned value. According to the tax authorities, assets received free of charge or for a value not representing their fair market value must be booked at their market value, with the consequence of a profit being immediately taxable.

Depreciation is based on the acquisition or investment value of the assets as defined for accounting purposes. However, there are some exceptions for tax purposes, notably as regards ancillary or related costs, formation expenses, the depreciation period of certain kinds of assets (intangibles, cars, etc.) or depreciation methods (straight-line or declining-balance). A difference is also drawn between SMEs and "large" companies (depreciation of ancillary costs, SMEs can depreciate a full annuity for the year of acquisition while only a pro-rata annuity is available to non-SMEs).

Capital gains

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

Gains that are only expressed are usually exempt under an intangibility condition meaning that the capital gain must be recorded and maintained in one or more distinct accounts on the liabilities side of the company's balance sheet.

Long-term gains (five years) and involuntary gains on tangible and intangible fixed assets are eligible for a tax-deferral regime, on condition that the realization value is reinvested in the business and the intangibility condition is adhered to. Reinvestments must be made within a three-year period in tangible or intangible assets that can be depreciated, to be used for the business in Belgium or within the EU.

If the taxpayer opts for the tax deferral regime, and provided, of course, all the conditions are met, the capital gain is taxed in proportion to the annual depreciation allowed for tax purposes on the reinvested assets. If the ad hoc reinvestments are not made, the capital gains become fully taxable and interest is due.

Capital gains on shares are subject to very limited taxation of 0.412% (and are even fully exempt in the case of capital gains realized by small and medium-sized companies) on condition that the dividends relating to such shares would satisfy the taxation requirement for the dividend-received deduction at the time the gains are realized and subject to a one-year holding requirement in full ownership. If the one-year full ownership requirement is not met, the gains are taxed at 25.75%. Other non qualifying capital gains are fully taxable.

Conversely, capital losses and impairment on shares are not deductible apart from capital losses incurred further to liquidation of the company, which are only deductible in the amount of the paid-up capital of the liquidated company.

As regards enterprises subject to the Royal Decree dated September 23, 1992 on the annual accounts for credit institutions, investment companies and management companies of undertaking for collective investments, capital gains realized on shares from their commercial portfolio are fully taxable while capital losses and impairment are deductible.

Gross operating income

Operating income comprises all profits realized by a company during the tax year; it includes abnormal or gratuitous benefits and, as already mentioned, capital gains.

A benefit is defined as any enrichment of the beneficiary without equivalent consideration. A benefit is "abnormal"

if it would not have been granted between unrelated parties and is contrary to current business practice. It is “gratuitous” if it is granted without any consideration. The benefit is added to the tax base if it is granted to (a) a non-resident taxpayer with a direct or indirect link of interdependence with the granting company, (b) a non-resident taxpayer or establishment that, in its country of establishment, is not subject to income tax or is subject to a tax regime that is notably more advantageous than the Belgian regime, (c) to a non-resident taxpayer having common interests with a taxpayer under (a) or (b), or (d) a Belgian recipient in the very rare situation where the benefit is not counted for the purposes of taxing that recipient.

This rule on abnormal or gratuitous benefits in fact constitutes the recognized “arm’s length” principle in Belgian tax law. It is confirmed in section 185(2) ITC, which also contains a clause providing for re-adjustment at the level of the Belgian company if one and the same profit is taxed twice whereas it should only be taxed in the hands of the foreign company.

Deductible and disallowed expenses

Gross operating income is reduced by deductible expenses and charges, unless they are considered “disallowed expenses”.

The deduction of expenses is subject to two conditions. First, the expense or charge must be made or incurred with the purpose of acquiring or preserving taxable income. There must be a link between the expenditure and the business activity carried on; the tax authorities may not however judge the wisdom of an expense or charge. Second, it must be made or incurred during the taxable period; this is the case once the liability representing the expenditure is certain and liquid.

While taxable profits even include profits realized from trading that falls outside the corporate purpose of the company, it is worth noting that expenses from such operations are not deductible.

In some cases, the combination of the provisions on abnormal or gratuitous benefits and deductible expenses on the other hand may lead to double taxation: this will be so if the expenditure is disallowed because it does not meet the conditions laid down for deduction but is taxed at the level of the receiving taxpayer.

Disallowed expenses are strictly listed in the Income Tax Code; they include *inter alia*:

- 31% of the vouched amount of restaurant costs, and 50% of reception costs;
- part of automobile expenses, depending on the vehicle’s emissions (from 0 to 50% non-deductibility);
- taxes, including corporate tax and taxes, levies and impositions collected by the Regions under their own taxing powers (taxes on waste, sites where economic activities were formerly carried on, discharges of industrial waste water, etc.); not all regional taxes are disallowed (e.g. real property tax, registration duties on the acquisition of real property, etc. continue to be deductible).
- interest in excess of an arm’s length rate (for further details, see chapter XV – general considerations);
- impairment and capital losses on shares (apart from capital losses on shares incurred further to liquidation of a company, which are deductible in the amount of the paid-up capital represented by the shares);
- 17% of the amount computed as benefit in kind to the beneficiary for the personal use of a company car.
- Interest excluded under the “thin-cap” rule. Deduction of interest relating to the part of the debt exceeding a 5:1 debt to equity ratio is disallowed. A debt includes all intra-group loans and loans for which the beneficial owner of the interest is not subject to income tax or is subject – in respect of the interest income – to a substantially more beneficial tax regime than the common Belgian tax regime. The equity is defined as the sum of the taxed reserves at the beginning of the taxable period and the paid-in capital at the end of the taxable period. Some debts are excluded. A special rule applies to “centralized treasury management” operations.

Special deductions

The net profit of the company is further reduced by special deductions:

- **Exemption of foreign profits**
Profits from foreign permanent establishments of Belgian companies and income from immovable properties where they are established or located in a country with which Belgium has a double taxation

treaty are exempt under the treaty. In practice, this income is deducted from the corporate tax base, in which it is first aggregated as a consequence of the company being taxed on its worldwide income.

- Dividends-received deduction

Ninety-five per cent of the amount of dividends received by a Belgian parent company from a subsidiary is deductible under certain conditions.

The receiving company must have full ownership of a shareholding in the distributing company representing at least 10% or having an investment value of at least €2.5 million. The shareholding must be maintained for at least one year. The dividend received must bear a normal corporate tax charge upstream. This is checked using five tests; if it fails the tests, the dividends-received deduction is denied. If the deductible amount of received dividends exceeds the available profits, the non-deducted amount can be carried forward against the profits of subsequent years without any limitation in time; this carry-forward however is limited to dividends originating an EEA country. Non-qualifying dividends do not benefit from any other relief against double taxation.

- Deduction for patent income

A resident company is allowed an 80% deduction of qualifying patent income. Qualifying patents include actual patents and supplementary protection certificates (specific to the pharmaceutical sector) on condition that the patents have at least partially been developed by the taxpayer in a research center in Belgium or abroad, or acquired patents or certificates that have at least partially been improved or further developed in a research center located in Belgium or abroad. The research center must qualify as a "branch of activity" in case the company is a large company.

Qualifying patent income includes licensing income and remuneration comprised in the sales price of patented products manufactured by the company or its subcontractor. This patent income is reduced by payments made to third parties from which the patent was acquired insofar as this remuneration is deducted from the tax base in Belgium.

- Notional interest deduction (NID)

The NID was introduced in 2005 and is intended to promote the equity financing of companies and

reduce their effective corporate tax rate. The NID is a percentage of the company's adjusted equity for accounting purposes at the end of the preceding taxable period. Shares, capital subsidies, tax credits for R&D and revaluation gains are deducted from the computation basis for the NID, as is the value of some assets not deemed directly and specifically related to the business (assets kept as portfolio investments, assets allowed to be used by directors or active partners of the company, and so on). The NID itself is reduced if the company has a foreign establishment or real property situated in a treaty country.

As from assessment year 2013, the NID rate can not exceed 3%, increased by 0.5% for SMEs and the carry-forward of excess NID to the seven subsequent taxable periods is abolished. The "stock of excess NID" existing at the end of tax year 2012 can however still be carried forward to the subsequent taxable periods (limited to the seven following taxable periods), but the maximum NID stock deduction per tax year is limited to 60% of the taxable base remaining after all other tax deductions. This limitation does however not apply to the first €1 million of the taxable base remaining before the deduction of the "stock of excess NID".

The NID rate for assessment year 2014 (income year 2013) amounted to 2.742% (3.242% for SMEs).

The NID rate for assessment year 2015 (income year 2014) amounts to 2.630 % (3.130 % for SMEs).

- Previous losses

Previous losses are carried forward without any time limitation.

No set-off of losses is however allowed against abnormal or gratuitous benefits received by a company.

Carry-over of losses is limited in cases of restructuring. They are forfeit in the case of acquisition or a change of control of a Belgian company which is not justified by legitimate financial or economic needs.

- Deduction for investment

The investment deduction allows companies to deduct from their net taxable income a certain percentage of the acquisition or investment value of qualifying assets. This regime has been substantially downgraded. It is today limited to very specific assets:

Assets	Rate (income year 2013)
Patents, investments in R&D favoring the environment, energy-saving investments, systems for output and air cleaning in the café, hotel and restaurant sector	13.5%
Investments favoring the re-use of containers for drinks and industrial products	3%
Investments in safeguards made by SMEs	20.5%
Companies whose profits stem exclusively from maritime navigation	30%

Limited to the years 2014 and 2015, SMEs can, under certain conditions, benefit from a 4% investment deduction for assets acquired or produced within these two years.

Tax rates

The standard corporate tax rate is 33.99%. A reduced progressive rate applies to profits not exceeding €322,500. This reduced corporate tax rate is excluded for some companies (financial companies, subsidiaries, companies distributing dividends exceeding 13% of their paid-up capital as existing at the beginning of the taxable period, companies not attributing to at least one of their directors emoluments of at least €36,000 (for assessment year 2015 – income year 2014) or the amount of the taxable income of the company if that income is less than €36,000). The effective tax rate actually is lower due to the effect of the notional interest deduction.

Commissions paid to beneficiaries whose identity is not disclosed are taxed at a rate of 309%. The tax so calculated is deductible as a business expense.

As of assessment year 2014, large companies can be subject to a separate assessment at a rate of 5.15 % (the so-called “fairness tax”) on (a part of) their distributed dividends. The “fairness tax”, which is a minimum corporate tax, will be levied in cases where large companies use the NID and/or carried forward tax losses to offset their taxable profit. The tax is non-deductible as a business expense.

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

The corporate income tax liability is reduced by the amount of advance payments and other creditable withholding taxes (withholding tax on dividends, interest, etc., foreign tax credits if available). Any surplus of withholding tax and advance payments can be credited with the “fairness tax”. The real property “withholding” tax (in fact a property tax) is not creditable but is deductible as a business expense.

Foreign tax credit

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

The FTC is first included in the tax base (“gross-up rule”) and then credited against corporate tax liability.

The FTC is 15/85 of the net income received. The FTC for interest is limited by a coefficient taking into consideration the proportion of financial costs relating to the income qualifying for the tax credit; it is creditable only in proportion to the period for which the assets generating the income were held (“*pro rata temporis* rule”). No FTC is allowed in cases of “channeling”.

Filing and Payment Requirements

A tax return is to be filed annually. The statutory accounts must be accompanied by the report by the board and the minutes of the AGM. 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 dividends, interest or royalties have to retain a withholding tax (WHT).

The WHT on dividends is as a rule 25%. This WHT may be reduced under double taxation treaties.

Dividends distributed by SMEs can, under certain conditions, be subject to a reduced withholding tax rate of 15%.

The withholding tax rate on dividend distributions resulting from the liquidation of a company (the so-called liquidation bonus) will increase from 10% to 25% as of October 1, 2014.

There is no withholding tax on dividends paid by a Belgian subsidiary of a Belgian or European company (in application of the EU Parent-Subsidiary Directive) or paid to beneficiaries in a treaty country with an exchange of information provision. This exemption is subject to a minimum shareholding requirement of 10% (since 2009) for a period of at least one year. Other exemptions may be available depending on the specific characteristics of the payer and recipient.

The WHT on interest and royalties is as a rule 25 % and may also be reduced under tax treaties. Exemptions exist, especially for payments between related companies as provided for by the EU Interest & Royalties Directive.

The WHT must be paid within two weeks of payment or attribution of the income. It is not paid if an exemption applies; a refund procedure is available for WHT unduly paid.

Special Tax Schemes

Several tax regimes are available.

Investment companies

Investment companies benefit from some favourable tax regimes. Open-end funds (SICAV/BEVEK), closed-end funds (SICAF/BEVAK), companies for investment in receivables (SIC/VBS), open-end real property funds (SICAFI/BEVAK) and private closed-end equity funds (PRICAF privée/private PRIVAK) are subject to corporate tax but only on a limited tax base consisting of the sum of any abnormal or gratuitous benefits received and disallowed expenses other than impairment and capital losses on shares. In return, they do not benefit from the dividends-received deduction (unless an exception applies) or foreign tax credits.

Special rules may apply as regards the withholding tax on dividends and/or interest paid or received by these companies. Note that as of assessment year 2014, the withholding tax on Belgian dividends received is no longer creditable for Belgian investment companies.

Shipping industry

A tonnage tax is available in Belgium on profits from shipping on the high seas or from management of ships for the account of third parties.

A number of other tax incentives have been introduced in favor of shipping operators not opting for the tonnage tax regime or that do not qualify for it: 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. These special rules are subject to special conditions.

Other regimes

Enterprises engaged in liquid or gaseous hydrocarbon drilling operations, investing in qualifying audiovisual works, insurance companies and SMEs can qualify for special tax regimes.

Miscellaneous Taxes Due

Besides corporate income tax, companies may be subject to regional and municipal taxes depending on their individual circumstances.

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

PERSONAL INCOME TAX

Belgian residents individuals are subject to personal income tax on their total net worldwide income. Total income is the sum of income from immovable properties, movable assets, earned income, and miscellaneous income, which includes various items that do not fall under the other categories (some capital gains on real estate or profits from occasional ventures). Each class of income is subject to specific rules.

A Belgian resident is anyone whose permanent domicile or customary residence, or whose "center of wealth administration" is in Belgium.¹ While tax residence is a question of fact, it is worth noting that a person registered in the National Population Register is deemed resident unless proved otherwise. The tax residence of married persons (or legal cohabitants) is where their household is established.

Under treaty law,² the residence criteria are (a) the individual's permanent home; (b) the center of his vital interests; (c) his habitual abode; (d) nationality

¹ Section 3 ITC.

² Article 4(2) of the OECD Model Convention; article 4(2) of the 2010 Belgian Model.

Tax Base

Income from real property

A “cadastral income” (*revenu cadastral/kadastraal inkomen*) is assigned to all real property, whether developed or otherwise, located in Belgium. It represents the deemed net annual rental income on the property. Plant or equipment used for the exploitation of real property and permanently attached to it is also considered as real property and is also assigned a cadastral income.

The taxable basis varies depending on the use made of the real property. If not let, the taxable basis consists of the indexed cadastral income plus 40%. If it is rented as commercial property, the taxable basis is the gross rental income less 40% for charges. Some exemptions exist. Income from real property used by the lessor for professional activities is taxed on the rent paid by the lessor.

In addition to the income tax on immovable property, a real property “withholding” tax is due on real estate, the revenue from which inures to the Regions, provinces and municipalities; each of these authorities annually fixes its tax rate (so-called *centimes additionnels/opcentiemen*). The taxable basis for this “withholding” tax is the indexed cadastral income. Some tax exemptions or reductions apply if, for example, the occupant has children or in the case of involuntary inoccupation of the building, depending on the regional rules applying to the property.

Income from movable assets

Income from movable assets is not actually aggregated with other income subject to progressive rates of tax. The two sorts are taxed separately.

Since January 1st, 2013, a difference has to be drawn between:

- income paid by a Belgian debtor or intermediary, on which withholding tax is due, with the effect that the withholding tax is considered final; this income does not need be reported in the tax return; and
- income not subject to withholding tax, which has to be reported in the annual personal income tax return: this includes dividends, interest, royalties etc. paid abroad, plus certain income from capital on which no withholding tax is due. They are taxed at a separate rate, equivalent to the rate of the withholding tax.

The income tax on reported movable income is increased by a municipal surcharge, which is also charged on income that is taxed separately. It is not due on income on which the

withholding tax is final. Nor is it due on reported dividends, interest or royalties originating from EEA member states.¹

The usual withholding tax rate on dividends, interest and royalties is, since January 1st, 2013, 25%. Domestic reduced rates are available, inter alia for interest from regulated savings deposits in excess of the tax-exempt amount (15%), and for dividends from residential real estate investment companies (15%)². Dividends distributed by SMEs can, under certain conditions, be subject to a reduced withholding tax rate of 15%. These rates may also be reduced under specific provisions of double taxation treaties.

No foreign tax credit is available for individual taxpayers.

Earned income

Earned income includes (a) business “profits”, (b) “gains”, (c) “salaries”; it also includes profits and gains from a former occupational activity, plus pensions, annuities and other similar payments. Special regimes are available for (d) stock options, profit sharing and savings plans.

Occupational activity is characterized by a series of operations that are sufficiently frequent and linked together with the purpose of making a gain.

(a) Business profits

“Profits” (as opposed to “gains”, q.v. below) originate from industrial, commercial or agricultural enterprises, and mainly include operating profits and capital gains and losses.

Operating profits cover the salary and any benefits in kind attributed to the entrepreneur, any sums used for reimbursing loans, extending the enterprise or increasing the value of assets. They also include abnormal or gratuitous benefits.

Benefits in kind are valued at their real market value unless a lump-sum valuation is provided for by the tax legislation (this is the case, for example, as regards interest-free loans, use of a car or house, etc.).

Assets may be depreciated at the usual rates.

Business expenses and charges are deductible according to rules similar to those applying to corporations. The list of disallowed expenses is limited for sole traders, compared to companies; for example, regional taxes continue to be deductible in all cases.

¹ ECJ, July 1, 2010, case 233/09, *Dijkman*.

² The withholding tax rate for liquidation surpluses was 10% but will be increased to 25% as of October 1, 2014.

The computation rules for capital gains are similar to those of the corporate tax. Capital gains are as a rule taxed at the progressive rates of personal income tax (see below); 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 at the time of disposal, provided the tax deferral regime has not been elected and flat rates of 16.5 or 33% may also apply in the case of capital gains realized on retirement or discontinuation of the professional activity.

(b) Gains from liberal professions

“Gains” (as opposed to “business profits”, q.v. above) stem from liberal professions, offices or appointed positions, or any other profit-seeking activity.

While businesses are taxable on their receivables, gains from liberal professions are taxed only at the time they are paid to the beneficiary. Some differences are also worth noting regarding capital gains. Liberal professions may deduct a lump sum of business expenses (with a maximum of €3,950 in assessment year 2015 – income year 2014).

(c) Salaries

Salaries include salaries, wages and allowances of all employees and the emoluments of directors and “assisting managers”. “Salary” includes benefits in kind.

Those in receipt of salary may deduct actual or lump-sum business expenses. Real occupational income includes depreciation of assets used for the occupational activity.

(d) Stock options, profit sharing and savings plans

The rules governing *stock options* plans have a broad reach, covering all cases where grant of the plan results in a benefit in kind inuring to the beneficiary from or by reason of his occupational activity.

The grantor’s identity, nationality and legal form are irrelevant. Nor is it relevant whether the shares are issued by the employer, a related party or a third party.

The taxable event is the grant of stock options to the beneficiary; for tax purposes, the option is deemed granted on the 60th day following the date of the written offer to participate in the plan, provided the beneficiary accepts no later than the 60th day. Therefore, the tax charge is levied even if the beneficiary does not exercise the option. Special rules apply for determining the taxable amount,

which mainly depend on whether the options are quoted at a stock exchange. The beneficiary is taxed at progressive rates on the taxable amount, which must be reported in his tax return. The grantor is responsible for withholding payroll tax on the taxable amount.

There is also special tax treatment of “*profit-participation schemes*” in which employees participate in the profits of their employer in the form of either shares or cash. The scheme must be organized at a company level and benefit all the employees of the company. The total equity or cash participations granted to the employees may not exceed 10% of the total gross salary expenses of the employing company or 20% of its after-tax profit.

The scheme may provide for the shares to be locked into the scheme for a certain period.

The gains in the employees’ hands are subject to a special tax. The tax base is (1) the amount distributed in cash (less a 13.07% solidarity contribution due by the employer), taxed at 25% or (2) the amount attributable to the participation in the capital, referenced to the market value of the shares, taxed at 15%.

Miscellaneous income

Miscellaneous income includes various items of an *ad hoc* nature. They are taxable on a net basis at a separate tax rate, which may be *ad valorem* or averaged.

Miscellaneous income encompasses profits from speculative operations and profits from operations going beyond the normal management of a private estate by a reasonable person (*bonus paterfamilias*). The difference between “speculation” and “normal administration of a private estate” depends on the facts and not infrequently gives rise to difficulties. In practice, these arise in the case of acquisition and re-sale of real estate by an individual or contribution in kind of shares in one’s own company to a personal holding company (known as “internal capital gains”). The tax authorities have developed their own doctrines on these questions, especially “internal capital gains”.

Miscellaneous income also includes short-term capital gains on real property, which are taxed at a separate rate (16.5 or 33%); “short-term” refers to periods of five years (land) or eight years (buildings).

Deduction from the tax base

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

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

Calculation of Tax

The individual income tax on individuals is based on progressive rates, supplemented by a series of tax exemptions, reductions and increases.

The rates

For assessment year 2015 (income year 2014), the applicable personal income tax rates are:

Taxable annual income ¹	Rate
Below €8,680	25%
From €8,680 to €12,360	30%
From €12,360 to €20,600	40%
From €20,600 to €37,750	45%
Above €37,750	50%

In fact, total taxable income does not include certain income types:

- certain types of miscellaneous income (such as some capital gains) are taxed separately at flat rates if such taxation is more favorable to the taxpayer;¹
- unearned income (dividends, interest, royalties) received or accrued as per January 1st, 2013, are to be reported in the tax return, unless the withholding tax has been withheld at the source; if they have to be reported, they are taxed separately at the withholding tax rate unless aggregation is more favorable to the taxpayer.²

Spouses and legal cohabitants are taxed separately. If one partner is not in receipt of earned income, a portion of the other partner's earned income is apportioned to him up to a maximum of €10,090 (indexed). Special rules deal with the apportionment of some tax exemptions and reductions between spouses.

Tax increases: the municipal surcharge

A municipal surcharge applies to tax on all income reported in the return. Each municipality sets the level of its surcharge annually.³

No municipal surcharge applies to tax on income that need not be reported in the tax return, as is the case for interest, dividends on which a final withholding tax has been paid.

The municipal surcharges also applies to earned income (or some categories thereof) exempted by tax treaty, if the treaty so allows.⁴

Tax exemptions

Tax exemptions may be available considering the personal and family situation of the taxpayer.

A personal allowance of €7,070 is available to each taxpayer (assessment year 2015 – income year 2014). This figure may increase if taxable income is low or the taxpayer is handicapped. A supplement is added for each dependent child.

Tax reductions

Tax reductions are offered to taxpayers as a tax incentive. They are aimed at encouraging certain investments such as life assurance, home-ownership and energy-saving investments.⁵ Tax reductions are also offered for gifts to approved charitable and other non-profit organizations, wages paid to domestic workers and child care expenses.

Filing and Payment Requirements

A tax return must be filed each year.

The income tax due is reduced by withholding taxes that are creditable: only advance payments relating to profits and gains, income tax withheld at source tax, withholding tax on reported movable income may be deducted.

Persons receiving gains and profits have to pay income tax on their earned income by means of advance payments; in the case of insufficient advance payments, a surcharge is due. For salaried individuals, a provisional tax is withheld by the employer; the withholding tax corresponds to the tax on the net salary taking into consideration lump-sum business expenses and dependent children.

The tax finally due is to be paid within two months of the date the assessment is issued.

¹ Section 130 ITC. Bands are indexed annually.

² Sections 313 and 171 ITC.

³ The rates range between 0% (Knokke-Heist) and 9% (Messines). Most municipalities charge a rate of 7 or 8%.

⁴ Section 466bis ITC.

⁵ See sections 145/1 to 145/32 ITC.

INCOME TAX ON OTHER LEGAL BODIES

Legal bodies which do not qualify as companies subject to corporate tax are liable to income tax on legal bodies, on a limited list of income.

Legal bodies include mainly

- the Federal State, Communities, Regions, provinces, metro areas, federations of municipalities, municipalities, public centres for social assistance (CPAS/OCMW), and public religious establishments;
- non-profit organizations which do not engage in operations for the purposes of profit (these are thus not subject to corporate tax);
- corporate bodies which are expressly exempt from corporate income tax and subject to legal bodies income tax (e.g. public intermunicipal cooperation associations ("intercommunales"), and some other companies under public control) (hereinafter "exempt companies").

Tax Base

Basically, the tax base for legal bodies is limited to their income from real property and from movable assets.

Non-profit organizations are taxable on capital gains realized on real estate, under certain conditions.

In addition, non-profit organizations and "exempt companies" are subject to tax on:

- salaries, remunerations and benefits in kind are not justified by ad hoc administrative documents;
- financial benefits or any other benefit in kind related to bribery;
- contributions and allowances paid for financing supplementary pensions under certain conditions;
- 17% if the amount computed as benefit in kind to the beneficiary for the personal use of a case.

Calculation of taxes

As a rule, the income tax corresponds to the withholding tax to be paid on the real property income and the movable asset income.

Capital gains are taxable at a rate of 33 or 16.5%. Non-justified expenses and financial benefits are taxed at a 309% rate. If the beneficiary of the non-justified expense,

or benefit in kind spontaneously reports it in his tax return, or if the beneficiary is taxed on the benefit within 3 years, the 309% rate will in principle not apply.

Filing and Payment Requirements

A tax return must be filed yearly.

The amount of tax due in excess of the withholding taxes already paid is to be paid within two months following issuance of the assessment notice.

Withholding Taxes

Special rules may apply to legal bodies allowing for exemption of withholding taxes on movable income whether they act as payer or beneficiary.

Similarly, exemptions from or reductions of real estate tax may be granted depending on the person owing or using the property.

Legal bodies employing workers are – like any other employer – required to withhold payroll tax on wages.

INDIRECT TAXES

VAT

As an EU member state, Belgium has implemented the EU VAT directives. It therefore applies the regime of intra-European-Union acquisitions as well as other basic concepts underlying the VAT system.

Only businesses which are to be considered as taxable persons carrying out taxable transactions are subject to VAT. Taxable transactions are the following:

- "supply of goods and services for consideration in Belgium by a taxable person (legal or individual);
- importation 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 standard VAT rate is 21% and applies unless a reduced rate (6% or 12%) is charged, on certain listed goods and services.

Every taxable person carrying out transactions in Belgium subject to Belgian VAT giving a right to a VAT credit must register with the Belgian VAT authorities. Some VAT registration obligations are also incumbent on certain taxable persons exclusively engaged in VAT-exempt activities under certain conditions and on non-taxable persons relative to intra-EU acquisitions in a value exceeding €11,200.

Apart from the exceptions, any supply of goods or services by a taxable person renders issuance of an invoice mandatory, no later than the fifteenth day following the end of the month during which the VAT fell due. This invoice must meet certain requirements.

A VAT return reporting input and output VAT must be filed monthly, or quarterly if annual turnover does not exceed € 2,500,000.

Persons operating outside of the EU with no fixed establishment in Belgium must appoint a responsible tax representative in Belgium, who must be approved by the Ministry of Finance, before entering into any transaction in Belgium under which it would become liable for VAT. The VAT representative is jointly liable along with the principal for its VAT obligations. Appointing a VAT representative has become optional on January 1, 2002, as regards EU enterprises.

REGISTRATION DUTIES

Contributions of capital to companies

Contributions of capital to companies, at the time of incorporation or as a capital increase, are subject to registration duty at a nil rate. Similarly, mergers, demergers, transfers of branches of activity or universal transfers of assets are, as a rule, exempt from registration duties on condition that (a) the transferring company has its effective management or registered office within the EU and (b) the transfer is remunerated exclusively in shares with a cash adjustment not exceeding 10% of the par value of the shares allotted.

There is also an exemption from registration duties for conversion of a company with legal personality into another form, changes to the corporate purpose of a company or transfer of the registered office of a European company (*societas europaea*) to Belgium.

Contribution of a dwelling by an individual is taxed at the rate laid down for transfers for valuable consideration

(12.5% in the Walloon and Brussels regions; 10% in the Flemish region).

Transfer of real property

Registration duties are due on the acquisition of real property, whether by individuals or companies, at a rate (depending on the Region where the property is situated) of 10 or 12.5% of the higher of the acquisition price or fair market value. Reduced rates are available for some kinds of properties and for persons engaged in the business of buying and selling real estate.

INHERITANCE AND GIFT TAX

INHERITANCE TAX

Inheritance tax applies to the transfer of the wealth of a Belgian resident, while a duty on death transfers is due on real property located in Belgium and owned by a non-resident deceased.

Inheritance tax is now a regional tax; the Regions (Flemish, Brussels-Capital and Walloon) have power to amend the taxation principles, the rates, the taxable basis and exemptions.

The relevant rules are determined on the basis of the deceased's tax domicile at the time of death. Where the deceased had domiciles in various Regions during the previous 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 basis

Inheritance duties are due on the value of all the assets of the deceased, wherever located. 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.

Following ECJ case law,¹ transfer tax upon death is also based on the net asset value of the Belgian real estate, and the debts relating to a building belonging to a non-resident deceased are therefore deductible² (the deduction extends to all non-residents).

¹ ECJ, September 11, 2008, case C-111/07, Eckelkamp.

² Section 1 Inheritance Tax Code, as amended by regional orders.

Foreign death duties paid abroad in relation to real property are creditable against Belgian inheritance tax liability.¹

It is worth noting that the final tax basis may vary depending on the Regional applicable law.

Tax rates

As a rule, inheritance tax is due by heirs on their share in the inheritance.

The rate and the exemptions are now decided by each Region. The rates depend on the value of the inheritance and the link between the heir/legatee and the deceased. In the case of legacies to collateral relatives or non-relatives, the rates are extremely high, with a figure of 80% on the highest band for non-relatives in the Regions of Brussels and Wallonia.

	Highest band	rate
Brussels-Capital		
Direct line*	Up to 500,000	30%
Other persons**	Up to 175,000	80%
Walloon Region		
Direct line*	Up to 500,000	30%
Other persons**	Up to 175,000	80%
Flemish Region		
Direct line*	Up to 250,000	27%
Other persons**	Up to 125,000	65%

* Direct line – between spouses and cohabitant (legal cohabitant in the regions of Brussels-Capital and Wallonia; cohabitant in Flanders)

** Between other persons

Specific tax rates

In the Region of Wallonia, a reduced rate applies to a direct line transfer or transfer to a spouse or legal cohabitant of the family home. Such reduced rate also applies to direct line transfers in Brussels. In the Regions of Brussels-Capital and Flanders, the family home passes without any liability to duty on the part of the spouse or cohabitant (legal cohabitant in Brussels).

In Flanders, the tax rates are applied separately to immovable and movable property. Debts are first deductible from the value of the movable assets and assets constituting an enterprise (including shares), unless they are specifically incurred in connection with immovable property and except for debts relating to the family home received by the spouse or cohabitant, which are first deducted from its value.

In the Regions of Brussels and Wallonia, debts are first deductible from the value of assets of a business taxable at a reduced rate of 3% (Brussels) or at a nil rate (Wallonia), then from the family home and finally from the other assets, unless they are specifically incurred in connection with a given asset, from which they are then deductible.

Special regimes

Some special rules apply in the case of death transfers to some charities and to transfers of businesses.

Bequests to charities

All three regions allow reduced rates on death transfers to certain legal bodies:

	Brussels-Capital	Walloon region	Flemish region
"Public bodies"	6.6%	5.5%	8.5%
Non-profit organizations	25% / 12.5%	7%	8.5%

Transfer of a business

Under certain conditions – which differ amongst the Regions, transfer of a business or of shares in an incorporated business is taxed at a reduced rate.

Conditions apply to qualify for the reduced rate; and other conditions must be met for the reduced rate to be maintained. These conditions are summarized in the following table. These three sets of regional regulations are aimed at allowing transfer of a sole trader's or an incorporated business to the person best suited to continuing it, whether that is a direct-line heir or someone else. The concept of "business" is fairly broad: it covers industrial, commercial, handicraft or agricultural activities and liberal professions.

	Walloon Region	Brussels-Capital Region	Flemish Region
Rate	0%	3%	3% (direct line/spouse/cohabitant) or 7% (others)
Transferred Assets		SME	Assets invested in a family business
Universal assets	X	X	
Branch of activity	X	X	
Business value	X	X	
Shares in EEA company	X	X (less than 25% owned by a not SME company)	X
Certificates	X	X	X
Claims against EEA company	X (when not excessive)	X	
	Right in rem	Full ownership (when shares are transferred)	Right in rem
Transfer of Activity			
Industrial	X	X	X
Commercial	X	X	X
Handicraft activity	X	X	X
Agricultural activity	X	X	X
Forestry	X		
Liberal profession	X	X	X
Sole-trader's business	X	X	X
Company	X	X	X
Successor(s)	Heirs and legatees	Heirs and legatees	Heirs and legatees
Employment condition	Occupation of employees or family self-employed workers in EEA at the time of death	SME: less than 250 persons	Exclusion of companies without effective economic activity; presumption: wage costs less than 1.5% and real estate more than 50% of total assets (on a consolidated basis in the case of pure holding companies)
Shares transferred	At least 10% Shareholders' agreement: 50% (except when 50% family shareholding)	At least 25% Shareholders' agreement: 50%	No minimum but at least 50% (or 30%) must be owned in full ownership by the decedent and his/her family
Continuation of activity	5 years	5 years	3 years Companies: publication of financial statements
Maintaining jobs	75% level maintained for 5 years	75% level maintained for 5 years	
Maintaining assets/capital	5 years	5 years	3 years (maintaining share capital)
Maintaining place of effective management			3 years, within EEA
Exclusion of the home	X (only when assets, not shares, are transferred)		X (only when assets, not shares, are transferred)
Exclusion of companies without effective activities	Qualifying activity must be principal (3 accounting years – consolidated basis)	Qualifying activity is required but no 'substance test'	Exclusion of companies without effective economic activity; presumption: wage costs less than 1.5% and real estate more than 50% of total assets (on a consolidated basis in the case of pure holding companies)
Assets must continue to be allotted to the business	For 5 years	For 5 years	
Exclusion of invested assets/capital		For 3 years before death (unless justification)	Pure holding companies: exclusion of the value of non-active subsidiaries
Prohibition against allocate the building for use as a private dwelling	5 years after death		3 years after death

Procedure

The inheritance tax return

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 occurring outside Europe.¹ It is possible to have these periods extended on request. A new tax return is filed if assets have to be added to the deceased estate.²

Payment of the tax

The inheritance tax must be paid within two months of the deadline for filing the tax return. Payment in installments may be authorized. In the case of late payment, interest is due at 7%.

In some cases, inheritance tax can be paid in the form of works of art forming part of the estate.

Statute of limitations

Inheritance duties may no longer be recovered by the tax authorities after expiry of a period of:

- two years (from filing of the tax return) on reported items;
- ten years on unreported items;
- two years on undervalued real estate for which the tax authorities can demand an expert appraisal;
- ten years on movable items undervalued in the return.³

Anti-abuse measures

The Inheritance Tax Code provides several anti-abuse provisions, notably:

First, debts recognized only in the will are considered as bequests and taxed accordingly.⁴

Second, gifts made during the three years preceding death on which no gift tax was paid are considered to be part of the inheritance of the donor. The beneficiary is considered to be the legatee.

Third, in Belgium, usufructs held by the deceased expire on his death with the consequence that the naked owner (remainderman) 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.

Fourth, in the case of clauses of a marriage contract which attribute more than half the matrimonial property to a surviving spouse, the excess is treated as a gift and taxed accordingly. Similarly, in separation of property regimes, clauses granting a benefit to the spouse are treated as gifts.

Fifth, 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.

Sixth, but not least, a general anti-abuse provision has been introduced in the field of inheritance taxation.

GIFT TAX

General rules

Gifts must be made in writing before a notary public to be valid under the civil law. However, manual and indirect gifts are possible for movable property. A gift made before a Belgian notary is mandatorily subject to gift tax in Belgium. Gifts granted during the three years preceding death and on which no gift tax has been paid are subject to inheritance tax.

Here, too, the Regions have their own rates. The applicable law is determined by the domicile of the donor. It must be checked whether and how the reservation of progression might apply.

As a rule, the tax base is the fair market value of the donated assets without deduction of any cost.

Tax rates

As with inheritance tax, each Region has its own rates applying to gifts and each also provides for specific exemptions. A difference is now drawn between immovable and movable assets.

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 extremely high – up to 80% on the highest band for non-relatives.

The tables below give a comparative view of the rates applying to real estate and movable assets amongst the three Regions, in case of transfer in direct line between spouses or to non-relatives.

¹ Sections 35 and 40 Inheritance Tax Code.

² Section 37 Inheritance Tax Code.

³ Section 137 Inheritance Tax Code.

⁴ Section 4(1°) Inheritance Tax Code.

Comparative Table of Gift Rates			
REAL PROPERTY		Direct line Between spouses*	Between non-relatives
Walloon Region	Brackets up to €150,000	7.08% (average rate)	
	Highest bracket	500,000	175,000
	Rate	30%	80%
Flemish Region	Brackets up to €150,000	7.08% (average rate)	
	Highest bracket	500,000	175,000
	Rate	30%	80%
Brussels-Capital Region	Brackets up to €150,000	6.67% (average rate)	
	Highest bracket	500,000	175,000
	Rate	30%	80%
MOVABLE ASSETS	Direct line Between spouses	Collaterals	Between non- relative
Walloon Region	3.3%	5.5%	7.7%
Flemish Region	3%	7%	7%
Brussels-Capital Region	3%	7%	7%
* Spouse means: - spouses and legal cohabitants in the Walloon Region and the Brussels-Capital Region (section 131, third paragraph, RDC and section 131(1), third paragraph, RDC); - spouses, legal cohabitants and other cohabitants for at least one year, in the Flemish region (section 132/1 RDC).			

Transfer of a business

Under certain conditions – which differ amongst the Regions – a gift of a business or of shares in a business is taxed at a zero or 3% rate.

Certain conditions must be met to qualify for the nil or reduced rate; other conditions must be met for nil or reduced rate to be maintained. They are summarized in the following table:

Special regimes

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

Gifts to charities

	Brussels-Capital	Walloon Region	Flemish Region
"Public bodies"	6.6%	5.5% / 0% / €100	5.5%
Non-profit organization	7% / €100	7% / €100	5.5% / €100

	Walloon Region	Brussels-Capital Region	Flemish Region
Rate	0%	3%	0%
Transferred Assets			Assets invested in a family business
Universal transfer	X	X	
Branch of activity	X	X	
Business value	X		
Shares in EEA company	X	X	X
Certificates	X		X
Claims against EEA company	X (when not excessive)		
	Right in rem	Full ownership	Right in rem
Transfer of Activity			
Industrial	X	X	X
Commercial	X	X	X
Handicraft activity	X	X	X
Agricultural activity	X	X	X
Forestry	X		
Liberal profession	X	X	X
Sole trader's business	X	X	X
Company	X	X	X
Donee	All*	Individual	All
Employment condition	Occupation of employees or family self-employed workers in EEA at the time of death		Exclusion of companies without effective economic activity; presumption: wage costs less than 1.5% and real estate more than 50% of total assets (on a consolidated basis in the case of pure holding companies)
Shares transferred	At least 10% Shareholders' agreement: 50% (except when 50% family shareholding)	At least 10% Shareholders' agreement: 50%	No minimum but at least 50% (or 30%) must be owned in full ownership by the decedent and his/her family
Maintaining activity	5 years	5 years (assets)	3 years
Maintaining jobs	Min. 75% for 5 years		
Maintaining assets/capital	5 years	5 years (assets) unless justification or pursuit by donee/heir	3 years (maintaining share capital)
Maintaining place of effective management		5 years, within EEA	Companies, 3 years, within EEA
Exclusion of dwellings	X (only when assets, not shares, are transferred)	X (only when assets, not shares, are transferred)	X (only when assets, not shares, are transferred)
Exclusion of companies without effective activities	Qualifying activity must be principal (3 accounting years – consolidated basis)		Exclusion of companies without effective economic activity; presumption: wage costs less than 1.5% and real estate more than 50% of total assets (on a consolidated basis in the case of pure holding companies) Pure holding companies: exclusion of the value of non-active subsidiaries
Keeping assets in the business	For 5 years	For 5 years (in case of transfer of assets; unless justification or pursuit by donee/heir)	For 3 years (maintaining share capital)
Keeping shares		For 5 years (unless pursuit of commitments by donee/heir/ shareholder participating to the shareholders' agreement)	
* Individual or legal person.			



IMMIGRATION REQUIREMENTS

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 15 “old” member states are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the UK. The 12 “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 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, the Czech Republic, Denmark (except Greenland and the Faroe Islands), Estonia, Finland, France, Germany (except Heligoland), Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway (except Spitsbergen), Poland, Portugal, 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).

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

EU/EEA nationals and most of their family members have a right of free movement, within certain limits, and are in principle entitled to take up short or long-term residence in Belgium.

The requirements for residence for a short term (less than three months) and a long term (more than three months) differ. For long-term residence, a residence permit is always required.

A foreigner is deemed to reside in Belgium for more than three months if he resides in Belgium or other Schengen countries for more than 90 days within a six-month period following the date 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). We would add that the rules regarding family reunification were tightened very recently on September 22, 2011. One of the important changes is that authorization for family reunification must almost always be applied for from the Belgian consular authorities abroad.

There are no immigration quotas.

More information on visa requirements can be found on the following website: http://diplomatie.belgium.be/en/services/travel_to_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 six-month period only require to have a valid passport.

In the following, we focus on Schengen visas; Belgian long-term visas are described in below.

The place where a visa application must be filed depends on the country or countries of destination of the foreigner.

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 in order to enter the territory of the member states.”*

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 €60. For children aged between six and 12, the fee is €35. 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;
- 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 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 is not a person for whom an alert has been issued in the SIS for the purpose of refusing entry;
- he is not considered a threat to the international relations of Belgium or any other Schengen country;
- he is not considered a threat to the public policy, public order or internal security (including public health) of Belgium;
- he has not been expelled from Belgium less than ten years previously on the basis of a decision that has not been suspended or revoked.

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;
- work permit.

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

The fees for a visa application are around €180 or \$250.

However, foreigners for whom the visa requirements have been waived (for instance nationals of the EU/EEA, Australia, Brazil, Canada, Japan or the United States) can apply for a residence permit directly from their Belgian local authority without first having to have a long-term type D visa.

A non-EU/EEA national who holds a work permit needs the following documents for such an application:

- work permit;
- medical certificate;
- certificate of good conduct/police clearance certificate.

Obtaining a residence permit "direct" can take several weeks, sometimes even several months. Non-EU/EEA foreigners can have difficulties in crossing borders if they extend their stay to over 90 days in six months.

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.

A residence permit based on a work permit is valid for the same period as the work permit plus one month.

A foreigner leaving Belgium does not need an exit permit. However, there are exit formalities: for instance any residence permit must be returned in the event of final departure from Belgium.



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EXPATRIATE EMPLOYEES

COST OF LIVING AND IMMIGRATION

Cost of living rankings in Belgium in 2014:

Consumer price	100.04
Rent	34.89
Consumer price + rent	68.39
Groceries	93.51
Restaurant price	105.82
Local Purchase Power	87.93

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.

- 1 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.
- 2 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, New Brunswick, Ontario and Quebec), China, Japan, Russia and the USA.
 - An investor who has registered with his local municipality and is waiting to be issued with a residence permit can lawfully drive in Belgium on the basis of his approved driver's license provided it is still valid.
 - Once the investor receives his residence permit, 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 €16); however, it could be that the municipal authorities charge administrative fees for the "exchange".

- 3 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 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.

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: the European School of Brussels (I, II, III) and the European School of Mol.¹

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.

Tax benefit

For a foreign employee who fulfills all the conditions to benefit from the special expats tax regime, reimbursements by the employer of education costs for his children in primary or secondary education can be considered a non-taxable reimbursement of costs. For more information in this respect we refer to section 17.8.2.

Housing

Type of housing

Rent Per Month	Avg. (€)	Range
Apartment (1 bedroom) in City Center	670.00	550.00-750.00
Apartment (1 bedroom) Outside of Center	565	500.00-620.00
Apartment (3 bedrooms) in City Center	1,142.00	950.00-1,400.00
Apartment (3 bedrooms) Outside of Center	935.00	800.00-1,200.00
Apartment Purchase Price		
Price per Square Meter to Buy Apartment in City Center	2,628.00	2,000.00-3,000.00
Price per Square Meter to Buy Apartment Outside of Center	1,997.00	1,500.00-2,500.00
Salaries And Financing		
Median Monthly Disposable Salary (After Tax)	1,885.00	1,599.00-2,300.00
Mortgage Interest Rate in Percentages (%), Yearly	3.92	3.50-4.25

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

For a foreign employee who fulfills all the conditions to benefit from the special expats tax regime, reimbursement by the employer of the costs of decorating his Belgian home and the difference in the cost of housing and the cost of living between Belgium and his country of origin qualifies as a non-taxable reimbursement of costs.

¹ <http://www.expatica.com>.

IMPORTING PERSONAL POSSESSIONS

WITHIN THE EU

Natural persons moving to Belgium from another EU country may import their personal belongings free of VAT and import duty and without any formalities, except for motor vehicles.

For alcohol and alcoholic beverages, manufactured tobacco and mineral oils, importation is also duty-free if the products were acquired for the individual's own use, thus not for commercial use, and are transported by him 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 been driven no more than 6,000 km. A special VAT declaration has to 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 natural persons 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 normal place of residence for a minimum of six months before the date on which he ceases to have his normal place of residence in the third country 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 normal 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 security, 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 four physicians per thousand inhabitants, Belgium is well above the OECD average of 2.9.¹

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.

¹ www.oecd.org.

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. The full price has to be paid to the physician, but a reimbursement is then calculated afterwards. These funds do not, however, cover 100% of the bill; the patient may be compensated for about half to three-quarters of a typical physicians' or specialists' visit.¹

Healthcare insurance is a part of the Belgian social security system. Contributions are automatically deducted by the National Office for Social Security from the salaries of workers of Belgian undertakings (see above).

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 easy and equitable, due to the low co-payments and the fact that any resident in Belgium has the right to health insurance coverage.²

MOVING COSTS

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

For a foreign employee who fulfills all conditions to benefit from the special expats tax regime, reimbursement by the employer of moving costs to Belgium can be considered a non-taxable reimbursement of costs.

TAX LIABILITY

Personal income tax

It is worth mentioning that a special tax regime exists for some foreign expat employees in specified jobs (general management functions or jobs requiring a high degree of specialization) who work in Belgium for an international

group on a temporary basis. Special conditions have to be met.

The advantage of the expat tax regime is that the employee is considered a non-resident of Belgium and is therefore only taxable in Belgium on the salary that corresponds to employment actually performed in Belgium. Furthermore, part of the salary is treated as a reimbursement of one-off or recurrent costs normally borne by the employer, and is not therefore taxable. Apart from the costs already mentioned (education, moving and housing – see sections 17.3.3, 17.4.3 and 17.7) we would mention another important example here: tax-equalization, defined as compensation for the higher rate of income tax payable in Belgium.

In order to benefit from the special expat tax regime, the employer has to apply for it within six months after the first day of the month following that in which the employment in Belgium started.

Tax treaties

Belgium has entered into several tax treaties pursuant to the OECD Model. The list of countries includes France, Gabon, Italy, Japan, the Netherlands, Portugal, Slovenia, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukraine, the United Kingdom, Venezuela and Vietnam.

WORK PERMITS/PROFESSIONAL CARDS/ BUSINESS VISITORS

WORK PERMITS

Principle

Despite several exemptions, the basic rule is that employment of a foreigner in Belgium requires an authorization/work permit.

Kinds of permits

There are three kinds of work permits:

Type A work permit: valid for more than one employment and for unlimited duration. This permit can in principle be obtained after four years' working with a type B work permit over a lawful, uninterrupted stay over ten years.

Type B work permit: valid for one employment only and for a – renewable – period of one year.

¹ www.expactica.com.

² <http://www.euro.who.int>.

Type C work permit: valid for more than one employment and for a – renewable – period of one year.

The type B work permit is the standard work permit for business immigration.

Issuance

Although, in principle, work permits can only be issued – following a resident labour test – to workers who are nationals of countries with which Belgium has an employment treaty, the Belgian work permit system has developed into a straightforward system in practice. There are several activity-based work-permit exemptions and almost all corporate immigration work permits are available “fast track” – without a resident labour test.

The two most important “fast track” work permits are those for highly skilled and executive-level personnel who earn a yearly gross salary exceeding a threshold that is adjusted annually. For 2014, the figures are €39,422 and €65,771, respectively. A highly skilled worker must have at least a bachelor’s degree.

“Fast track” work permits can be obtained within two to three weeks after filing the application, which is faster than in Belgium’s neighbors.

The required authorization consists of a work permit (for the worker) and a work authorization (for the employer). 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 (for “fast track” work permits, an employment letter or an accepted job offer may suffice) 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.

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 must file his application with his local Belgian consulate or embassy.

Application

The federal Ministry of Economic Affairs will check whether the self-employed person meets the requirements to register with the Central Register of Undertakings, for which certain documents are required. Moreover, a professional card will only be issued if the applicant can prove that the activities in Belgium will bear profit.

The processing time can vary between one and six months.

Refusal can be appealed to the Ministry of Economic Affairs within 30 days. Appeals can take up to six months.

Unlike work permits, there is only one type of professional card. In principle, they are 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

Before 2007, business visits were a gray area for employees: business visitors could get a business visa but they could not actually do anything without a work permit, not even attending meetings. The situation for employees was clarified in 2007, when the government implemented a plan to attract foreign knowledge workers, leading to important new work permit exemptions and “fast track” work permits (for instance, for attending meetings and scientific congresses, following training courses at the Belgian entity of a multinational group, and so forth).

For the self-employed, business travel as defined in the law is permissible without a professional card, but is limited to three consecutive months. Foreign directors in charge of the daily management of a Belgian company need a professional card if management tasks go beyond the scope of a business trip. In general, this will be so.



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For setting up a business in Belgium or for any question relating to Belgian law, you should contact your attorney to obtain specific legal advice.

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