

## Company law reform: no difference anymore between civil and commercial companies

The reform of the Companies Code of 7 May 1999 was about simplification, flexibilization and adaptation to European evolutions. The last word is not written about these radical changes. Today we take a look at one of the most important principles in our company law: the distinction between civil and commercial companies.

### New structure

We start this contribution with an overview of the structure of the new Company Law Code. The new Company Law Code will be structured in parts and books:

- Part 1: General provisions (books 1 until 3)
- Part 2: Companies (books 4 until 8)
- Part 3: Associations and foundations (books 9 until 11)
- Part 4: Restructuring and transfer (books 12 until 14)

Part 5 on the European legal forms will later be integrated in the new Code. For the European Company (SE) and the European Cooperative Societies (SCE) our current Companies Code will apply for the time being.

### Civil versus commercial companies

An important principle of the reform is the simplification of our company law by abolishing a number of types of companies. We hereby again list the types which will disappear: silent and temporary trade companies, economic co-operation partnerships (ESV), agricultural companies, one-person and starter bvba's, co-operative partnerships with unlimited liability (CVOA) and limited partnerships (CVA).

Next to the abolishment of the types of companies, also the difference between civil and commercial companies will disappear.

Article 3 of the current Company Law Code provides:

*The companies shall be governed by the parties' agreements, by civil law and, if they are of a commercial nature, by the special Acts on commerce (§1).*

*The civil or commercial nature of a company shall be determined by its purpose (§2).*

*The above shall also apply if the articles of association of the company provide that the company is not incorporated to give the shareholders a direct or indirect financial benefit (§3).*

*Civil companies in a commercial form are companies that have a civil purpose and, without losing their civil nature, assume the legal form of a commercial company to receive legal personality. They shall not qualify as merchants (§4).*

This distinction is obsolete (read outdated) by the introduction and uniformization of the undertaking concept in the Economic Law Code and the planned reform of the Commercial Court into the Undertakings Court. As a consequence, the distinction between civil acts and commercial acts will disappear. The concept of merchant/trader is replaced by the concept undertaking.

Art. 1:1 of the new Companies Code states:

*A company is incorporated by a legal act by one or more persons, called partners, making a contribution. It has a capital and exercises one or more activities as its object. Its goal is to provide the partners with direct or indirect monetary advantages.*

COMPTAFID-Benelux NV SA  
Brussels

Bld. Edmond Machtensl. 180/100  
B-1080 Brussels  
Tel: +32 (0)2 410 75 75  
[www.comptafid.be](http://www.comptafid.be)

COMPTAFID-Benelux NV SA  
Antwerp

Schijnparklaan 45  
B-2900 Antwerp (Schooten)  
Tel: +32 (0)3 658 89 02  
[www.comptafid.be](http://www.comptafid.be)

COMPTAFID (Schweiz) AG  
Zürich

Seefeldstrasse 19 – Postfach  
CH-8032 Zürich  
Tel.: +41 44 250 2929  
[www.comptafid.ch](http://www.comptafid.ch)

## Consequences

The consequence of abolishing the distinction between civil and commercial companies is that both companies as associations, when they exercise an economic activity and have a profit-making goal, will be qualified as undertakings. Associations and foundations should however destine their profit pro bono.

Civil companies with an economic activity such as liberal professions will be subject to company and insolvency law. This implies that liberal professions can be declared bankrupt.

## Timing

Soon the draft law introducing the new Companies Code will be presented to the Council of Ministers for a second reading. In the coming months, it will be presented to Parliament. We expect that it will be adopted in the first semester of 2018. The publication of the new Companies Code in the Belgian Official Journal will be in autumn 2018.

According to the latest news (and subject to confirmation) the new Companies Code would be applicable to *new companies* immediately after publication (read 10 days after publication). As from then a company can no longer be converted to a disappeared company form. For *existing companies* the new Companies Code would apply as from 1 January 2020. At the first opportunity, the articles of association should be adapted. Legal forms which will disappear should modify their legal form ultimately after ten years. They remain subject to the current law, with the exception of all mandatory provisions.

### COMPTAFID-Benelux NV SA Brussels

Bld. Edmond Machtensl. 180/100  
B-1080 Brussels  
Tel: +32 (0)2 410 75 75  
[www.comptafid.be](http://www.comptafid.be)

### COMPTAFID-Benelux NV SA Antwerp

Schijnparklaan 45  
B-2900 Antwerp (Schoten)  
Tel: +32 (0)3 658 89 02  
[www.comptafid.be](http://www.comptafid.be)

### COMPTAFID (Schweiz) AG Zürich

Seefeldstrasse 19 – Postfach  
CH-8032 Zürich  
Tel.: +41 44 250 2929  
[www.comptafid.ch](http://www.comptafid.ch)