

## Greater Flexibility for Belgian Companies Issuing Bonds

### IN SHORT

**The Situation:** A draft law designed to substantially reform the Belgian Companies Code was submitted to the Belgian Parliament for review ("New Companies Code") on June 4, 2018.

**The Result:** The New Companies Code will lift a number of mandatory rules applicable to convertible bonds and to the general assembly of bondholders.

**Looking Ahead:** Belgian companies will have much greater flexibility in issuing bonds (including convertible bonds) once the New Companies Code comes into effect.

The Belgian Council of Ministers submitted a draft law to the Belgian Parliament on June 4, 2018. The draft law is designed to substantially reform the Belgian Companies Code, in view of promoting greater flexibility and competitiveness for Belgian companies.

The New Companies Code envisages many changes, including with respect to bond issues. Given the evolution of bonds in a global context, the proposed modifications reflect regimes already applicable in other EU Member States as well as international practices. These modifications, as discussed below, seek to provide greater clarity and maneuverability to both issuing companies and bondholders.

#### Convertible Bonds

**Clarified Conversion Rights.** The New Companies Code addresses ambiguities under current Belgian law on whether the right to convert bonds into shares (i) may be granted to the issuer and (ii) may be automatic or must always remain an option for bondholders. The New Companies Code sets out that the terms and conditions of the bond must determine whether the right to convert bonds into shares accrues to the bondholder or to the issuer (or to both) and whether such conversion is voluntary, automatic, or mandatory. This will provide not only more legal certainty, but also much more flexibility in relation to conversion rights.

**More Liberal Approach to Bondholder Protection.** The New Companies Code will remove existing mandatory provisions under the current Belgian Companies Code that aimed at protecting bondholders, subsequent to the bond issue, in case of a cash capital increase (Art. 491) or in case a company decided on early redemption of the bonds (Art. 492). Instead, any company action that is likely to be detrimental to bondholders must be expressly allowed in the bond's terms and conditions.

**Term Limits Removed.** The New Companies Code abolishes the maximum 10-year term for converting bonds into shares. Generally, all bonds (whether convertible or not) will no longer be limited in time.



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#### General Assembly of Bondholders

**Not an Entity of the Issuing Company.** The New Companies Code clearly sets out that the general assembly of bondholders is not an organ ("*organe*"/"*orgaan*") of the company issuing the bonds. The decisions of the general assembly are binding on bondholders only (including the minority bondholders), and not on the issuing company.

**Default Rules Only.** The New Companies Code's provisions regarding the general assembly of bondholders are default rules only. The bond's terms and conditions may derogate from these provisions giving companies enhanced flexibility.

**Electronic General Assembly of Bondholders.** The general assembly of bondholders may be held electronically under the New Companies Code. Decisions of the general assembly shall be taken by electronic consent via the securities settlement systems and approved account holders. In such case, a majority representing three-quarters of the total amount of bonds taking part in the vote will be required.

**Lifting the Court of Appeal Approval Requirement.** The New Companies Code would abolish the

requirement to obtain approval of the relevant Court of Appeal in the event that a decision of the general assembly of bondholders does not obtain a majority representing at least one-third of the total amount of outstanding bonds.

### Other Changes to Bondholder Representation

**Appointment of a Bondholder Representative.** The bondholders may appoint a representative who will act as an agent on behalf of all bondholders. An agent is appointed within the bond's terms and conditions or by decision of the general assembly of the bondholders. The agent may bind all bondholders vis-à-vis third parties (including the issuing company) and represent them (in particular in insolvency proceedings), and agree on behalf of the bondholders to the issuing company's proposed amendments to the bond's terms and conditions. A bondholder representative may also act as security agent, in its own name, but on behalf of the bondholders.

**Participation to the Shareholder Meetings.** Under the New Companies Code, only convertible bondholders (to the exclusion of other bondholders) will retain the right to attend the issuer's shareholder meetings with a consultative vote only.

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For further information on the New Companies Code, see also our June 2018 *Commentary* "[Loyalty Shares for Belgian Listed Companies: Fundamental Change on the Way.](#)"

### THREE KEY TAKEAWAYS

1. The New Companies Code's more flexible provisions will apply to bond issues by Belgian companies in view of aligning with international practices.
2. As the majority of rules relating to bonds will become default rules only, this will enable companies to tailor bond issue conditions more closely to their needs.
3. It will be also possible to hold an electronic general assembly of bondholders, which will issue its decisions by electronic consent.



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