

Loyalty Shares for Belgian Listed Companies: Fundamental Change on the Way

IN SHORT

The Background: On June 4, 2018, a draft law designed to substantially reform the Belgian Companies Code was submitted to the Belgian Parliament for review ("New Companies Code").

The Result: The New Companies Code seeks to enhance flexibility and competitiveness for Belgian companies, and notably introduces an optional double-voting right for loyal shareholders of listed companies.

Looking Ahead: Under the New Companies Code, existing listed companies could take advantage of this new double-voting right as of January 1, 2020, upon introducing loyalty shares into their articles of association.

On June 4, 2018, the Belgian Council of Ministers submitted to the Belgian Parliament a draft law 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, notably including enabling Belgian listed companies to grant double-voting rights to shareholders who have registered their shares for a period of at least two years. Such a fundamental move echoes the current European focus on long-term share ownership in listed companies. Other EU Member States, including France and Italy, have adopted similar regimes.

New Companies Code—Expected Timing

While the parliamentary review process for the New Companies Code is at an early stage, its targeted date of applicability is January 1, 2019, for any company incorporated from such date.

For existing companies, the mandatory provisions of the New Companies Code would be applicable as of January 1, 2020. The New Companies Code's full set of modifications, including its default provisions would apply as of the first date on which a company modifies its articles of association, but no later than January 1, 2024.

Existing companies seeking to benefit from the more flexible provisions of the New Companies Code as of 2019 may decide to opt-in earlier by modifying their articles of association to comply with the New Companies Code.



A prohibition on multiple voting rights has existed in Belgium since 1934 ... The New Companies Code would waive this prohibition for both listed and nonlisted companies that opt for multiple voting rights.



Loyalty Shares for Listed Companies—A New Regime for Multiple Voting Rights

A prohibition on multiple voting rights has existed in Belgium since 1934 (excluding cooperative companies). This means that one share equals one vote. The New Companies Code would waive this prohibition for both listed and nonlisted companies that opt for multiple voting rights. The one share/one vote rule would become the default rule only.

Nonlisted companies may bypass the proportionality principle and issue multiple voting rights without a multiplier limit.

For listed companies, the New Companies Code will introduce an optional double-voting right mirroring the French Company law regime ("Loi Florange"), which limits the multiplier to two and thereby eases potential imbalances between capital and voting power. However, in France, the double-voting right automatically applies by law unless specifically prohibited by the articles of association. By contrast, Belgium takes a more cautious approach, such that double-voting rights would be permitted only upon express authorization by the shareholders through an amendment to the articles of association.

The New Companies Code would allow articles of association to grant a double-voting right to reward "loyal" shareholders, namely those shareholders who have held such shares in registered form for an uninterrupted period of at least two years. This period begins to run from the date of registration in the shareholders' register, even if the company was not yet listed at that time or if the double-voting right regime was not yet applicable.

The double-voting right principle must be explicitly introduced in the company's articles of association following a formal decision of the shareholders taken by a special majority of two-thirds of the votes present or represented (by contrast, ordinarily, amendments to the articles of association require a majority of 75 percent). In further derogation of the ordinary voting quorum, listed companies could implement the double-voting right principle with only a majority of 50 percent + one share, if the shareholders' meeting decision occurs between January 1, 2020, and June 30, 2020. Therefore, listed companies must not overlook that this major change in voting rights would be easier to introduce during this time-window immediately following the reform. In an additional step to soften quorum requirements, an abstention would no longer be counted as a negative vote for the purpose of calculating the voting quorum.

The double-voting right would be lost in the event of a transfer of shares or a conversion of registered shares into dematerialized shares. However, it would be maintained if the transfer took place between companies under common control or between a company and its controlling shareholder, or in the event of inheritance, merger, or demerger.

Impact on Belgium's Takeover Law and Transparency Law

The Belgian law of May 2, 2007, on the disclosure of major shareholdings in listed companies ("Transparency Law") would not be amended to take into account the application of the loyalty shares and double-voting right mechanism. This implies that holders of registered shares in Belgian listed companies would need to monitor closely the amount of their holdings to assess whether the effects of the loyalty shares mechanism would require notifying a significant shareholding following the attainment of the transparency threshold.

By contrast, the Belgian law of April 1, 2007, on public takeovers ("Takeover Law") would be amended to "neutralize" the effects of the loyalty shares and double-voting right mechanism. Shareholders who surpass the 30 percent threshold of voting rights in a listed company, due to the double-voting right, would not be required to launch a mandatory takeover bid on the listed company in which they hold shares. Along the same lines, the acquisition of shares benefiting from the loyalty shares mechanism (representing more than 30 percent of the voting rights in a listed company, due to the double-voting right) would not trigger such obligation to launch a mandatory takeover bid, since the benefit of the double-voting rights would be lost due to such transfer of shares.

THREE KEY TAKEAWAYS

1. Soon, it may be possible for any Belgian listed company, by amending its articles of association, to grant a double-voting right to "loyal" shareholders who hold these shares for an uninterrupted period of at least two years in registered form.
2. To encourage the introduction of a new such right, a two-thirds majority (instead of 75 percent) would suffice under the New Companies Code to introduce the double-voting mechanism by way of amending the articles of association. Furthermore, the required majority is even lowered to only 50 percent + one share during the interim period from January 1, 2020, to June 30, 2020.
3. While the effect of introducing loyalty shares and double-voting rights is neutralized for the purposes of the Belgian Takeover Law, this significant shift in voting right powers will require shareholders of Belgian listed companies to monitor more closely their participation in such companies and to undertake, as needed, relevant transparency notifications for significant shareholdings.



Matthieu Duplat
Brussels



Thomas Flament
Brussels



Aurélie Cauttaerts
Brussels

YOU MIGHT BE INTERESTED IN: [Go To All Recommendations >>](#)



[EU Consumer Rights Enforcement— Penalties Ahead](#)



[Non-German Real Estate Funds \(and Trusts\) as Eligible Investments for German Real Estate Funds](#)



[Uniform European Union Conflict of Laws Rule to Foster Cross-Border Transfer of Claims](#)

SUBSCRIBE

SUBSCRIBE TO RSS



Jones Day is a global law firm with more than 2,500 lawyers on five continents. We are One Firm WorldwideSM.

Disclaimer: Jones Day's publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.

© 2018 Jones Day. All rights reserved. 51 Louisiana Avenue, N.W., Washington D.C. 20001-2113