

New Versatility for Equity Financing by Belgian REITs

IN SHORT

The Situation: On April 25, 2019, a law to amend the Law of May 12, 2014 on Belgian regulated real estate companies ("REITs") (*gereguleerde vastgoedvennootschappen (GVV) / sociétés immobilières réglementées (SIR)*) (the "Amending Law") was approved by the Belgian Parliament. The Amending Law will enter into force on the 10th day following its publication in the Belgian State Gazette.

The Result: The Amending Law will notably enable Belgian REITs to disapply the preferential subscription right of existing shareholders in case of a capital increase in cash, up to certain limits, without granting such shareholders a priority allocation right.

Looking Ahead: This is a welcome change, as Belgian REITs can now move quickly to pursue capital market opportunities as they arise.

The current REIT regime places various constraints on Belgian REITs in the event of pursuing a capital increase in cash:

- Disapplying the preferential subscription right of the existing shareholders can only occur if granting such shareholders a priority allocation right. This priority allocation right must apply with respect to the entire capital increase (and not only a tranche thereof) and in proportion to the shareholding at the time of the transaction.
- For the effective exercise of the above priority allocation right by existing shareholders, the subscription period must be at least three business days. The maximum subscription price must be announced, at the latest, on the day before the opening of the subscription period.
- Priority allocation rights are not tradable, unlike preferential subscription rights. However, even though this priority allocation regime is more flexible than the ordinary preference regime, it still remains burdensome and entails time constraints that prevent Belgian REITs from rapidly pursuing market opportunities that require additional capital on short notice—e.g., through an accelerated bookbuilding ("ABB").



Belgian REITs can now move quickly to pursue capital market opportunities as they arise.



To some extent, the Amending Law will lift these constraints on Belgian REITs. In particular, it will allow to disapply the priority allocation right, provided that: (i) the capital increase is decided by the board of directors under the "authorized capital" procedure (which implies the existence of relevant authorizations from the shareholders' meeting); and (ii) the aggregate amount of the capital increases in cash realized without preference or priority allocation right, over any trailing 12-month period, does not exceed 10 percent of the amount of the capital at the time of the decision to increase the capital. This 10 percent limit aims at reducing the risk of a significant dilution of the existing shareholders.

This innovation will level the playing field between Belgian REITs and foreign competitors.

TWO KEY TAKEAWAYS

1. Soon, it will be possible for Belgian REITs to quickly raise additional capital through an ABB by disapplying the preferential subscription right of existing shareholders, but without the obligation to offer these shareholders a priority allocation right.
2. The 10 percent limit on capital increases (over any trailing 12-month period) should adequately reassure shareholders in delegating their power to increase the capital to the board of directors, given the limited risk of dilution of their shareholding.



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