The new BCCA has been eagerly anticipated, as it will modernize Belgian company law by simplifying and clarifying rules, introducing more flexibility, and fostering greater competitiveness for companies in Belgium, including in respect of banking transactions.

This Commentary focuses on the following main changes that are expected for banking transactions involving Belgian companies:

• **New, more agile vehicle for transactions.** The new private limited liability company ("BV/SRL") is expected to become the main vehicle for banking transactions, given its contractual freedoms under the BCCA. In particular, the BV/SRL's articles of association ("Articles") may provide for the free transfer of shares. This means that the Articles no longer require amendment (before entering a share pledge) in order to ensure a free transfer of shares, in case of enforcement of a pledge over such shares.

• **Elimination of minimum capital requirement for BV/SRLs.** Under the current regime, lenders in banking transactions have often exploited the existing "capital" concept in seeking to obtain additional covenants and restrictions on distributions in their loan agreements. The BCCA will abolish this "capital" concept, and the "minimum capital" requirement of EUR 18,550 will disappear in a BV/SRL. Lenders will now need to seek assurances in the BCCA's new "net asset" and "liquidity" tests, and if necessary, seek to strengthen these tests in their loan agreements. For public limited liability companies ("NV/SA"), existing capital requirements and the net asset test will remain unchanged.

• **Abolished one share, one vote rule—lender awareness needed.** The BCCA dismantles the strict "one share, one vote" rule within the BV/SRL and the unlisted NV/SA, which will enable multiple voting rights and so-called "loyalty shares" in the listed NV/SA (i.e., a double voting right for shareholders who continuously hold registered shares for at least two years). Thus, in loan agreements, lenders will have to carefully consider the wording concerning any change of control and equity retention provisions.

"The BCCA introduces welcome changes to modernize and simplify Belgium's existing legal framework for banking transactions."
• **Flexible corporate approval process of transactions.** The corporate approval process for banking transactions will be simplified by both (i) allowing board decisions to be made by unanimous written resolutions (subject to certain exceptions) and (ii) abolishing, for an unlisted NV/SA, the requirement to seek and publish the shareholders’ approval of change of control clauses. A further improvement in simplification will allow a Belgian company to now file required documents with the competent Belgian enterprise court in any language of the European Union (following translation from one of the official languages in Belgium (Dutch, French, or German)).

• **Clarified/Simplified financial assistance.** The BCCA does not materially amend the financial assistance regime, but instead clarifies and simplifies the conditions allowing such financial assistance. In case of breach of these conditions, criminal sanctions will no longer apply. Furthermore, financial assistance within a BV/SRL will only be allowed provided that the new liquidity test is met (due to abolishment of the "capital" concept).

• **Potential conflict of laws under registered office connecting factor.** Under the BCCA, Belgian law will now apply to a company with its registered offices in Belgium. This can create a potential mismatch under the so-called centre of main interest connecting factor under the European Insolvency Regulation, which provides that the law of a company’s centre of main interest will determine the applicable insolvency law.

Given the divergent approaches of the BCCA and European Insolvency Regulation, lenders may be confronted by a borrower who falls under both Belgian corporate law (given its registered offices in Belgium), as well as the law of another jurisdiction (given its centre of main interest considered as located in such jurisdiction).

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For further information on the BCCA, see also our June 2018 Commentary *"Loyalty Shares for Belgian Listed Companies: Fundamental Change on the Way"*, our September 2018 Commentary *"Greater Flexibility for Belgian Companies Issuing Bonds"*, our November 2018 Commentary *"Greater Flexibility Slated for Equity Financing in Belgium"* and our March 2019 Commentary *"Belgium Enacts Historic Corporate Law Reform"*.​

THREE KEY TAKEAWAYS

1. The BCCA’s modernization of Belgian company law will have a significant impact on banking transactions involving Belgian companies.

2. Lenders involved in banking transactions with Belgian companies should carefully assess how the BCCA may affect existing and future banking transactions and relevant finance documents.

3. The BCCA will apply with immediate effect to any company formed or incorporated on or after May 1, 2019, and any existing company that explicitly opts into the new rules. For all other companies existing prior to May 1, 2019, a transitional period will apply from January 1, 2020 until January 1, 2024.

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