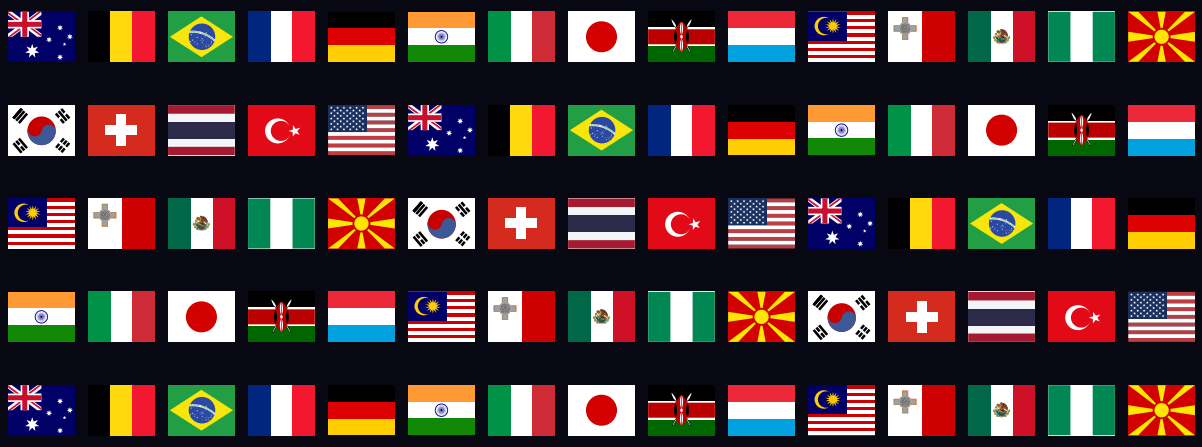
CORPORATE GOVERNANCE

Belgium



LEXOLOGY
Getting The Deal Through

Consulting editor
Sidley Austin LLP

Corporate Governance

Consulting editors

Holly J.Gregory

Sidley Austin LLP

Quick reference guide enabling side-by-side comparison of local insights into corporate governance issues worldwide, including sources of rules and practice; responsible agencies and notable opinion formers; shareholder powers, decisions, meetings, voting, duties and liabilities; employee role in governance; corporate control issues; board structure and composition, duties, leadership, committees, meetings and evaluation; director and senior management remuneration; director protections; disclosure and transparency; hot topics, such as shareholder engagement, and sustainability, pay ratio and gender gap reporting; and other recent trends.

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Contributors

Belgium

Nick Hallemeesch
nick.hallemeesch@whitecase.com
White & Case LLP

Thomas Glauden
thomas.glauden@whitecase.com
White & Case LLP

SOURCES OF CORPORATE GOVERNANCE RULES AND PRACTICES

Primary sources of law, regulation and practice

What are the primary sources of law, regulation and practice relating to corporate governance? Is it mandatory for listed companies to comply with listing rules or do they apply on a 'comply or explain' basis?

The primary source of company law and corporate governance in Belgium is the Code on Companies and Associations (BCCA), which was amended in 2020 to, among other things, transpose the Shareholders Rights Directive II within Belgian law.

For listed companies, additional periodic disclosure requirements are laid down in the Royal Decree of 17 November 2007 . Additional ad hoc disclosure requirements are laid down in various specific regulations (eg, the Transparency Law of 2007 and the Prospectus Regulation, among others).

An additional source of corporate governance is the 2020 Belgian Code on Corporate Governance (the Corporate Governance Code), which applies on a comply-or-explain basis – that is, listed companies must either comply with the provisions thereof or explain and justify any deviations therefrom in their yearly corporate governance statements, which is part of the annual report. The Corporate Governance Code provides that listed companies (ie, companies the shares of which are trading on a regulated market) must adopt a corporate governance charter that describes the main aspects of its governance, such as its governance structure and the terms of reference of the board and its committees. There is also a corporate governance code for non-listed companies, although the comply-or-explain principle does not apply to this code and it comprises recommendations only.

Companies with securities listed on Euronext Brussels are required to comply with applicable listing rules. However, these rules would typically not relate to matters of corporate governance.

Law stated - 10 July 2022

Responsible entities

What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder or business groups, or proxy advisory firms, whose views are often considered?

Government agencies in Belgium are not in charge of lawmaking, as may be the case in other jurisdictions. The BCCA and any amendments thereto are adopted by the Federal Parliament, and executive measures are generally enacted by the government on behalf of the King through royal decree.

The Corporate Governance Code is issued by the Corporate Governance Committee, which is a private initiative and includes representatives of those concerned with good governance in Belgium.

Listed companies are subject to the supervision of the Financial Markets and Securities Agency (FSMA) for certain matters (including public offerings, share buy-backs, transparency notifications, public takeovers, market abuse and inside information). In the area of corporate governance, the FSMA monitors compliance with, among other things, the disclosure requirements applicable to listed entities under the Royal Decree of 17 November 2007.

Rules that fall outside of the supervision of the FSMA (eg, rules relating to the functioning of the board or the general meeting of shareholders) are mainly enforced through legal actions brought by relevant stakeholders. For a limited number of provisions of the BCCA (eg, timely approval of annual accounts and filing with the National Bank of Belgium), non-compliance is considered a criminal offence, whereby proceedings may be initiated by the public

prosecutor.

International proxy advisors such as ISS and Glass Lewis are active in Belgium. Deminor, a Brussels- and Paris-based research firm, is well known on the Belgian market for advising and representing (minority) shareholders in matters relating to the corporate governance of listed companies.

Law stated - 10 July 2022

THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND EMPLOYEES

Shareholder powers

What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action? What shareholder vote is required to elect or remove directors?

The power to appoint and dismiss the members of the board is legally vested with the general meeting of shareholders (save for interim co-optation appointments in the event of a vacancy). Unless more stringent rules have been included in the articles of association, appointment decisions require an absolute majority of casted votes. Dismissals in principle also require a majority of casted votes. In companies incorporated as a private limited liability company (ie, a BV/SRL), the articles of association may require a higher majority or provide that directors may only be terminated for cause. This is not permitted in companies incorporated as a public limited liability company (ie, an NV/SA) (at-will revocability) – however, a notice period or severance payment is permitted, subject to certain conditions.

Shareholders do not have the right to instruct the board to pursue a certain course of action that falls within the powers of the board. Shareholders that exercise control or influence over a company generally do so through their powers to appoint and dismiss directors.

Law stated - 10 July 2022

Shareholder decisions

What decisions must be reserved to the shareholders? What matters are required to be subject to a non-binding shareholder vote?

Matters reserved to the general meeting of shareholders are those expressly set forth by law and include subject to certain exceptions:

- approval of the annual accounts and allocation of the results;
- appointment, dismissal, discharge and remuneration of directors and the statutory auditor;
- approval of remuneration policy and certain severance payments in listed companies;
- certain poison pills and anti-takeover measures;
- amendment of the articles of associations;
- issuance of shares, profit certificates and convertible bonds;
- capital increase and decrease;
- distributions (including share buy-backs);
- financial assistance;
- mergers, de-mergers, contribution of a branch or universality;
- voluntary dissolution and liquidation;
- conversion into a different company form; and
- cross-border seat transfer.

In listed entities, the remuneration report, which is part of the annual report, must be submitted to a non-binding vote of the general meeting of shareholders. The company must explain in its next remuneration report how the results of the previous vote have been taken into account.

Law stated - 10 July 2022

Disproportionate voting rights

To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

As a general principle, each share carries a number of voting rights proportionate to its nominal or par value (ie, the portion of the share capital represented by such a share), subject to rounding.

In non-listed companies, the articles of association may deviate from this principle and provide for multiple voting rights shares or non-voting shares. In the latter case, shares without voting rights may resume their voting rights in exceptional circumstances by operation of law (eg, modification of the rights attached to classes of shares).

By contrast, in listed companies, the articles of association may, in principle, not deviate from the aforementioned principle. However, the articles of association may provide that shares that have been held by the same shareholder in registered form for two consecutive years shall carry double the voting rights compared to the other shares with the same par or nominal value (loyalty shares). This option was created in 2019 and has since been used by a number of listed companies.

Law stated - 10 July 2022

Shareholders' meetings and voting

Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote? Can shareholders act by written consent without a meeting? Are virtual meetings of shareholders permitted?

In closed companies, there are no statutory requirements for shareholders to participate to the general meeting of shareholders. The articles of association may impose certain conditions in this respect (eg, requirement to RSVP), provided that those conditions are reasonably required for the proper organisation of the meeting.

By contrast, in listed companies, access to the general meeting of shareholders is restricted to shareholders who hold shares on the 14th day prior to the date of the meeting (record date), regardless of the actual number of shares held on the date of the meeting. Shareholders should inform the listed company of their intention of participating in the meeting at least six days prior to the date of the meeting.

Law stated - 10 July 2022

Shareholders and the board

Are shareholders able to require meetings of shareholders to be convened, resolutions and director nominations to be put to a shareholder vote against the wishes of the board, or the board to circulate statements by dissident shareholders?

Shareholders that represent 10 per cent of the share capital (in an NV/SA) or the shares (in a BV/SRL) are entitled to

require the board to convene a general meeting of shareholders and to determine its agenda. In addition, in listed companies, shareholders that represent 3 per cent of the share capital are also entitled to add items to the agenda of the general meeting of shareholders. Those items may include proposals for the appointment or dismissal of directors.

There is no obligation for companies to circulate statements by dissident shareholders, although these shareholders have the right to ask questions and express their views during the meeting.

Law stated - 10 July 2022

Controlling shareholders' duties

Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action be brought against controlling shareholders for breach of these duties?

While directors and the board must always act in the company's corporate interest, there is some discussion among scholars regarding whether this obligation also extends to (controlling) shareholders. In any event, (controlling) shareholders may not abuse their voting rights (ie, exercise their voting rights in a manner that clearly exceeds the normal exercise of voting rights by a reasonable and prudent shareholder). This would be the case if, for instance, a controlling shareholder exercises its voting rights with the sole intention of harming the minority shareholders or vice versa. Save for certain exceptions, each shareholder affected by abuse can seek the judicial annulment or rescission of resolutions. Such a claim would be directed against the company directly rather than against co-shareholders, although it is possible, subject to certain conditions, to claim damages from the shareholder that has abused its voting rights.

Law stated - 10 July 2022

Shareholder responsibility

Can shareholders ever be held responsible for the acts or omissions of the company?

Shareholders may be held liable for acts or omissions of the company if such acts or omissions result from abusive exercises by such shareholders of their voting rights in the general meeting of shareholders.

In respect of matters falling within the powers of the board, shareholders (as well as other third parties) may be held liable for acts or omissions of the company if it can be established that they have acted as a de facto or shadow director. This would apply if the relevant shareholder has exercised key management responsibilities or has given precise instructions and imposed its will on the board of directors. Controlling shareholders are the usual suspects in this respect. If it can be demonstrated that a controlling shareholder has acted as a shadow director, such a shareholder can be held liable in the same way and on the same grounds as the directors.

Law stated - 10 July 2022

Employees

What role do employees have in corporate governance?

Companies that employ 100 employees on average must establish a works council and must maintain the works council for as long as they have at least 50 employees. The works council has decision-making power in certain employment-related matters (eg, modifications to work regulations). In some other matters, the works council has the right to be informed or to be consulted, or both. For instance, the works council must be provided with the annual accounts and related information on a yearly basis, and has the right to be consulted in the event of a transfer of

undertaking. With respect to corporate governance matters specifically, the works council has the right to receive the annual remuneration report and any proposal to grant severance pay to a director or member that exceeds 12 months of remuneration must be submitted to the works council for advice.

Law stated - 10 July 2022

CORPORATE CONTROL

Anti-takeover devices

Are anti-takeover devices permitted?

There is no general prohibition on anti-takeover devices, but the board must always act in the company's corporate interest when adopting such measures. It should be noted that certain anti-takeover devices are subject to restrictions.

First, rights to third parties that may have a substantial impact on the assets of the company and that are subject to a change of control or a public takeover should be approved by the general meeting of shareholders (in listed companies). The same requirement applies to decisions that are adopted once a public takeover has been launched if such decisions would have a substantial impact on the company's assets or liabilities (eg, sale of so-called crown jewels).

Second, provisions in the articles of association that authorise the board of directors to increase the share capital cannot be used in the event of a public takeover, unless specifically authorised by an extraordinary shareholder meeting. The validity of such an authorisation is limited to three years.

Third, provisions in the articles of association that subject the transfer of shares to the approval of the board or a pre-emption right of other shareholders do not apply in the event of a public offer, unless a counter-offer is made to all shareholders in the amount of at least the same price by the holders of the pre-emption rights or a third party (white knight).

Law stated - 10 July 2022

Issuance of new shares

May the board be permitted to issue new shares without shareholder approval? Do shareholders have pre-emptive rights to acquire newly issued shares?

The articles of association may authorise the board of directors to issue new shares and increase the share capital (if any) without shareholder approval (authorised capital). In listed companies, the amount of the authorised capital may not exceed the share capital. The use of authorised capital is prohibited in certain circumstances (eg, issuance of a new class of shares and capital increase through contribution in kind, mainly reserved to a reference shareholder).

In the event of an issuance of new shares or capital increase subscribed to in cash, existing shareholders benefit in principle from preferential subscription rights. Those rights can be limited or cancelled in the interest of the company by a decision of the relevant corporate body, in which case the board report drawn up in connection with the capital increase must include specific provisions on, among other things, the justification for the limitation or cancellation, as well as the impact of the transaction on the financial and membership rights of the existing shareholders. Preferential subscription rights do not apply where the new shares or capital increase are subscribed to in kind (eg, through the contribution or conversion of a receivable in equity).

Law stated - 10 July 2022

Restrictions on the transfer of fully paid shares

Are restrictions on the transfer of fully paid shares permitted and, if so, what restrictions are commonly adopted?

The validity of share transfer restrictions is subject to certain conditions. Lock-up provisions should be justified by a legitimate interest, in particular with respect to their duration. Provisions that subject a share transfer to board approval as well as pre-emption rights may not result in the shares being blocked for more than six months. These principles apply whether or not the shares are fully paid up.

Law stated - 10 July 2022

Compulsory repurchase rules

Are compulsory share repurchases allowed? Can they be made mandatory in certain circumstances?

Whenever a person, alone or acting in concert, acquires 95 per cent of the securities with voting rights in a listed company, it has the possibility of squeezing out the minority shareholders, regardless of whether the threshold is met as a result of a public takeover. However, if the threshold is met as a result of a successful takeover, each minority shareholder also has the right to request the bidder to purchase its shares at the same price as the price of the bid (sell-out). There is also a squeeze-out procedure for non-listed companies (for which the same threshold applies), but the minority shareholders have the right to refuse to transfer their shares, provided that they do so explicitly.

Law stated - 10 July 2022

Dissenters' rights

Do shareholders have appraisal rights?

No. Shareholders that disapprove of a merger or a stock transaction may challenge before court the validity of such transactions on the basis of, among other things, abuse of majority power. However, they do not have a legal right to sell their shares to the company.

Law stated - 10 July 2022

RESPONSIBILITIES OF THE BOARD (SUPERVISORY)

Board structure

Is the predominant board structure for listed companies best categorised as one-tier or two-tier?

For companies incorporated as a public limited liability company (ie, an NV/SA), the Code on Companies and Associations (BCCA) offers companies a choice between three governance structures: a sole director, a one-tier board and a two-tier board. Nearly all (listed) companies have adopted a one-tier board, making it the dominant board structure. However, certain regulated entities – such as credit institutions or insurance companies – are legally required to have a two-tier board.

Law stated - 10 July 2022

Board's legal responsibilities

What are the board's primary legal responsibilities?

The board has the power to perform all actions necessary or useful to realise the company's objective or purpose, unless the general meeting of shareholders is competent. The BCCA, however, does not impose an active obligation on the board to exercise these powers, nor does it indicate how it must do so. In the absence of statutory provisions, it is generally held that the primary legal responsibility of the board is to determine the company's strategy and to monitor its management. The latter responsibility includes:

- appointment, evaluation and (if needed) dismissal of the members of management;
- monitoring of risk; and
- communication with the shareholders and the financial markets.

The board may be involved in the day-to-day operations of the company, but it has no obligation to do so. Besides these general principles, the BCCA imposes some specific obligations on the board, either on a recurring basis (eg, drawing up an inventory, preparing the annual accounts and convening the general meeting of shareholders) or on an ad hoc basis (eg, preparing a report in the context of certain transactions such as equity raises, preparing a response memorandum in the context of a public takeover and disclosing conflicts of interest).

Law stated - 10 July 2022

Board obligees

Whom does the board represent and to whom do directors owe legal duties?

Even if board members are sometimes appointed upon the proposal of certain shareholders (eg, pursuant to provisions in the shareholders' agreement or the articles of association), directors are not considered representatives of individual shareholders. They owe their legal duties to the company as a legal entity and not to the shareholders directly. In addition, directors may be held liable in respect of third parties (including shareholders) for breaches of provisions of the BCCA or the articles of association, provided that such third parties are protected by the relevant provision.

Law stated - 10 July 2022

Enforcement action against directors

Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed? Is there a business judgment rule?

A company may bring legal action against its directors for, among other things, negligence in the exercise of their mandates, or violations of the provisions of the BCCA or the articles of association (actio mandati). Claims on the basis of negligence can only be honoured for decisions, actions or conduct which manifestly exceeds the margins with in which normally prudent and diligent directors, placed in the same circumstances, can reasonably disagree.

The actio mandati requires a decision of the general meeting of shareholders. However, minority shareholders representing a certain portion of the share capital or the securities (such a minimum depending on the company form) may bring legal action against a director on behalf of the company (derivative suit), provided that they have not voted in favour of the discharge of the relevant directors.

In addition, third parties (including creditors) may bring legal action against the directors if they have suffered a loss resulting from, among other things, violation of a provision of the BCCA or the articles of association, provided that they are protected by such a provision. Such legal action may also be brought by individual shareholders (on their own behalf), provided that the loss suffered by them is different from the loss suffered by the company.

There are additional grounds for director liability, for instance in insolvency law, tax law, social law or environmental law.

Law stated - 10 July 2022

Care and prudence

Do the duties of directors include a care or prudence element?

Yes, directors are expected to perform their mandates in a manner that may be expected from a normally prudent and diligent director placed in the same circumstances. However, unless a liability claim is based on violation of the law or the articles of association, the principle of judicial deference shall apply (ie, directors shall only be held liable if they have exceeded the margins within which normally prudent and diligent directors, placed in the same circumstances, can reasonably disagree).

Law stated - 10 July 2022

Board member duties

To what extent do the duties of individual members of the board differ?

The BCCA requires that the board members (of listed companies) who sit on the audit and remuneration committees must have sufficient expertise in audit or remuneration policies, respectively. Apart from this, the law does not require any special skills to be a director. However, with respect to listed companies, the 2020 Belgian Code on Corporate Governance (the Corporate Governance Code) provides that the composition of the board should be determined so as to gather, among other things, sufficient expertise in the company's areas of activity. In practice, the boards of listed companies typically consist of directors with different backgrounds and types of experience. The assignment of the directors to advisory committees (eg, audit committees) may depend on their individual types of expertise. However, as a principle, the board must function as a collegial body, which means that its decisions must be the outcome of deliberations between all present or represented directors, and those decisions are considered to be taken by the board in its entirety. In addition, in terms of liability, courts typically do not take into account the personal characteristics of the directors (eg, age, education, experience) to determine whether they have acted negligently – in practice, all directors are held to the same standard.

Law stated - 10 July 2022

Delegation of board responsibilities

To what extent can the board delegate responsibilities to management, a board committee or board members, or other persons?

The board may delegate the daily management of the company to one or several persons (who may, but do not have to, be directors), called daily managers. Such delegation may cover both internal operations and external representation of the company toward third parties. Daily management entails all actions and decisions that do not go beyond the day-to-day needs of the company, as well as actions and decisions that do not require the intervention of the board of directors because of their minor importance or their urgency. In practice, daily management is often delegated to the

chief operating officer (CEO) of the company, who is assisted by other members of (executive) management who may or may not be appointed as daily managers themselves. Delegation of daily management is not exclusive (ie, the board does not lose its power to act itself, although it has no obligation to do so).

With respect to matters that fall outside daily management, the board may, in principle, not delegate its responsibilities, subject to two reservations.

First, the board may (and, in listed companies, must) establish advisory committees that advise the board on certain matters (eg, remunerations and audits). Such committees are not, strictly speaking, delegations, as the final decision still lies with the board and the directors remain responsible for the final decision, regardless of the committee's advice. The same principle applies where the board seeks the advice of other persons, or external advisors or consultants.

Second, the board may delegate the power to represent the company (outside of the daily management) to one or more directors, acting jointly or solely, depending on the relevant provisions of the articles of association. In addition, the board may grant power of attorney to third parties to represent the company for certain specified matters.

Law stated - 10 July 2022

Non-executive and independent directors

Is there a minimum number of 'non-executive' or 'independent' directors required by law, regulation or listing requirement? If so, what is the definition of 'non-executive' and 'independent' directors and how do their responsibilities differ from executive directors?

The BCCA does not require a minimum number of non-executive directors. However, the Corporate Governance Code recommends that a majority of directors be non-executive directors and most listed companies have adopted this rule in their internal charters. There is no legal definition of non-executive directors, but it is generally accepted that this refers to directors who do not have any management role or employment in the company or an affiliate company.

The BCCA does not set forth any minimum number of independent directors. However, the procedure for related-party transactions includes the establishment of a committee of at least three independent directors, which means that, in practice, most listed companies have at least three independent directors. This is also the recommendation of the Corporate Governance Code and most listed companies have adopted this rule (or a more stringent rule) in their internal charters.

Directors are deemed independent if they do not have a relationship with the company or with a major shareholder that would compromise their independence. In addition, independent directors must meet nine conditions for independence as set forth in the Corporate Governance Code, which include, among others:

- not being entrusted with daily management for at least one year prior to the appointment;
- not having served as a non-executive director for more than 12 years; and
- not holding more than 10 per cent of the shares or voting rights.

Law stated - 10 July 2022

Board size and composition

How is the size of the board determined? Are there minimum and maximum numbers of seats on the board? Who is authorised to make appointments to fill vacancies on the board or newly created directorships? Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?

The statutory minimum of directors depends on the company form. A company incorporated as a BV/SRL should have at least one director. A company incorporated as an NV/SA should have at least three directors, unless the company has not more than two shareholders or has opted for a sole director regime (in which case specific rules apply). There is no statutory maximum. However, the articles of association may increase the minimum and impose a maximum number of directors.

If a director resigns or passes away, the board may appoint by co-optation a successor if the minimum number of directors (as set out in the BCCA or the articles of association) or the gender quota applicable to listed companies (ie, at least one-third of the directors must be of the opposite gender to the other directors) is no longer met. Such an appointment must be confirmed by the next general meeting of shareholders.

In listed companies, at least one-third of the directors must be of the opposite gender to the other directors (subject to rounding). The BCCA does not set forth criteria that the individual directors must meet. However, some of the directors that serve on the audit and remuneration committees must have relevant expertise. Additional criteria for directors may also be included in the articles of association or result from regulatory requirements (eg, directors of financial institutions must be cleared by the regulator). In addition, certain persons may be prohibited from serving as a director of a company, either by law (including incompatibility rules), pursuant to a court decision (eg, in the context of a bankruptcy proceeding) or professional conduct rules, or as a result of a criminal conviction.

Appointments and resignations of directors must be published in the official Belgian gazette. In addition, most listed companies publish the composition of the board and committees on their websites.

Law stated - 10 July 2022

Board leadership

Is there any law, regulation, listing requirement or practice that requires the separation of the functions of board chair and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

The Corporate Governance Code provides that there should be a clear division of responsibilities between chair and CEO, and that these should not be the same individual. This rule is adopted in most of the listed companies' corporate governance charters. However, in a limited number of listed companies, the roles of chair and CEO are combined (which is permitted under the comply-or-explain principle).

Law stated - 10 July 2022

Board committees

What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?

The BCCA provides that the board may, under its own responsibility, establish one or more advisory committees. In listed companies, the BCCA requires the establishment of at least two advisory committees.

First, the BCCA requires an audit committee, whose mission consists of, broadly speaking, assisting the board in fulfilling its monitoring responsibilities in respect of control in the broadest sense, including risks. The audit committee must consist of non-executive directors only and must include at least one independent director. The members must have collective expertise in the field of the company's activities and at least one member must have sufficient expertise in the field of accounting and audit.

Second, the BCCA requires the board to establish a remuneration committee, which shall be in charge, broadly

speaking, of making proposals regarding the company's remuneration policies, as well as the remuneration of individual directors and managers, including variable remuneration and severance pay. The composition requirements of the remuneration committee are similar to those of the audit committee. Moreover, the members must have collective expertise in the field of remuneration policy.

In addition, the Corporate Governance Code provides that a nomination committee should be established, the mission of which is to, among other things, make recommendations to the board with regard to the appointment of board members and executives. The nomination committee and the remuneration committee may be combined, which is an option used by many listed companies.

It should be noted that the aforementioned committees have an advisory role only (ie, the final decision remains with the board and the directors remain responsible for the final decision, regardless of the committee's advice).

Law stated - 10 July 2022

Board meetings

Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?

There should at least be one board meeting per year (eg, for the preparation of the annual accounts). Most listed companies provide for a minimum number of board meetings (typically between four and six per year), as well as the possibility for additional meetings to be convened (eg, by the chair) as often as required in the company's interest. The Corporate Governance Code also provides that the non-executive board members should meet at least once per year in the absence of the CEO and the other executives.

Law stated - 10 July 2022

Board practices

Is disclosure of board practices required by law, regulation or listing requirement?

For listed companies, the Corporate Governance Code provides that the number of board and board committee meetings as well as the individual attendance record of board members should be disclosed in the corporate governance statement, which is a part of the annual report.

Law stated - 10 July 2022

Board and director evaluations

Is there any law, regulation, listing requirement or practice that requires evaluation of the board, its committees or individual directors? How regularly are such evaluations conducted and by whom? What do companies disclose in relation to such evaluations?

Pursuant to the Corporate Governance Code, at the end of each board member's term, the nomination committee should evaluate this board member's presence at the board or committee meetings as well as his or her commitment and constructive involvement in discussions and decision-making in accordance with a pre-established and transparent procedure. The board should act on the results of the performance evaluation. Where appropriate, this will involve proposing new board members for appointment, proposing not to renew existing board members or taking any measure deemed appropriate for the effective operation of the board.

Law stated - 10 July 2022

REMUNERATION

Remuneration of directors

How is remuneration of directors determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of directors, the length of directors' service contracts, loans to directors or other transactions or compensatory arrangements between the company and any director?

The remuneration of directors for the exercise of their mandate as director must be approved by the general meeting of shareholders. It is permitted for the general meeting of shareholders to approve an aggregate amount to be split among the directors by the board.

By contrast, the remuneration of (executive) directors for management functions and other services (eg, consultancy services) are decided by the board. In such cases, rules on conflicts of interest shall apply to the director whose remuneration is decided. Two exceptions, however, apply to listed companies:

- severance pay that exceeds 12 months of remuneration must be approved by the general meeting of shareholders and, if exceeds 18 months of remuneration, a unanimous recommendation of the remuneration committee is required; and
- variable remuneration can only be granted to non-executive directors under the condition precedent of approval of the general meeting of shareholders.

In addition, the Code on Companies and Associations (BCCA) requires listed companies to adopt a policy relating to the remuneration of directors and executive management. Such a policy must include provisions relating to, among other things:

- the criteria under which variable remuneration can be granted;
- the permitted duration of management agreements; and
- the procedure for granting remuneration and to avoid conflicts of interest in this respect.

The remuneration policy must be approved by the general meeting of shareholders upon its initial adoption and then upon every material change, and at least once every four years. The policy, the date and the results of the vote must be published on the company's website. Any decision by the board relating to the remuneration of (executive) directors for management functions and other services must comply with the remuneration policy. Deviations are permitted under certain stringent conditions.

Some additional restrictions apply with respect to variable remuneration in listed companies. First, independent directors may not be entitled to variable remuneration. Second, the BCCA requires that the criteria for receiving variable remuneration must be specified in the relevant agreement. Unless otherwise provided in the articles of association or specifically approved by the general meeting of shareholders, stock options can only be exercised after three years. In addition, at least one-quarter of the total variable remuneration must be based on objective criteria to be assessed over a period of at least two years and one-quarter of the total variable remuneration must be based on objective criteria to be assessed over a period of at least three years.

Law stated - 10 July 2022

Remuneration of senior management

How is the remuneration of the most senior management determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of senior managers, loans to senior managers or other transactions or compensatory arrangements between the company and senior managers?

The remuneration of members of management (who are not directors) is decided by the board. In listed companies, such decisions must comply with the remuneration policy. Deviations are permitted under certain stringent conditions.

Some additional restrictions apply to variable remuneration and severance pay in listed companies.

First, the BCCA requires that the criteria for receiving variable remuneration must be specified in the relevant agreement. Unless otherwise provided in the articles of association or specifically approved by the general meeting of shareholders, stock options can only be exercised after three years. In addition, at least one-quarter of the total variable remuneration must be based on objective criteria to be assessed over a period of at least two years and one-quarter of the total variable remuneration must be based on objective criteria to be assessed over a period of at least three years

Second, severance pay that exceeds 12 months of remuneration must be approved by the general meeting of shareholders and, if exceeds 18 months of remuneration, a unanimous recommendation of the remuneration committee is required.

Law stated - 10 July 2022

Say-on-pay

Do shareholders have an advisory or other vote regarding remuneration of directors and senior management? How frequently may they vote?

First, in listed companies, the general meeting of shareholders must approve the remuneration policy upon its initial adoption and then upon every material change and at least once every four years. This is a binding vote. The policy, the date and the results of the vote must be published on the company's website.

Second, individual remuneration decisions must be approved by the general meeting of shareholders if they relate to:

- remuneration granted to directors for their mandates as directors;
- severance pay exceeding 12 months of remuneration; and
- variable remuneration to non-executive directors.

Law stated - 10 July 2022

DIRECTOR PROTECTIONS

D&O liability insurance

Is directors' and officers' liability insurance permitted or common practice? Can the company pay the premiums?

It is common practice for Belgian companies to propose directors' and officers' (D&O) insurance for their directors and officers, and the premiums may be paid by the company.

Law stated - 10 July 2022

Indemnification of directors and officers

Are there any constraints on the company indemnifying directors and officers in respect of liabilities incurred in their professional capacity? If not, are such indemnities common?

Without prejudice to the possibility for companies to purchase D&O insurance for their directors and officers, companies may not indemnify directors and officers or hold them harmless in respect of liabilities incurred in the course of their mandates.

Law stated - 10 July 2022

Advancement of expenses to directors and officers

To what extent may companies advance expenses to directors and officers in connection with litigation or other proceedings against them or in which they will be a witness?

Companies may not advance expenses in connection with litigation or other proceedings against them. However, the company may purchase D&O insurance that would cover such expenses.

Law stated - 10 July 2022

Exculpation of directors and officers

To what extent may companies or shareholders preclude or limit the liability of directors and officers?

While companies may subscribe to D&O insurance for their directors and officers, they may not preclude or limit the liability of directors and officers beyond the statutory limitations, which apply by operation of law to all companies. That being said, (reference) shareholders may undertake to grant discharge and personally indemnify directors or officers or hold them harmless in respect of liabilities incurred in the course of their mandates.

Law stated - 10 July 2022

DISCLOSURE AND TRANSPARENCY

Corporate charter and by-laws

Are the corporate charter and by-laws of companies publicly available? If so, where?

Certain sections of the articles of association (eg, provisions relating to share capital and representation powers of the directors) must be published in the official Belgian gazette, failing which they cannot be opposed to third parties. Since 2019, consolidated articles of association are publicly available on a database managed by the national association of notaries. Note that, for the time being, the database only includes articles of association that have been amended since 1 May 2019 in front of a notary public. There are additional disclosure obligations for listed companies (eg, the articles of association must be published on the company's website).

Law stated - 10 July 2022

Company information

What information must companies publicly disclose? How often must disclosure be made?

Companies must submit their annual accounts (which include a balance sheet, a profit and loss statement, and explanatory notes) and, if applicable, consolidated accounts to the National Bank of Belgium, which publishes them on its website. Subject to certain conditions, the annual accounts must be accompanied by a certification thereof by the statutory auditor, as well as the management report, which includes, among other things, the corporate governance statement, the remuneration report and, if applicable, the environmental, social and governance report.

In addition, listed companies must publish yearly and half-yearly financial reports on their website and through the press. Such listed companies must also have a separate section on their website where the following information must be made freely available for consultation by the public:

- financial reports for the past five years;
- corporate governance charter;
- remuneration policy and results of the vote thereon;
- prospectuses (if any); and
- minutes of the meetings of the general meeting of shareholders, as well as any information and reports that must be provided to the shareholders (eg, reports relating to a capital increase).

Besides these periodic disclosures, certain disclosures must be made on a regular (eg, half-year results) or an ad hoc basis (eg, inside information, related party transactions and transparency notifications).

Law stated - 10 July 2022

HOT TOPICS

Shareholder-nominated directors

Do shareholders have the ability to nominate directors and have them included in shareholder meeting materials that are prepared and distributed at the company's expense?

Shareholders that represent 10 per cent of the share capital (or 3 per cent in listed companies) are entitled to add items to the agenda of the general meeting of shareholders. Those items may include proposals for the appointment or dismissal of directors.

In addition, shareholders may be granted nomination rights (ie, the right to designate candidates for one or more mandates). Nomination rights may be included in the articles of association or in a shareholders' agreement. Such rights are common in closed companies, although the articles of association of some listed companies also grant nomination rights to their larger shareholders.

Law stated - 10 July 2022

Shareholder engagement

Do companies engage with shareholders? If so, who typically participates in the company's engagement efforts and when does engagement typically occur?

The Code on Companies and Associations entitles each shareholder to raise questions during the general meetings of shareholders to the extent that they relate to the points of the agenda, and the directors have a duty to respond to those questions unless doing so would harm the company's interest or result in a violation of confidentiality undertakings.

In respect of listed companies, the 2020 Belgian Code on Corporate Governance provides that the board should ensure an effective dialogue with shareholders and potential shareholders through appropriate investor relation programmes to achieve a better understanding of their objectives and concerns. That being said, most listed companies in Belgium have a controlling shareholder, resulting in (at least) informal interaction between the controlling shareholders and the board (typically the executive directors). It should, however, be noted that directors have a duty of confidentiality, which prevents them from sharing non-public information about the company with the (controlling) shareholders. In cases where disclosure is legally required, all shareholders should be treated equally. Some scholars, however, argue that directors may consult with the (controlling) shareholders that they represent, subject to board approval and customary confidentiality undertakings by the relevant shareholders. In practice, (controlling) shareholders are sometimes appointed as directors themselves.

Law stated - 10 July 2022

Sustainability disclosure

Are companies required to provide disclosure with respect to corporate social responsibility matters?

The consolidated annual report of certain listed companies and other companies of general interest must include a statement regarding social and environmental matters, anti-bribery and corruption, and human rights. This statement must, among other things, provide a description of the policies and procedures that are applied in this respect, the results that have been achieved, and the main risk of the group's activities to those matters.

Law stated - 10 July 2022

CEO pay ratio disclosure

Are companies required to disclose the 'pay ratio' between the CEO's annual total compensation and the annual total compensation of other workers?

The remuneration report of listed companies must include a statement on the ratio between the highest remuneration of the management members and the lowest remuneration (in full-time equivalent) of the employees.

Law stated - 10 July 2022

Gender pay gap disclosure

Are companies required to disclose 'gender pay gap' information? If so, how is the gender pay gap measured?

No. However, in listed companies, the corporate governance statement must include a description of the efforts undertaken to ensure that at least one-third of the directors must be of the opposite gender to the other directors.

Law stated - 10 July 2022

UPDATE AND TRENDS

Recent developments

Identify any new developments in corporate governance over the past year. Identify any significant trends in the issues that have been the focus of shareholder interest or activism over the past year.

The Shareholders Rights Directive II was implemented into Belgian law in 2020. Following this implementation, the scope of the related-party transaction procedure (applicable to listed companies only) was substantially expanded. Apart from this, the legislator has created the possibility (but not the obligation) for the board (of listed and non-listed companies) to allow shareholders to attend the general meeting of shareholders through digital means, subject to certain conditions. As in many other jurisdictions, shareholder activism is on the rise in Belgium, through which environmental, social and governance objectives have become a new point of shareholder interest. Shareholder activism in Belgium has not led (and is not, in the near future, expected to lead to) any changes in legislation.

Law stated - 10 July 2022

Jurisdictions

Australia	Kalus Kenny Intelex
Belgium	White & Case LLP
Brazil	Loeser e Hadad Advogados
France	Aramis Law Firm
Germany	POELLATH
India	Chadha & Co
Italy	Ughi e Nunziante
Japan	Anderson Mōri & Tomotsune
Kenya	Robson Harris Advocates LLP
Luxembourg	Bonn & Schmitt
Malaysia	SKRINE
Malta	GVZH Advocates
Mexico	Chevez Ruiz Zamarripa
Nigeria	Streamsowers & Köhn
North Macedonia	Polenak Law Firm
South Korea	Lee & Ko
Switzerland	BianchiSchwald LLC
Thailand	Chandler MHM Limited
Turkey	Gün + Partners
USA	Sidley Austin LLP