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Memorandum Belgian Limited Liability Company



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Introduction

Belgium knows two main types of limited liability companies. Other company types exist but are not that often used in our industry.

A public limited liability company (NV/SA) is typically used for companies that engage in a lot of transactions and that are mainly set up from a financial point of view while a private limited liability company (BVBA/SPRL) is most of the times set up from a more personal point of view.

This memorandum provides you with an overview of the steps to be taken to incorporate a Belgian company, the main differences between an NV/SA and a BVBA/SPRL, the annual filing requirements and the services rendered by TMF Belgium.

Steps to be taken in respect of the incorporation

■ Opening of a blocked bank account with a Belgian bank

TMF has excellent contacts with most Belgian banks which can speed up the process of opening a bank account substantially.

Once the bank account has been opened, the funds representing the future capital of the company need to be deposited into this account.

Upon receipt of the funds, the bank will block the funds on the account and will issue a certificate to the notary that confirms receipt of the capital.

■ Preparation of a financial plan in Dutch or French

This financial plan needs to contain a detailed overview of the financial situation of the company for the first two years. If the company is declared bankrupt within the first three years after its incorporation, the financial plan will be provided by the notary to the court that will use the plan to evaluate whether the company's share capital was manifestly insufficient for the normal exercise of the planned activities. If this is indeed the case, the founding shareholders will be held personally liable for the company's debts.

TMF can provide a template of a financial plan that automatically translates from English to Dutch or French. In addition, if requested, TMF will perform a review of the financial plan.

■ Meeting in front of a Belgian notary

A Belgian company is incorporated by notary deed. In this respect proxies will need to be signed by the shareholders on the basis of which TMF will be able to represent the latter before the notary.

An overview of the information that needs to be provided to the notary can be found on pages 3 to 5 under the heading *'Information required in respect of the incorporation of the company'*.

Once the notary deed is signed, the notary will issue a certificate to the bank on the basis of which the funds in the blocked bank account will be released and transferred to the current account.

Once the notary deed is signed, the notary will file the deed with the Commercial Court and the company will have legal personality.

■ Registration with the Crossroads Bank for Enterprises (KBO/BCE)

In this respect three approaches can be taken:

1. A declaration on honour is signed by which the Belgian company declares that it is not a small or medium sized company.
2. A declaration of honour is signed by which one of the shareholders of the Belgian company (that owns at least 25% of the company's capital) declares that it is not a small or medium sized company.
3. One of the managers / directors of the Belgian company provides a diploma that evidences basic knowledge of company management. In case this is not a Belgian diploma, the Ministry of Education needs to provide a declaration of equivalence.

TMF can assist with the preparation of the declaration on honour or in case one of the TMF employees has been appointed as manager / director of the company, the registration can take place on the basis of the diploma of the relevant employee.

■ Depending on the activities of the Belgian company, different registrations such as a VAT registration might have to take place

TMF can assist with the necessary registrations and take care of VAT compliance as well.

■ Affiliation with the social security

Affiliation for social security is mandatory even if the company does not employ any personnel.

Affiliation is done automatically upon incorporation.

Information required in respect of the incorporation

■ LEGAL FORM:

Please specify if you would like to incorporate a public limited liability company (NV/SA) or a private limited liability company (BVBA/SPRL).

■ COMPANY NAME:

This name needs to be different from the name of any other existing Belgian company.
In addition, the selected name cannot lead to confusion with the names of other Belgian companies.

■ LANGUAGE OF THE COMPANY:

Please select Dutch or French.

■ REGISTERED OFFICE OF THE COMPANY:

If the company will be registered at TMF's premises, the address will be Havenlaan 86C, box 204, 1000 Brussels.

■ OBJECT OF THE COMPANY:

Please provide us with a clear description of the activities the Belgian company plans to undertake.

■ SHAREHOLDERS OF THE COMPANY:

An NV/SA needs at least two shareholders. A BVBA/SPRL only needs one shareholder. If a legal entity is appointed as the sole shareholder of a BVBA/SPRL, it will be jointly and severally liable for any and all debts and liabilities of the BVBA/SPRL.

Please enclose a copy of the passport of the shareholders or of the articles of association of the shareholder in case this is a legal entity, as well as a recent excerpt of the trade registry proving the legal representatives of the shareholder.

■ SHARE CAPITAL OF THE COMPANY:

A BVBA/SPRL needs a minimum share capital of € 18.550.
An NV/SA needs a minimum capital of € 61.500.

■ NUMBER OF SHARES AND ALLOCATION TO EACH SHAREHOLDER:

■ NOMINAL VALUE OF THE SHARES (IF ANY):

■ **FINANCIAL YEAR END:**

■ **CLOSING DATE OF THE FIRST FINANCIAL YEAR:**

■ **DATE OF THE ANNUAL GENERAL MEETING OF SHAREHOLDERS**

Needs to take place within 6 months after closing of the financial year.

■ **NAME, PERSONAL ADDRESS, DATE OF BIRTH OF THE DIRECTORS / MANAGERS:**

A BVBA/NV needs at least 1 manager.

An NV/SA needs at least 2 directors (3 in case there are more than 2 shareholders).

Please enclose a copy of their passport and evidence of their address of residence.

■ **PERIOD OF TIME FOR WHICH THE DIRECTORS / MANAGERS are appointed:**

For a BVBA/NV this is standard an indefinite period of time.

For an NV/SA is the maximum period six years.

■ **SIGNATURE AUTHORITY:**

Please mention if this will be singly or jointly (or other specific instructions)

■ **REMUNERATION OF THE DIRECTORS / MANAGERS:**

Please mention whether the directors will be remunerated.

■ **MANAGING DIRECTOR:**

For an NV/SA please mention if there will be a managing director and provide us with the name.

■ AUDITOR

Please mention if an auditor will be appointed and provide us with his name, address and fees.

It is mandatory to appoint an auditor for a Belgian company in case two of the following criteria are exceeded:

1. average personnel: 50
2. annual turnover before tax: € 7.300.000
3. Balance total: € 3.650.000

If the company employs more than 100 persons it will automatically need to appoint an auditor.

If a company is part of a group that has the obligation to publish consolidated accounts, these criteria need to be calculated on a consolidated basis.

For a company that is to be incorporated these criteria need to be estimated.

It is possible to incorporate the company without an auditor. If the company however estimates that the criteria will be exceeded, the auditor has to be appointed before the end of the first financial year.

■ BANK ACCOUNT

Please provide us with the name, address and account number.

If no bank account has been opened, please indicate if you would like TMF to assist you with the opening of the account.

■ FINANCIAL PLAN

This financial plan needs to contain a detailed overview of the financial situation of the company for the first two years. If the company is declared bankrupt within the first three years of its incorporation, the financial plan will be provided to the court that will use the plan to evaluate whether the company's share capital was manifestly insufficient for the normal exercise of the planned activities. If this is indeed the case, the founding shareholders will be held personally liable for the company's debts.

Main differences between an NV/SA and a BVBA/SPRL

	NV/SA	BVBA/SPRL
Minimum share capital	€ 61.500	€ 18.550
Minimum paid up capital	<p>Minimum € 61.500 and:</p> <ul style="list-style-type: none"> -25% fully paid up on each share in case of a contribution in cash (in case the capital is higher than € 61.500) -25% fully paid up on each share representing a contribution in kind in case the capital is higher than € 61.500 (and fully paid up within five years after the incorporation in case of a contribution in kind) 	<p>Minimum € 6.200 of which:</p> <ul style="list-style-type: none"> - fully paid up in case of a contribution in cash - fully paid up in case of a contribution in kind <p>(if the company only has one shareholder, the minimum capital to be paid up is € 12.400)</p>
Transfer of shares	<p>Free (subject to restrictions in the articles of association)</p> <p>Restrictions apply if the shares have not been fully paid up</p>	<p>Approval from the other shareholders is required prior to a transfer of shares (subject to restrictions in the articles of association)</p>
Number of shareholders	Minimum two shareholders	<p>Minimum one shareholder</p> <p>The limited liability no longer applies if:</p> <ul style="list-style-type: none"> - The sole shareholder is an individual person that is also the sole shareholder in another BVBA/SPRL - The sole shareholder is a company

Number of directors / managers	<p>In general minimum three directors</p> <p>If the company only has two shareholders, two directors is sufficient</p> <p>It is possible to delegate the daily management to a managing director</p> <p>Directors can be appointed for a maximum period of six years</p>	<p>Minimum one manager</p> <p>Can be appointed for an indefinite period of time</p>
Dividend distributions	<p>Can distribute:</p> <ul style="list-style-type: none"> - Annual dividend - Interim dividend - Intermediary dividend 	<p>Can distribute:</p> <ul style="list-style-type: none"> - Annual dividend - Intermediary dividend

Annual filing requirements

■ Annual meeting of shareholders and board of directors / managers:

The annual general meeting (AGM) of shareholders is held on a specified date once every year, as fixed in the articles of association.

Key issues discussed at the AGM include approval of the annual report of the board of directors / managers, approval of the annual accounts, approval of any special reports, approval of the report of the auditor (if any), discharge of the directors/managers/auditor, appropriation of the results of the financial year.

The AGM is preceded by a meeting of the board of directors/managers.

■ Financial statements:

After their approval by the company's shareholders, the financial statements of Belgian companies should be filed with the National Bank of Belgium. In some cases it is mandatory to publish quarterly financial statements. The annual financial statements need to be filed with the National Bank of Belgium at the latest one month after their approval by the AGM and maximum seven months after closing of the financial year.

■ **Social balance sheet / other filings:**

Depending on the activities of the branch a social balance sheet or other returns such as VAT-returns or withholding tax returns need to be prepared.

■ **Corporate income tax return:**

On the basis of the financial statements that have been filed with the National Bank of Belgium, a corporate income tax return needs to be prepared.

Fee schedule

TMF Belgium charges a fixed fee of € 2.900 (exclusive of VAT) for the following services in respect of the incorporation:

- Opening of the bank account and obtain the bank certificate;
- Provision of a template for the financial plan and review of the financial plan;
- Liaising with the notary and arrange for proxies to be signed;
- Representation of the shareholders before the notary and arrange for the release of the funds;
- Registration with the Crossroads Bank for Enterprises;

Our fee does not include third party fees such as the invoice of the notary and the invoice of the Crossroads Bank for Enterprises. In addition our fee does not include VAT registration or any translations (except for an English translation of the proxies for the incorporation). If required a separate fee proposal can be prepared in this respect.

In addition to the incorporation of the company, TMF can assist with the following on-going services:

- Preparation and filing of the financial statements with the National Bank of Belgium;
- Preparation of specific reporting in Belgian GAAP, US GAAP or IFRS in our own accounting system or on the basis of a pre-defined format or in a system requested by the client;
- Preparation and filing of the corporate income tax return, specific annexes and commission fee forms;
- Assistance with the filing of the social balance sheet;
- VAT-registration and full VAT compliance (VAT-returns, annual listing etc.);
- Assistance with all kinds of corporate changes such as replacements of directors, capital movements etc.;
- Payroll services;

- Provision of a registered office;
- Directorship services.

Our fees for the above mentioned services will vary depending on the complexity of the work and will be charged on a time spent basis or on the basis of a fixed fee to be determined upfront.

Contact

For more information relating to the above services and our fees, please contact Ann Lavrysen (ann.lavrysen@tmf-group.com) or Mathieu Loquet (mathieu.loquet@tmf-group.com).

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