

## ESRA

### FUNCTIONING OF AN AISBL UNDER BELGIAN LAW PARTICULARLY IN LIGHT OF THE ENTRY IN TO FORCE OF THE BELGIAN COMPANIES AND ASSOCIATIONS CODE

#### I. FUNCTIONING OF AN AISBL UNDER BELGIAN LAW

##### I1 Legal Framework

1. Non-profit organizations are currently governed by the new “CAC”, which was enacted on 23 March 2019.
2. Non-profit organizations used to be governed by the act of 1921. On 23 March 2019, a government bill introducing a new Belgian Companies and Associations Code (“CAC”) was passed by Parliament. It repeals the 1921 act and, in a modernized version, merges it into the CAC.
3. Under the CAC, distributions by an association are prohibited:

*Art. 1:2. An association is formed by an agreement between two or more persons, called members. It pursues a disinterested aim in the exercise of one or more specific activities which constitute its object. It may not, directly, or indirectly, grant or procure any pecuniary advantage to its founders, members, directors, or any other person, except for the disinterested purpose defined in its statutes. Any transaction contrary to this prohibition shall be null and void.*

4. Article 10:1 of the CAC defines the AISBL as an association (within the meaning of Article 1:2 CAC) whose legal personality is recognized by the King and which pursues a purpose of international utility. Its members, in this capacity, bear no responsibility for the commitments undertaken by the association.
5. As long as it refrains from any distribution, the AISBL can now, in its capacity as a business, engage in any industrial or commercial activity aimed at fulfilling its international utility purpose. However, caution must be exercised as the absence of limits on commercial and/or industrial activities that AISBLs can now undertake may have an impact on the income tax regime of the association: it could become liable to corporate income tax instead of the “tax on legal persons”.

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6. For the rest, the legal framework of the AISBL has not undergone significant changes. It continues to be characterized by the considerable flexibility granted to founders and members in drafting the articles and organizing the rules governing the association's operations.

## I2 Compliance: Adapting The Articles of the Association (“AoA”) to the Belgian Companies and Associations Code

7. Modifications of the AoA can as a rule be made by private agreement.
8. However, the modification of the following elements must be carried out in authentic form (in front of a notary) :
  - The attributions, the convocation method, and the decision-making process of the general assembly, as well as the conditions under which its resolutions are communicated to the members;
  - The conditions for amending the articles of association;
  - The conditions for dissolution and liquidation, and the disinterested purpose to which the AISBL must allocate its assets in the event of dissolution.
9. After an amendment, “coordinated articles” are to be drawn up and filed.
10. We can handle the preparation of the necessary documents – including s the case may be instructing a notary.

## I3 Registered office

11. The registered office must be located in Belgium<sup>1</sup>, but additional offices can be opened elsewhere in Belgium and/or abroad and which does not mean that an association cannot act abroad.
12. The articles of association (“AoA”) must be drafted in French, Dutch, or German, depending on the location of the non-profit association’s registered office.
13. The board of directors has the power to change the registered office of the association in Belgium, provided that such change does not require the modification of the language of the articles of association (see also art. 2 of the AoA).

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<sup>1</sup> Art. 2:4 CAC.

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## 14 Legal bodies

14. There are two main bodies in a non-profit association.

### 4.1 General meeting

15. The General meeting consists of the (effective) members (including the founding members).
16. It is normally presided by the president of the board of directors.
17. The articles to determine the method of convocation and the decision-making process of the general assembly, as well as the conditions under which its resolutions are communicated to the members (Art. 2:10, § 2, 6°, CAC). The CAC does not contain mandatory provisions regarding the decision-making process at the general assembly of an AISBL. In the absence of statutory provisions, decisions are made by a majority of members, except for the amendment of the articles, which (again, in case of statutory silence) requires unanimity.
18. The articles of the AISBL must specify the powers and responsibilities of the general assembly.
19. Article 10:5 of the CAC now states that a decision of the general assembly is required for:
  - The appointment and termination of the auditor's functions and the determination of their remuneration;
  - The approval of the annual accounts;
  - All other cases where the law or the articles require it.
20. The new regime for AISBLs Among the other powers granted to the general assembly by the CAC are:
  - Approval of the budget established by the administrative body (Art. 10:8 CAC);
  - Determination of the conditions, including financial ones, under which the mandate of a member of the administrative body is granted and exercised, as well as the conditions under which this mandate is terminated (Art. 2:50 CAC). However, the CAC does not expressly provide that the general assembly is competent for the appointment of administrators. If this is the will of the founding members, it must be mentioned in the articles.

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21. Other powers can, of course, be expressly entrusted to the general assembly by the articles.
22. The articles of the AISBL must include the conditions for amending the articles (Art. 2:10, § 2, 8°, CAC). Usually, this power is statutorily entrusted to the general assembly, but there is nothing preventing the allocation of this competence to another body.
23. In the event of silence in the articles regarding the conditions for amending the articles, 'the articles can only be modified unanimously by all effective members'.

## 4.2 The board of directors

24. Management of the association is vested with the board of directors, appointed by the general meeting.
25. The articles of the AISBL must specify the powers/responsibilities of the board of directors (Art. 2:10, § 2, 7°, a), CAC).
26. The CAC assigns two main responsibilities to the board of directors, *viz.* establishing:
  - the budget (Art. 10:8 CAC); and the
  - annual accounts (Art. 3:47, § 1, CAC).

The approval of both the budget and the annual accounts falls under the purview of the general assembly.

27. The articles of the AISBL must specify the method of convocation and the decision-making process of the board of directors, as well as the mode of appointment, revocation, and cessation of functions of the administrators. This includes indicating their minimum number, the duration of their mandate, the extent of their powers, and the modalities of their exercise (Art. 2:10, § 2, 7°, CAC).
28. If compensated, the persons in charge of the daily management are liable to the social security regime of employees.

## 15 Register of the members, formalities, and annual accounts

29. The new Code maintains the principle of establishing and maintaining, for each AISBL, a file kept at the registry of the business court within the jurisdiction where the association has its registered office (Art. 2:7, § 1, para. 1, CAC). It

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also provides for the creation of a publicly accessible database, which will include both the initial version of the articles derived from the constitutive act and their coordinated version after each amendment (Art. 2:7, § 2, CAC). Alongside information about individuals with the power to manage and represent the AISBL, the availability of the text of the articles in force on the day of consultation will constitute the most relevant source of information for third parties. This initiative aligns with the legislator's intent to distinguish the constitutive act, on one hand, and the articles, on the other. Moreover, this will allow interested third parties to consult the up-to-date version of the articles without revealing the personal data of the founders or signatories to the act.

30. The documents to be filed in the AISBL's file are listed in Article 2:10 of the CAC. Regarding the filing deadline, AISBLs must now deposit their deeds at the registry within thirty days.
  - The deed of incorporation;
  - Articles of association and re-stated amended articles, if applicable, and every change made to the articles;
  - Documentation of appointment or termination of directors;
  - Documents relating to statutory auditors and proxyholders;
  - Any decision to dissolve and liquidate the association;
  - Yearly accounts.
31. As for publication in the Annexes of the Belgian Official Gazette, the old regime allowed a thirty-day period for AISBLs. Due to advances in information technology, it has been decided to reduce this period to just ten days, subject to damages against officials to whom the omission or delay could be attributed (Art. 2:13 CAC).
32. We can take care of these publication formalities for you.
33. Each year, the board of directors must prepare the annual accounts for the previous financial year and the budget for the next year and submit these documents for the general meeting's approval.

## 16 UBO Register

34. Please also note that formalities relating to beneficial owners of non-profit associations, international non-profit associations and foundations have been

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introduced by the law of September 18, 2017<sup>2</sup> on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and limitations to the use of cash (“UBO register”).

35. We can of course provide you with further advice and assistance in this regard.
36. The following persons are considered as beneficial owners of AISBLs and foundations:
  - a. Directors;
  - b. Persons entitled to represent the AISBL;
  - c. Persons in charge of the daily management of the AISBL or the foundation;
  - d. The associations or foundation’s founders;
  - e. The natural persons or, when those persons have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
  - f. Any other natural person exercising ultimate control over the AISBL or the foundation by other means.

## 17 Accounting

37. The Board of Directors must submit the annual financial statements and a budget proposal for the following year to the Annual General Meeting for approval. The financials must be presented no later than six months after the end of the accounting period.
38. The documents form and contents as well as publication formalities depend on the size of the association.
39. **There are two accounting methods: simple accounting (destined to smaller associations which may also choose the following more complex method) and double entry accounting (which larger associations must use).** Small and micro AISBLs which elect to conform to the double-entry bookkeeping system may prepare and file their annual financials according to an abbreviated scheme determined by royal decree<sup>3</sup>.

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<sup>2</sup> Law of September 18, 2017, concerning the prevention of money laundering and terrorist financing, and the limitation of the use of cash, Belgian Official Gazette, October 6, 2017.

<sup>3</sup> CAC, art. 3:47, § 3 and § 4.

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- **Simple accounting:**

40. **Eligibility:** only AISBLs that do not exceed more than one of the following criteria may opt for simple accounting:
- Average annual number of workers: 5 full-time employees or equivalent;
  - Total receipts, excluding non-recurrent ones and value-added tax: 334.500 euros;
  - Total assets: 1.337.000 euros;
  - Total liabilities: 1.337.000 euros.

41. **AISBLs which exceed more than one of these criteria will therefore be required to comply with the principles of double-entry bookkeeping.**

42. In summary, the AISBL's size and financial activity determine whether it can opt for the simple accounting method. It may always decide to opt for double-entry bookkeeping. Note that if a small AISBL selects the double-entry bookkeeping even though it meets the criteria for simple bookkeeping, it has the option of reassessing and modifying its choice each year.

- **Formalities for filing financials**

43. The financial statements must be filed with the clerk of the commercial court of the area where the AISBL has its registered office.

ESRA's financials must be filed in the "Registry of legal entities" of the commercial court located Boulevard de la deuxième Armée britannique 148, 1190 Forest.

44. The financials only need to be published with the National Bank of Belgium if the AISBL exceeds the criteria for simple accounting, i.e. point # 40.

45. Accordingly, even when the small AISBL voluntarily selects the double-entry bookkeeping, it is not required to file its annual financials with the National Bank of Belgium.

46. However, opting for double-entry bookkeeping implies that the annual financials must nevertheless be drawn up according to the micro or abbreviated scheme, even if they are not filed with the National Bank of Belgium.

47. When annual financials are required to be filed with the National Bank of Belgium, both management and auditor's reports, if ready, will be attached.

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48. I can recommend "BST", a firm of chartered accountants located at avenue Louise 240, 1050 Brussels [<https://www.bst.net>].
49. **Three categories of AISBL according to their size**
- **Large AISBL [art. 1:28, § 1, CAC]**
    - Definition: Organizations that, for the accounting year, exceed more than one of the following criteria:
      - Average annual number of workers: 50 full-time equivalents;
      - Annual turnover, excluding value-added tax: 9.000.000 euros;
      - Total balance sheet: 4.500.000 euros.
 An auditor must check its financials and legal compliance yearly.
  - **Micro AISBL [art. 1:29 CAC]:**
    - Additional qualification: A small AISBL can be further classified as a micro-AISBL, provided that, as of the balance sheet date of the last closed fiscal year, not more than one of the following criteria is exceeded:
      - Average annual number of workers: 10 full-time equivalents;
      - Annual turnover, excluding value-added tax: 700.000 euros;
      - Total balance sheet: 350.000 euros.
  - **Small AISBL [art. 1:28 CAC]:**
    - Definition : If the AISBL exceeds more than one criterion defining the micro AISBL but exceeds none or only one of the criteria mentioned for the large AISBL, the organization is then classified as a small AISBL.
50. Note that exceeding or no longer exceeding more than one of the specified criteria only has an impact if this situation occurs for two consecutive fiscal years. In such cases, the consequences (change of qualification) will apply from the fiscal year following the fiscal year during which, for the second time, more than one of the criteria has been exceeded or is no longer exceeded.

On an ongoing basis, I can assist you with maintaining legal compliance and dealing with any legal issue that may arise.

I am at your disposal to discuss any of the above and, if necessary, provide further information.

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Yours sincerely,

January 11, 2024,

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