

New circular on publication formalities

Anne Tilleux

Commercial companies (and civil companies that take the form of a commercial company) must fulfil on a daily basis various publication formalities with respect to certain corporate changes (e.g., the resignation and replacement of a director, a merger, etc.). A good summary of these formalities can be found in a circular recently issued by the Federal Public Service for Justice. The circular also contains guidelines for the clerks of the commercial courts on ensuring compliance with these formalities following certain amendments to the Company Code, including the introduction of the Crossroads Enterprise Bank (*Banque Carrefour des Entreprises/Kruispuntbank van Ondernemingen*) (“BCE-KBO”). The circular was published in the *Belgian State Gazette (Moniteur belge/Belgisch Staatsblad)* on 28 December 2007.

Instructions for the commercial court registries

The circular contains instructions on how the clerks of court should review documents filed with them. The four following principles must be taken into account:

- (i) the filing of the document must be required by law;
- (ii) the clerk must verify whether the appropriate forms have been used and if these forms have been duly completed;
- (iii) payment must be made as prescribed by law;
- (iv) all information provided to register a company or update or remove its registration with the BCE/KBO must be correctly indicated on the appropriate forms.

Publication formalities

The circular contains a table of all the formalities that must be fulfilled for each type of company mentioned, in each case distinguishing between three different kinds of filings:

- (i) The filing of instruments and documents or extracts therefrom which must be included in the company’s file and published in full or by extract in the annexes to the *Belgian State Gazette*. These are typically the formalities that must be observed in order to appoint a director.
- (ii) The filing of instruments and documents, together with other instruments and documents which must be published in the annexes to the *Belgian State Gazette*, for which only a notice of the filing need be published.

This type of filing is typically required when a company amends its articles of association. The officially recorded instrument amending the articles and the consolidated version of the articles must be kept in the company’s file. The amendment itself must be published in the annexes to the *Belgian State Gazette*, along with a notice of the filing of the consolidated articles (the mention “filed at the same time”, followed by a list of the documents filed, appears at the bottom of the publication).

- (iii) The filing of documents for which only a notice of the filing must be published in the annexes to the *Belgian State Gazette*.

A typical example of this type of filing is a merger proposal, which must be kept in the company’s file with the commercial court but need not be published in full or by extract. Only a mention of the fact that the company has filed such a document with the clerk of court must be published.

Additional information

The circular contains information on the electronic filing of documents and forms, even though such filing is currently only allowed for the notarised instruments of incorporation of Belgian companies. It also contains practical information on the following:

- (i) how foreign companies must accomplish certain formalities prescribed by the Belgian Company Code;
- (ii) how to transfer a file upon winding up;
- (iii) how certain publications can be effected directly in the *Belgian State Gazette* (e.g. to convene a general meeting);
- (iv) how to obtain copies of certain documents;
- (v) how the clerks of court must maintain company files, etc.

Publication forms

The circular furthermore contains a table summarising the forms companies must use to publish resolutions in the annexes to the *Belgian State Gazette* and to update their registrations with the BCE/KBO (e.g., in the event of a change in the composition of the board of directors or the transfer of the company's registered office). This table can also be found on the website of the Federal Public Service for Justice (<http://www.ejustice.just.fgov.be/>).

Scope

The circular covers publication formalities for the following types of companies: (i) limited company (*société anonyme/ naamloze vennootschap*), (ii) private limited-liability company (*société privée à responsabilité limitée/ besloten vennootschap met beperkte aansprakelijkheid*), (iii) partnership limited by shares (*société en commandite par actions/ commanditaire vennootschap op aandelen*), (iv) limited partnership (*société en commandite simple/ gewone commanditaire vennootschap*), (v) European company (*Societas Europaea*) (*Société européenne/Europese vennootschap*), (vi) general partnership (*société en nom collectif/ vennootschap onder firma*), (vii) [European] economic interest grouping (*groupement [européen] d'intérêt économique/ [europese] economische samenwerkingsverband*), (viii) cooperative company (*société coopérative/ coöperatieve vennootschap*) and (ix) agricultural society (*société agricole/landbouwvennootschap*). It also applies to civil companies that take the form of a commercial company.

Please note that a similar circular relating to the publication formalities for [international] non-profit organisations (*association internationale sans but lucratif/ buitenlandse vereniging zonder winstoogmerk*) and foundations (*fondation/stichting Vereniging zonder winstoogmerk*) was issued on 2 June 2005.

Corporate housekeeping

On a daily basis, NautaDutilh's Corporate Housekeeping Team ensures that our clients:

- (i) meet the requirements prescribed by the Belgian Company Code and their corporate by-laws; and
- (ii) fulfil the requirements of corporate law in a timely manner, including all publication formalities set forth in the circular.

Should you have any questions regarding the circular or NautaDutilh's corporate housekeeping and monitoring services, please contact Anne Tilleux at + 32 2 566 81 64 or anne.tilleux@nautadutilh.com.