

Impact of the annulment of article 2:59, 3° of the Code for Companies and Associations by the Constitutional Court

Article 2:59 of the Belgian Code for Companies and Associations (“BCCA”) provides that the administrative body of a legal entity (a company, a non-for-profit organization, a foundation...) has the power to issue internal regulations, subject to prior statutory authorization.

However, the legislator had set some limits as to the content of such internal regulations by providing that internal regulations could not contain the following:

- 1° Any provisions contrary to mandatory legal provisions or to the Articles of Associations;
- 2° Any provisions relating to matters for which the BCCA requires a provision in the Articles of Associations;
- 3° Any provisions affecting the rights of shareholders/members, the power of the bodies or the organization and the functioning of the General Assembly.

For cooperative companies however, article 6:69,§2 BCCA provides that internal regulations can contain additional provisions regarding the rights of the shareholders and the functioning of the company, including those matters as referred to under article 2:59, 2° and 3°, provided that the internal regulations are approved by a decision taking into account the same special presence - and majority requirements as the ones that are needed to amend the Articles of Associations. Consequently, the Articles of Association of a cooperative company can derogate from these limitations.

The Constitutional Court has now annulled article 2:59, 3° BCCA, the reason being that difference in treatment between cooperative companies and other entities governed by the BCCA (public/private limited liability company, non-for-profit organizations, foundations...) was not justified (**Court Decision of 15 October n°135/2020**).

As a result of this annulment, internal regulations may now contain provisions *"affecting the rights of shareholders or members, the powers of the bodies or the organization and mode of operation of the general meeting"*. However, the Constitutional Court also stated that this is only allowed on condition that such internal regulations are approved by a decision taking into account the same special presence - and majority requirements as the ones that are needed to amend the Articles of Associations.

Although at first sight, this might not be of a big impact for companies, it will certainly have an impact on other legal entities, such as (international) not for profit organizations, which often choose to include certain aspects pertaining to the rights of their members and the functioning of certain bodies, such as their Board, working groups and task forces into internal rules and which had been limited to do so because of article 2:59, 3° BCCA. In doing so they will have to comply with the presence- and majority requirements for the amendment of the Articles of Association.

For more information, do not hesitate to reach out to us.



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