

Legal aspects of starting a company

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I. How to start a company/commercial activity from a legal perspective

Different options

- As a physical person
 - One (or more) person(s) business
 - Factual association
- As a legal entity
 - Legal entity – not a company
 - Company

One (or more) person(s) business

- Most easy way to start-up a business
- No “capital” requirements, no reporting obligations
- Limited administrative obligations and a simplified bookkeeping
- But unlimited liability ! (no distinction between personal belongings and the assets of the business)

Administrative formalities

- One or more persons business
 - Open an account in the name of the business
 - Request a number to the trade register (Crossroad Bank of Enterprises)
 - Request the activation of the VAT number
 - Join a social fund for self-employed persons (sociale kas voor zelfstandigen)
 - Join a Health Care Service (ziekenfonds)

Factual association

- Non profit sector
- Contract between 2 or more persons in which they agree to cooperate for a non profit purpose
- But: no separate legal personality, no separate assets, liabilities and rights -> unlimited liability
- E.g. sport club, student group, carnival group

Administrative formalities

- No legal requirements
- Advisable to agree on way of cooperation and to enter into a good insurance

Legal entity

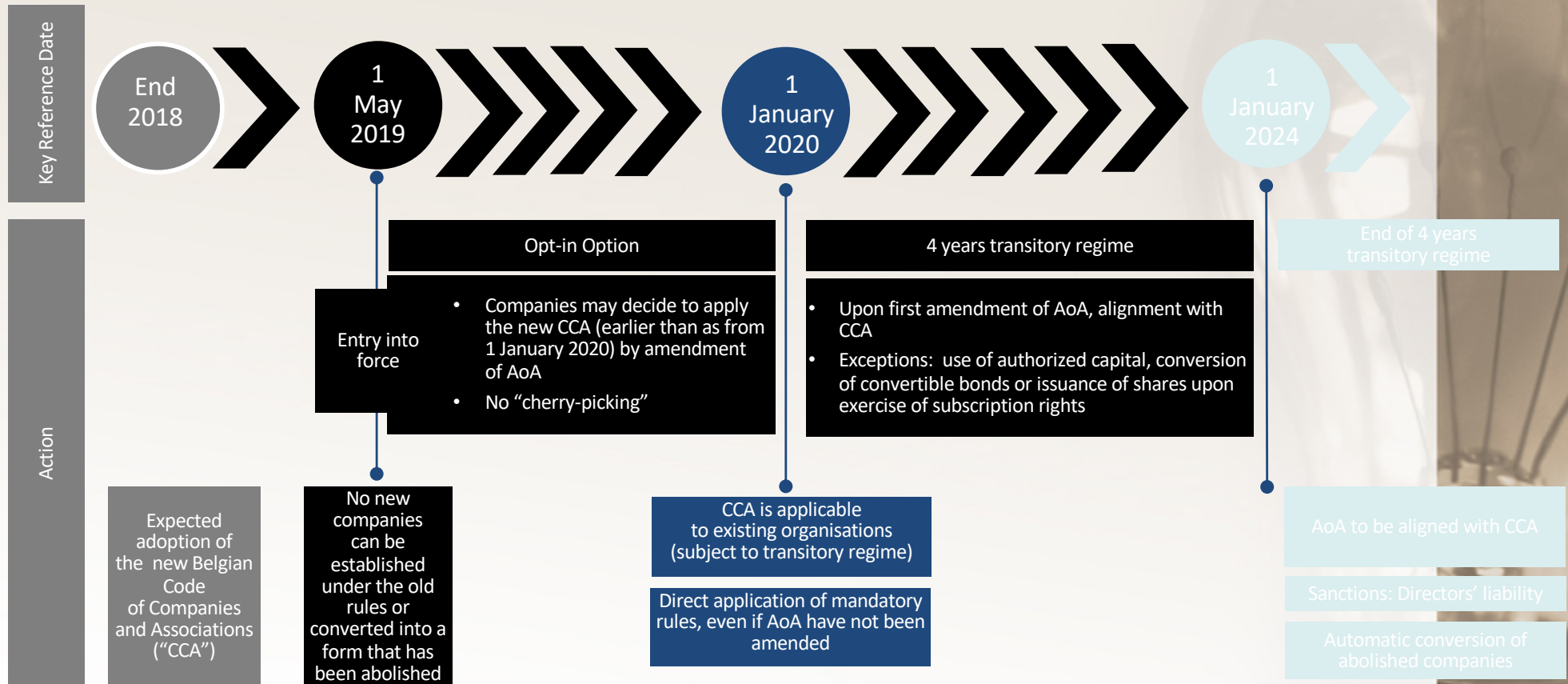
- Distinction between profit and non profit legal entities:
 - Non profit
 - E.g. non profit associations, foundation
 - Non profit objective and commercial activities should not be the main purpose
 - Profit
 - Companies
 - with limited liability
 - with unlimited liability

- Advantage of a legal entity:
 - Possibility to limit your liability
 - Separate rights and liabilities (= legal personality)
- Disadvantage of a legal entity:
 - Administrative more burdensome
 - Yearly reporting requirements
 - Bookkeeping

Regime applicable to limited liability companies

- New Company Code since 1 May 2019
- Important changes compared to former regime

Transition period



Which type of company to choose?

- Decisions to take:
 - Limited or unlimited liability
 - One director, two directors or a board of directors
 - Capital or not
 - Special agreements between shareholders or with managers
 - Shares freely transferable

Focus on NV/SA and BV/SRL

- BV/SRL = closed company (former BVBA/SPRL)
 - follows the Dutch example
 - for small undertakings
 - no required capital
 - shares can be freely transferred, if allowed by the articles
- NV/SA
 - for large undertakings
 - capital: EUR 61,500
- CV/SC for cooperative purposes

BV/SRL

- No capital requirement
 - shares are separate from capital
 - contribution no longer determines the rights attached to shares
 - sufficient initial assets in light of the intended activity
 - taking into account other financing sources
 - justification in the financial plan
 - much more detailed financial plan
 - sufficient initial assets
 - minimum information stipulated in the law
 - opening balance sheet and income statements for 2 years
 - name of an external expert that provides assistance to be included in financial plan

BV/SRL

- Contribution of cash
 - to a special account, no obligation to pay-up at incorporation
- Contribution in kind
 - requires a report by the company auditor or statutory auditor (on the value) and a report by the founders/board
- Contribution of services/industry (sweat equity) is allowed
 - audit report required
 - death, declaration of incapacity or other unusual cause that renders performance impossible, the shares lapse
 - temporary incapacity of more than 3 months, suspension of the rights attached to the shares

BV/SRL

- Closed or open (transferability of the shares)
 - old rules are supplementary (non-mandatory) law -> closed
 - articles can provide otherwise -> open
- Freedom of securities
 - rights may be freely determined; but one share with one vote
 - in the absence of other rules, a share entitles its holder to one vote
 - Multiple voting rights
 - convertible bonds and subscription rights

NV/SA

- Incorporation
 - financial plan (~ BV/SRL)
- Transfer of shares
 - In principle freely transferable

NV/SA

- Strict capital rules (protection of creditors) – min. EUR 61,500
- Distinction between subscribed and paid up capital
 - Subscribed capital = amount mentioned in the Articles of Association for which there is a payment undertaking of the shareholders
 - Paid-up capital = amount of the subscribed capital effectively paid to the company (min 1/4th and issue premium and at least EUR 61,500)

NV/SA

- Contribution in cash
- Contribution in kind
- No contribution of services/industry possible

NV/SA

- Voting rights
 - voting rights proportionate to capital will become non-mandatory (waivable) law -> multiple voting rights are possible
 - limited in listed companies
 - double voting rights
 - only for loyal shareholders

NV/SA

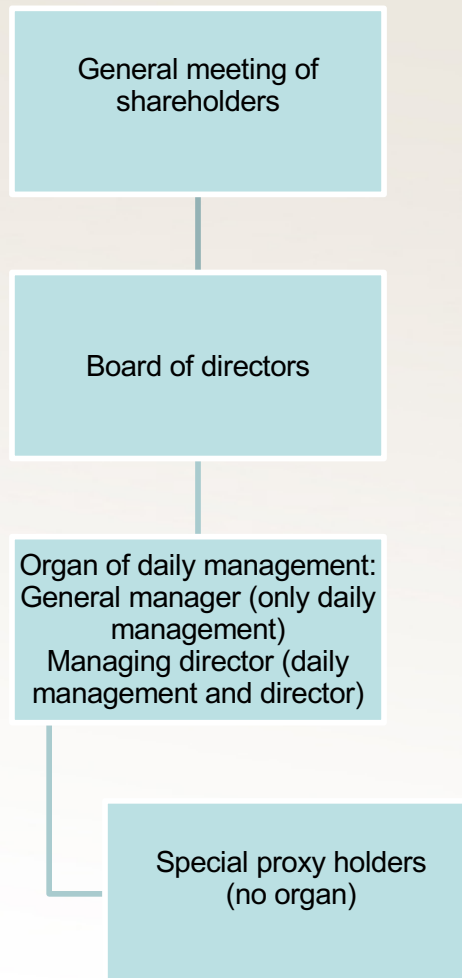
- Freedom of securities
 - rights may be freely determined; but one share with one vote
 - in the absence of other rules, a share entitles its holder to one vote
 - profit shares
 - convertible bonds and subscription rights

- Incorporation of a BV/SRL or NV/SA
 - Draft financial plan
 - Draft articles of association
 - Wire amount of minimum capital to a blocked account -> bank certificate (if applicable for BV/SRL)
 - Bank certificate, financial plan, identification of the incorporators and the directors to be sent to the notary
 - Notary draws up notary deed
 - Go to notary to enact the notary deed or give a POA
 - Notary registers the notary deed, files a copy at the clerk's office of the commercial courts and takes care of the publication in the Annexes to the Belgian State Gazette
 - Notary provides the registration number in the Crossroad Bank of Enterprises (not VATnumber)

- Request a registration number to the trade register (Crossroad Bank of Enterprises)
- Request the activation of the VAT number
- Join a social fund for self-employed persons
- Join a health care service
- Register at the UBO register

II. How does a company work

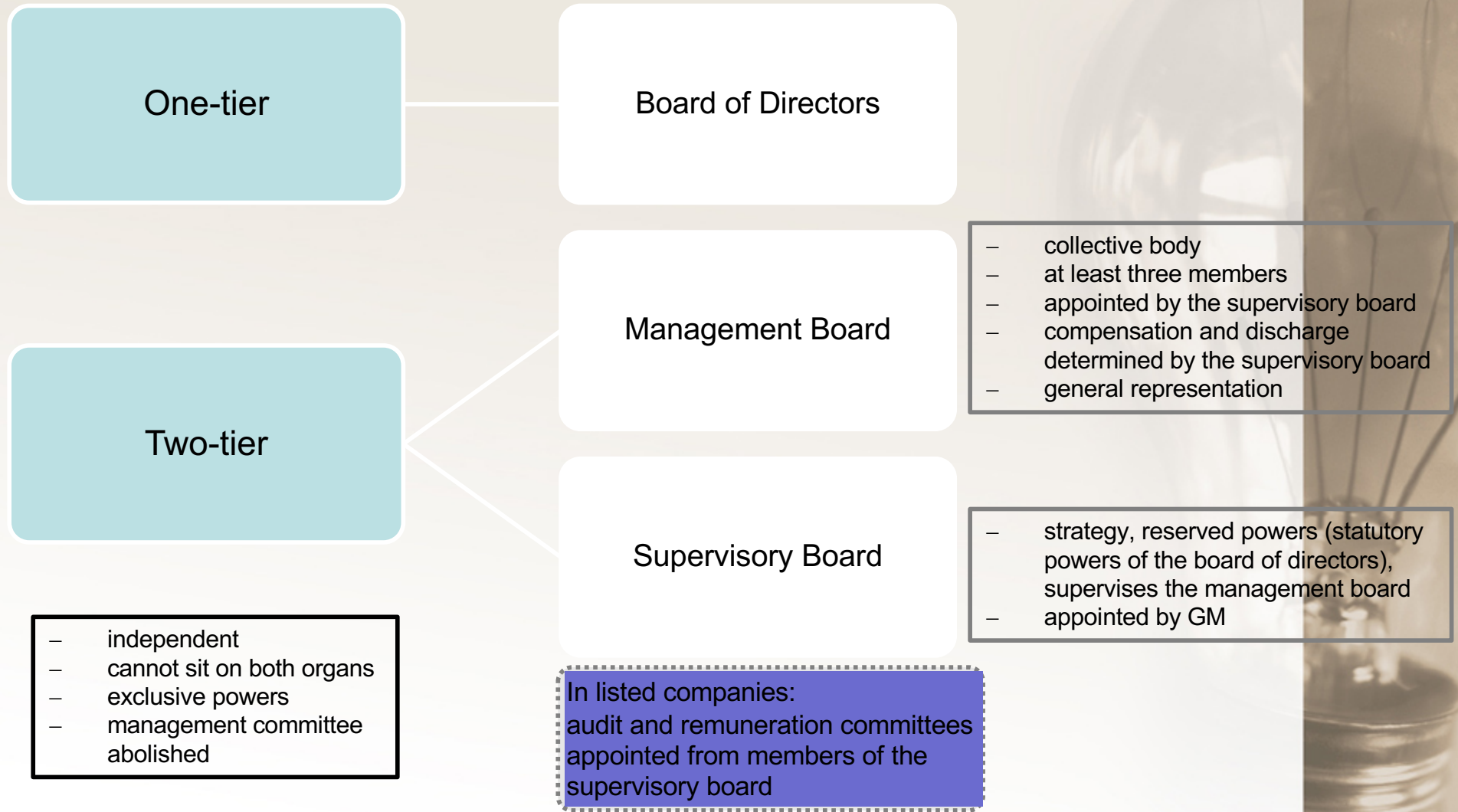
BV/SRL



BV/SRL

- Board of directors
 - one or more directors, whether or not in a board, also for daily management
 - remuneration and removal determined by GM (at all times, unless otherwise determined or decided)
 - can be appointed in the articles
 - removal requires amendment to the articles
 - permanent representative of a legal entity is a natural person
- Person in charge of daily management

NV/SA



NV/SA

- Management by a sole director
 - a successor to the director may be appointed in the articles
 - the articles may stipulate that the director has joint and several unlimited liability for the company's obligations
 - the articles may stipulate that the director must agree with each amendment to the articles
 - in listed companies (or when the law requires collective management) the sole director must be an NV/SA with a collective board
- Daily management described in accordance with the literature

Powers

- Shareholders' meeting: only those powers expressly reserved for the shareholders meeting in the Company Code or Articles of Association – reserved powers
- Board of directors or (board of) managers: all powers not reserved for other organs – residual power

Decision power vs the power to represent the company

- A company should act via its organs (but can only act via its organs)
- Acts are imputed to the company (as if the organ does not exist)
- The person that is competent to take the decision is not necessarily the person who can represent the company for the execution of a decision
- Decision power: see previous slides
- Power to represent the company: determined by the articles of association, if not by the majority of the members of the board of directors

Shareholders' meeting (NV & BV)

- 3 types
 - Annual shareholders' meeting
 - Yearly at the date mentioned in the Articles of Association
 - Approval of the annual accounts, discharge of the directors/managers
 - Extraordinary shareholders' meeting
 - A shareholders' meeting in front of the notary (e.g. amendment of articles of association, capital increase/decrease, merger, split)
 - Special shareholders' meeting
 - Rest category (e.g. appointment and dismissal of directors, auditor if not at the annual shareholders' meeting)

BV/SRL

- Dividend distribution
 - net asset value test: no distribution if the net asset value would become negative
 - net asset value = total assets, (usually) with the exclusion of capitalised costs, less reserves and debts
 - determined on the basis of the last approved financial statements or a more recent statement of assets and liabilities
 - in the case of unavailable reserves, net assets cannot fall below this amount
 - liquidity test: guarantee by the board that debts can be paid as and when they become due and payable “according to reasonably foreseeable developments” for a period of 12 months from the distribution
 - board must provide a justification in its report
 - auditor examines the accounting and financial data in the report and states in the audit report that it has done so
 - no publication

NV/SA

- Distributable profits
 - Net asset value is determined based on the last approved financial statements
 - net asset value = total assets, (usually) excluding capitalized costs, less reserves and debts
 - Power of the GM
 - at all times
 - carried-forward profits or reserves

NV/SA and BV/SRL

- Interim dividends (board)
 - no longer any time limits
 - thus each quarter is possible
 - from profits from the current financial year, but also from profits from the preceding financial year until approval of the financial statements
 - increased or decreased by carried-forward profits or losses
 - but no impairment of statutory or other reserves
 - board must determine, based on the audited statement of assets and liabilities, that the profits are sufficient
 - the auditor's verification shall be appended to the audit report

Liability

- Shareholders: in principle not
- Directors/managers: legal grounds
 - Bad management
 - Non compliance with the company code or the Articles of Association
 - Additional liability in the event of bankruptcy, alarmbell procedure, non filing of the annual accounts, ...
- Members of the management board: idem as directors
- Organ of daily management: legal grounds

Yearly administrative formalities

- Bookkeeping (double-entry)
- Closing of the financial year -> draft annual accounts
- Drawn up by the board of directors/managers (together with the annual report)
- Check by the statutory auditor, if any
- Shareholders' meeting should be convened within 6 months following closing of the financial year (in principle at the date provided in the Articles of Association) to approve the annual accounts
- Filing of the annual accounts with the National Bank (within 30 days following approval by the shareholders' meeting)

- Board of directors/managers should meet at least 1x per year (draft annual accounts)
- Shareholders' meeting should meet at least 1x year (approval annual accounts)
- Of the meetings of the board of directors and shareholders' meetings minutes should be kept

End of the company

- Fixed duration in the Articles of Association or achievement of the corporate purpose
- Merger or split
- Voluntary liquidation
- Judicial liquidation
- Bankruptcy

Additional information

www.kreskado.be

- The [Kreskado platform](http://www.kreskado.be) is a starting point for growth companies. Kreskado is the Esperanto word for growth which perfectly encapsulates the platform's aim: to provide assistance and advice to young, innovative companies and accompany them as they grow. The platform is a means of providing growth companies with information about legal and other aspects. At present, NautaDutilh is cooperating with an IT service provider and accountancy firm; in the near future, however, the idea is to extend the scope of cooperation to other professional service providers active in marketing, sales, financing, etc.
- Users of the platform can access questions and answers about the services offered. For legal aspects, we have created, with the help of selected clients (CEOs of growth companies, investors and business consultants), an extensive Q&A in which we provide answers to more than 30 frequently asked questions. In addition, a number of legal documents can be downloaded for free (<http://www.kreskado.be/standard-documents>).

For more information on the new reform, visit [our secure portal](#) dedicated to the new company code.

New Belgian Company Code Portal

Welcome!

Our team of specialised lawyers will keep you informed of everything you need to know about the upcoming reform through presentations, articles and regular newsletters. As the idea is to create an interactive community, the portal is also a place where you can share your comments and ask questions in the [Q&A module](#) or contact a member of our team (see below).

[amendments](#) [artificial intelligence](#) [asbl](#) [association](#)
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[d'intérêts](#) [constitution](#) [contribution](#) [convertible securities](#)
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News



New Code of Companies & Associations published
By Dirk Van Gerven on 05 Apr 2019 14:52



NautaDutilh in Trends on the abolishment of the capital requirement for the SRL/BV when dividends are paid
By Nicolas de Crombrughe on 14 Mar 2019 17:02



Road Map with key phases and deadlines
By Dirk Van Gerven on 13 Mar 2019 14:48



Bill on the New Code of Companies & Associations Finally Approved
By Dirk Van Gerven on 01 Mar 2019 08:45



New Belgian Company Code: Issue 15: Governance in the SRL/BV
By Philippine de Wolf on 03 Dec 2018 12:17

Seminars

Our experts have prepared three seminars on selected aspects of the new Company Code.

- Changes to be made to the **articles of association** by 1 January 2020, with a general overview of the required changes and a discussion of certain clauses.
- The impact of the new Code of Companies and Associations on **Belgian listed companies**
- The impact of the new Code of Companies and Associations on **financing transactions**

Invitations will be sent shortly. If you do not receive one, do not hesitate to contact us.

!! Final published text !!



Codes des sociétés et associations_Wetboek vennootschappen en verenigingen.pdf

Articles



Algemene bespreking Wetboek van vennootschappen en verenigingen.pdf

Preparatory Works



026 - Corrigendum - 54K3119026.pdf



025 - Rapport complémentaire - Aanvullend verslag - 54K3119025.pdf



024 - Texte adopté en séance plénière - Tekst aangenomen in plenaire vergadering - 54K3119024.pdf



023 - Amendementen - Amendements - 54K31190-023.pdf



021 - Amendementen - Amendements - 54K31190-021.pdf

Road Map