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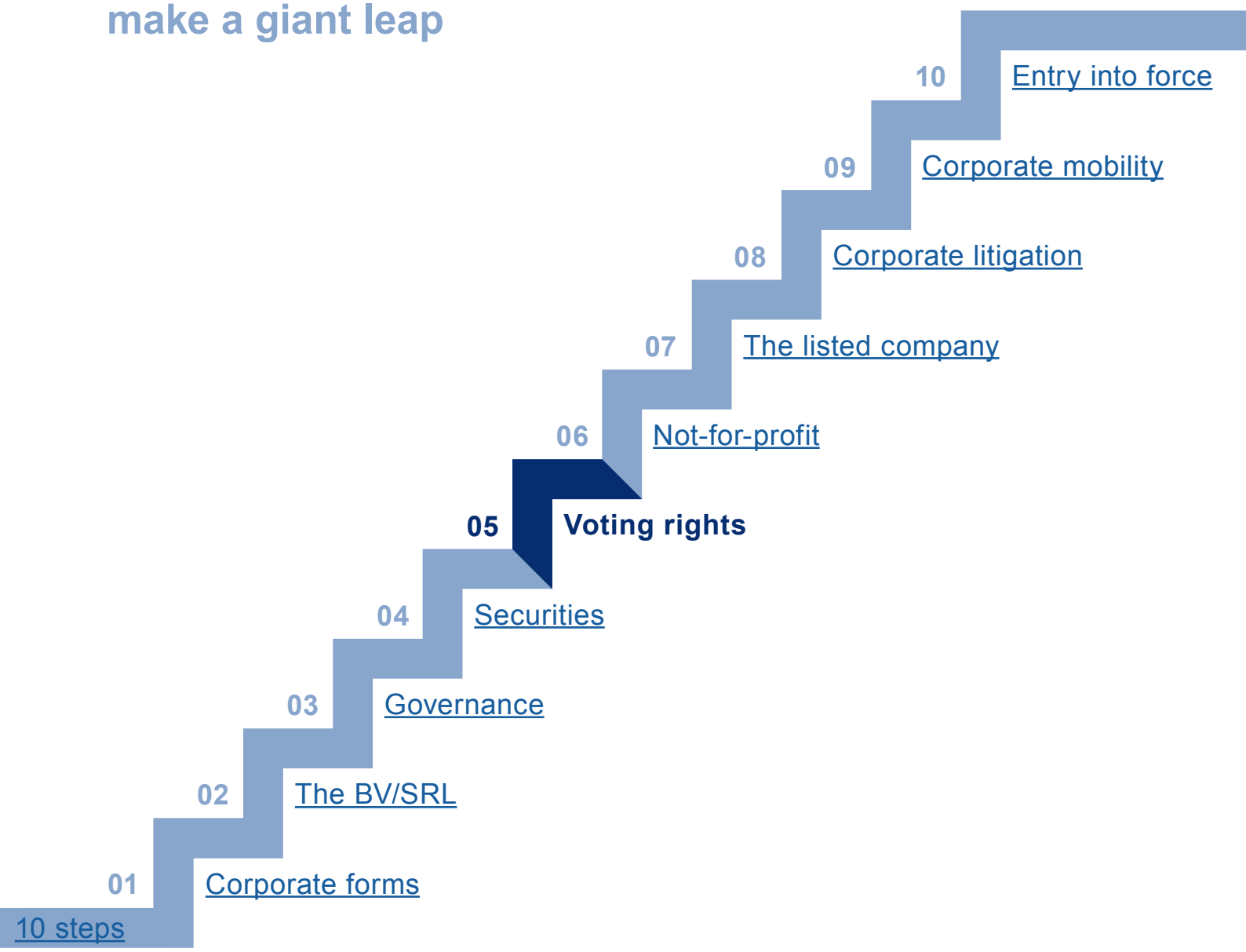
NEW CODE OF COMPANIES AND ASSOCIATIONS

VOTING RIGHTS

05

10 STEPS

make a giant leap



05

VOTING RIGHTS

"FROM SHARES WITHOUT VOTING RIGHTS TO MULTIPLE VOTING RIGHTS"

The BV/SRL and the NV/SA are being given much more freedom to opt for different share voting arrangements as they see fit.

Multiple voting rights are now possible in the NV/SA and the BV/SRL

The Code lays down a completely new regime for voting rights in public and private limited liability companies (the NV/SA and the BV/SRL respectively). ***The mandatory rule of "one share, one vote" has been abandoned***. Henceforth, companies will enjoy a considerable degree of freedom with respect to voting rights for shareholders. The only absolute rule is that a company must issue at least one share with voting rights. In listed companies, however, the freedom is more limited: only double "loyalty" voting rights are possible there.

In the NV/SA, by default, shares confer voting rights in proportion to the fraction of the share capital they represent. However, from now on, the articles of association can deviate from this rule, which makes it possible to create multiple voting rights.

Given the abolition of the legal capital in the BV/SRL, the default rule is somewhat different here: each share in the BV/SRL confers one vote, regardless of the value of the contribution (the BV/SRL will now be able to issue shares with unequal value) or the cash flow rights attached to the share. But, again, the articles of association can specify different conditions.

Multiple voting rights in non-listed companies

In companies whose shares (or profit-sharing certificates or certificates relating to these shares) are not admitted to trading on a regulated market (*e.g.* Euronext Brussels) or an MTF designated by the King (*e.g.* Euronext Access or Euronext Growth), it will be **possible to provide for multiple voting rights in the articles of association**. There is a great deal of contractual freedom here. The new Code deliberately chooses not to limit the number of votes that can be attached to one share. And when it comes to the specific forms that multiple voting rights can take, the **possibilities are endless**: for example, it will be possible to grant certain shares multiple voting rights in respect of certain key decisions only or only if certain conditions are met.

In the NV/SA, **profit-sharing certificates** can now also be granted multiple voting rights. However, the voting power of profit-sharing certificates as a class remains subject to the same restrictions as before. In the BV/SRL, voting rights can only be granted to shares.

At the same time, the Code loosens the rules regarding the issuing of **shares without voting rights**. The articles of association can freely determine the rights of shares without voting rights. It is therefore no longer mandatory to attribute a preferential dividend right to shares without voting rights. Moreover, the number of situations in which shares without voting rights may, by operation of law, vote in any case is substantially reduced: this will now only remain the case in a vote on changes to the rights of classes of securities, the conversion of a company into a different legal form, a cross-border merger in which the company is dissolved, and a cross-border transfer of the registered office.

A lot of freedom: from shares without voting rights to multiple voting rights.

Multiple voting rights can be introduced either by issuing new shares with multiple voting rights or by granting multiple voting rights to existing shares. In the first case (an issue of new shares), a board report will have to be drawn up, justifying the issue price and describing the impact of the issue on the patrimonial rights and voting rights of the existing shareholders. This type of board report will henceforth be required for any issue of new shares. In the second case, for obvious reasons, the procedure for issuing new securities does not need to be followed.

Creation of multiple voting rights will normally result in the creation of different classes of shares. The issuing of new shares with multiple voting rights will therefore commonly require compliance with the rules regarding class changes (in which case a vote per class will be held). These rules will normally also have to be complied with in connection with any subsequent share issues, as well as in the event of subsequent modification or abolition of the multiple voting rights. Companies need to be aware of this when contemplating the introduction of multiple voting rights.

The unbundling of voting rights from the value of a shareholder contribution will have an impact throughout the entirety of our company law. When applying rules – whether legal, statutory or contractual – which provide for ceilings, majorities or thresholds, it is crucial to determine whether these are formulated in terms of voting rights, number of shares or capital share. Shareholder agreements should also be carefully reviewed in this respect.

Loyalty voting rights in listed companies

In companies whose shares, profit-sharing certificates or certificates relating to these shares are admitted to trading on a regulated market or an MTF designated by the King, shares with multiple voting rights will, as a rule, still be prohibited. However, the articles of association can provide for a limited exception whereby the shareholders acquire double voting rights (so-called “loyalty voting rights”) for **shares that have been fully paid up and which have been registered in their name in the share register for an uninterrupted period of at least two years**. This loyalty voting right does not lead to the creation of different classes of shares, because it is inherently linked to the capacity of the shareholder. All shares which meet these conditions confer double voting rights. In listed companies, profit-sharing certificates cannot confer multiple voting rights or loyalty voting rights.

The introduction of loyalty voting rights requires amendment of the articles of association. However, a 2/3 majority is sufficient for this (whereas a 3/4 majority is ordinarily required for amendments to the articles of association).

> Double voting rights can be introduced for loyal shareholders of listed companies.

For the calculation of the two-year loyalty period, the holding period in respect of the shares (in registered form) which has already elapsed at the time of the introduction of loyalty voting rights is also taken into account. The creation of loyalty voting rights in the articles of association may therefore have immediate effect. Moreover, so-called “bonus shares” that are issued in connection with a capital increase by conversion of reserves will immediately confer double voting rights to the extent that the existing shares enjoy double voting rights.

The loyalty voting rights lapse if the registered shareholder converts its shares into dematerialised shares or transfers the ownership of its shares, whether or not the transfer is for a consideration and even in the case of a transfer under universal title. There are, however, a number of exceptions to the latter rule: transfers to heirs or transfers as a consequence of succession or liquidation of matrimonial property do not result in the loss of loyalty voting rights, and neither do transfers between companies controlled by the same shareholders and transfers in the context of certification and decertification. In order to prevent evasion of the loyalty condition, indirect transfers of the shares concerned are also targeted: thus, a change in the control of a company which is a shareholder will also result in the loss of double voting rights, unless the control changes in favour of the spouse or one or more heirs of the controlling shareholder. The scope of this provision is very broad and will make things more complex from an administrative point of view.

Together with the introduction of the Code, a number of amendments have been made to the act of 1 April 2007 on public takeover bids. First, the loyalty voting rights are neutralised for the purposes of calculation of the threshold for a mandatory public takeover bid (30% of the securities with voting rights in listed companies) and a public squeeze-out bid (95% of the securities with voting rights). Furthermore, a bidder who holds at least 2/3 of the securities with voting rights upon completion of a voluntary public takeover bid may convene an extraordinary general shareholder meeting in order to abolish the loyalty voting rights. At that meeting, all shares will confer one vote, whether or not certain shareholders satisfy the loyalty conditions. Hence, in this case we can speak of a legal breakthrough with regard to the loyalty voting rights.

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