

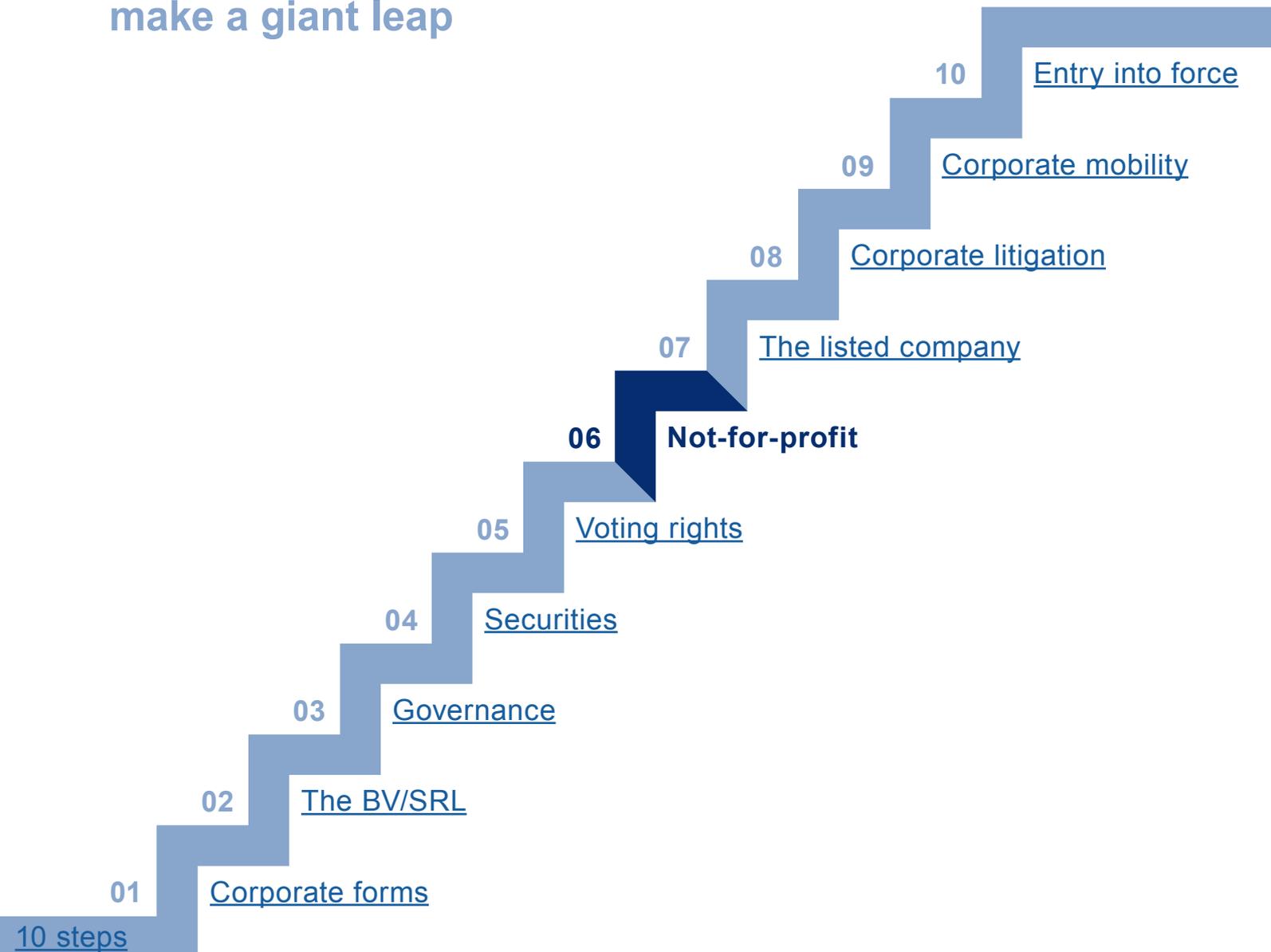
**NEW CODE OF COMPANIES
AND ASSOCIATIONS**

NOT-FOR-PROFIT

06

10 STEPS

make a giant leap



NOT-FOR-PROFIT & SOCIAL PROFIT

“ONE SINGLE FRAMEWORK FOR COMPANIES AND ASSOCIATIONS”

The Code regroups company law and association law within one single legal framework, while at the same time filling a series of gaps. The new criterion for distinguishing between companies and associations is remarkable: is the distribution of profits intended or is it forbidden?

Integration and harmonisation

Belgian company law and association law have existed side by side over the years, each being governed by its own legal framework. Whereas companies were subject to the Companies Code, the legal framework for associations has been the Act of 27 June 1921 on non-profit associations, international associations and foundations. Since reforms in company law have not always been implemented in a consistent manner in association law (and *vice versa*), there were a number of discrepancies and gaps in association law compared to company law, and these were difficult to explain.

The Code changes this and **integrates company law and association law in one single code**. This integration has been realised in such a way that the specific nature of association law is respected wherever necessary. The threefold division between not-for-profit associations, international associations and foundations is maintained. For each of these entities, the Code includes a separate book containing provisions specifically applicable to the relevant type of entity.

Association law has been completely integrated in the new Code.

The structural integration is accompanied by **substantive harmonisation between company law and association law**.

On a wide range of subjects (including incorporation, disclosure formalities, name, governance, dissolution and liquidation), the Code provides for **strongly unified or parallel regulation for companies and associations with legal personality**. In this context, a number of gaps and discrepancies which existed in association law have been eliminated, such as the absence of a conflict of interest rule for directors and the absence of an obligation to take minutes for the management body.

With regard to the governance of not-for-profit associations, the rule that a not-for-profit association should always have fewer directors than it has members, which was particularly inconvenient for umbrella organisations, has been abolished. **The requirement that the board must always have at least three directors is maintained**. However, for an association with only two members, the appointment of two directors will be sufficient, although the association is not prevented from appointing more than two directors. Furthermore, directors of associations are now subject to **a mandatory statutory conflict of interests regime**, the possibility of co-optation of directors in an association is created, and directors of associations are subject to substantially the same liability regime as directors of companies. In addition, the possibility of a written decision-making process for the board is introduced. Minutes are required to be kept for meetings of the board. Liability claims against directors and liquidators of the association are subject to the same **special statute of limitations of five years** which has been in existence for a long time for directors and liquidators of companies.

There are also innovations with regard to the **general meeting**. For example, it will no longer be possible for the general meeting to deliberate and decide on items that were not on the agenda. Directors will be obliged to answer questions from the members of the association at the general meeting.

The Code offers many **new possibilities for the restructuring of associations**. Given its importance, this matter is dealt with in a separate book of the Code. Henceforth, it will be possible to merge and demerge associations in accordance with specific and detailed procedures, largely based on existing procedures for companies with legal personality. The conversion of an association into a different form of association will also be possible under certain conditions. In this respect, the option of cross-border conversion is particularly innovative.

In principle, the board of a not-for-profit association must have at least three directors, but the number of directors may exceed the number of members of the association.

Restructuring of associations is now explicitly regulated in the Code.

The new criterion for distinguishing between associations and companies: prohibition of profit distribution

The Code contains a new definition of associations. An association is an agreement between two or more persons, whereby the **association pursues an altruistic purpose and in this framework has one or more well-defined activities as its object**. The association may not, directly or indirectly, distribute or provide material benefits to its founders, members, directors or any other person, except in the framework of the altruistic purpose determined by the articles of association.

Two members are sufficient under the provisions of the Code. The condition that at least three members are required to establish an association has been abolished.

The most important new feature, however, is **the abolition of the prohibition against an association conducting commercial or industrial activities**. This prohibition had given rise, in practice and in case law, to countless discussions and application issues. Under the new regime, an association will be permitted to conduct unlimited commercial or industrial activities, or more general economic activities, provided that these activities serve the altruistic purpose of the association.

The prohibition of profit distribution is maintained, but it is being strengthened. Henceforth, associations are prohibited from – directly or indirectly – distributing or providing material benefits to members, directors or third parties, unless these serve and fall within the altruistic purpose of the association as determined in the association's articles of association. Any transaction contrary to this prohibition is void.

Since associations can now conduct the same activities as companies, it now becomes **possible to convert an association into a company and vice versa**. The possibility of converting an association into a company is, however, limited to conversion into a company with a social purpose, in order to avoid the capital of the association being distributed following its conversion to a company.

The distinction between a company and an association is from now on essentially based on the distribution of benefits or the prohibition thereof.

Companies with a social purpose survive, but only in the form of a cooperative company

The company with a social purpose, which was introduced into Belgian company law in 1995, was never an independent company form, but was a special variant of the existing company forms. Until now, a company with a social purpose could take the form of an existing company form with legal personality, such as a limited liability company (BVBA/SPRL or NV/SA) or a cooperative company (CVBA/SCRL).

The Code preserves the basic principle of the company with a social purpose, but only allows this special arrangement for companies that take the form of a cooperative company. Specifically, the Code creates the **possibility for a cooperative company (CV/SC) to apply for recognition as a company with a social purpose**. This possibility is open to CVs/SCs which are recognised as such (if they also receive recognition as a company with a social purpose, they are referred to as a *recognised cooperative company* (erkende CVSO/SCES agréée)) as well as to non-recognised cooperative companies (which, if they receive recognition as a company with a social purpose, are referred to as a *cooperative company recognised as a social company* (CV erkend als SO/SC agréée comme ES)).



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