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CORPORATE NEWSLETTER

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AN END TO ANONIMITY FOR SIGNIFICANT SHAREHOLDINGS IN PRIVATE COMPANIES?

With the creation of a new Article 515*bis* in the Belgian Companies Code ("BCC"), the amended Belgian anti-money laundering law has introduced an obligation for owners of securities carrying voting rights to report their 25 % (or above) participation, in companies that have issued dematerialized or bearer shares.

Background

The new rules are part of a larger Bill of 18 January 2010 amending the existing anti-money laundering rules. Although the use of bearer securities will be abolished in Belgium by the end of 2013, the legislator apparently wanted to accelerate a ban on anonymity generally offered by bearer shares. As the holders of dematerialized shares can also benefit of an anonymity towards the issuing company, the new rules also apply to shareholders in companies with dematerialized shares.

In light of the incumbent ban on bearer shares, the new Article 515*bis* BCC will thus as from 2014 remain of particular relevance to companies which have (also) issued dematerialized shares.

Scope

The new obligation **only applies to holders of securities carrying voting rights, in unlisted limited liability companies ("NV" / "SA") and unlisted limited partnerships ("Comm. VA" / "SCA")**, **which have issued bearer or dematerialized shares**. As such, the holders of registered shares in these companies would also be subject to the notification obligation, although this has little added value. In case of an acquisition of shares, Article 515*bis* BCC henceforth requires that a purchaser makes this notification to the issuing company **within five business** days after obtaining or exceeding the **25% threshold**, further to an acquisition of securities. Conversely, the same obligation applies to a seller when his participation falls below the 25% threshold following a transfer of securities.

Level of anonimity?

What level of anonymity will be henceforth offered to owners with a significant participation of bearer and dematerialized securities?
It is certain that there will be **no longer an absolute anonymity** for holders of bearer or dematerialized securities owning at least 25%, as they have to disclose their identity to the company.

Will this notification to the company be kept confidential, or is the company under an obligation to further disclose its shareholding to the general public?
We take the view that there is **no legal basis**, in the frame of Article 515*bis* BCC, **to require a company to disclose the notifications it has received** (or the structure of its shareholding). However, there is no certainty on the issue. Listed companies must include the notifications received in the frame of the rules on disclosures of significant

shareholdings in the explanatory notes to the annual accounts. Some argue that the notifications under the new Article 515*bis* BCC must be disclosed in the same way, as this new article is inspired on the transparency rules for listed companies. We do not agree with this interpretation.

Transition

The **current owners of at least 25%** of securities carrying voting rights in a NV/SA or Comm.VA/SCA, are also affected by the new rules. They only have a transitory period of maximum six months to make a notification to the issuing company on their shareholding. This **transitory period** has started on 5 February 2010 and **will expire on 4 August 2010**.

The transitory arrangement differs in two other respects from the new rules under Article 515*bis* BCC:

- First, the transitory regime applies to owners that **directly or indirectly** have a 25% participation. Article 515*bis* BCC does not apply to an indirect ownership of 25%;
- Second, the transitory regime rather enigmatically determines that the notification to the company must be made "***in function of the risk***". It is not clear what kind of risk the legislator had in mind, and what the impact of a high or low risk would be on the notification duty.

Since 5 February 2010, the new rules apply to persons involved in transactions as a result of which their participation has exceeded or fallen below the 25% threshold, obliging them to make a notification within 5 business days.

Sanctions

The sanctions are **similar to those for breaches of the legislation on the disclosure of major holdings in listed companies**. Upon request of the company or the other shareholders, the president of the commercial court can partially or fully suspend the exercise of rights of the securities concerned for maximum one year. He can also postpone an already convened general assembly. Finally, he can order the sale of the shares to a third party.

In addition, the board of directors of the issuing company has the possibility to postpone a general assembly for up to three weeks upon receipt of the 25% notification in a 20 days period prior to the assembly, or of it is aware that such notification should have been made, or still must be made (amended Article 534 BCC).

More importantly, a shareholder will only be able to participate in a voting at a general shareholders' meeting with the voting rights that were notified at least 20 days in advance (amended Article 545 BCC). We believe that it is not necessary to repeat such notification for each following shareholders' meeting.