

DIGITALISATION OF COMPANY LAW

In this newsletter, HVK Stevens would like to provide you an overview of (recent) developments on the Digitalisation of company law in the Netherlands and Europe.

COMPANY LAW DIGITALISATION - BACKGROUND

On 13 March 2019, the European Parliament and Council concluded an agreement for a new directive that sets rules to facilitate mergers, divisions or transfers of registered offices within the single market.

The aim of the Directive 2019/2121 – which was adopted on 27 November 2019 – is:

- ‘to reinstate a predictable framework, legal certainty and create common standards of procedures for assessing cross-border operations in the EU’. This directive is part of the ‘Company Law package’ adopted by the European Commission on 28 April 2018, which also contains a proposal for a directive on the use of digital tools and processes in company law;
- to ensure that these cross-border operations cannot be misused for fraudulent or abusive purposes (Anti money laundering/AML).

DEVELOPMENTS IN THE NETHERLANDS

In April 2022 the proposal for implementation of the Directive 2019/2121, including an amendment of among others Book 2 of the Dutch Civil Code was sent to the House of Representatives (de Tweede Kamer).

Due to a breach in the proposal between the possibility of the incorporation in English and the impossibility of an amendment of the articles of association in English, the proposal has been amended, to include the possibility to execute the amendment of the articles of association in English.

The implementation of the amendment was expected on 1 January 2023, but it has been postponed to July 2023.

DEVELOPMENTS AT EUROPEAN LEVEL

As mentioned in the first paragraph, 1st bullet, another Directive was adopted. This Directive together with the Commission Implementing Regulation (EU) 2020/2244, set out rules on the system of interconnection of business registers (‘BRIS’). It allows EU-wide electronic access via e-Justice to company information and documents stored in Member States business registers. BRIS

also enables business registers to exchange between themselves notifications on cross-border operations and on branches. etc.

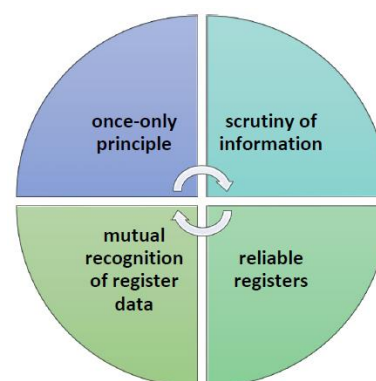
On 14 November last, Willem Gerbers was – as representative of the Dutch KNB (Koninklijke Notariële Beroepsorganisatie) – invited to share his knowledge and vision about the need, obstacles and the challenges the notaries in Europe are faced with.

His conclusion was that steps forward are taken especially with the ideas on the scrutiny of information and the reliance on registers. The notary should play a key role in entering correct information into the (local) business registers to improve readability and consequently reliability.

Obstacles are there to overcome – let’s work with one common language (next to the preferred language of the respective Member State) and work with a transposition table to ensure conformity on terms and definitions that should encourage the harmonisation of the company law systems of the Member States.

How to understand the information you find in BRIS, that challenge we are facing, is called harmonisation.

He recommends that the accessibility of BRIS could be improved by making BRIS accessible also for non-Member States.



Effective use of company information saved in company registers

Source: ICLEG report 13 July 2022

E-JUSTICE PORTAL AND UBO REGISTERS

The European e-Justice Portal is conceived as a future electronic one-stop shop in the area of justice.

The e-Justice Portal can be consulted for information regarding Ultimate Beneficial Ownership, via the Beneficial Ownership Register Interconnection System ('BORIS'). This is a tool for linking national central registers containing information on the beneficial owners of companies and other legal entities, trusts and other types of legal arrangements.

However, family firms and shareholders have campaigned against having an open system because of the privacy implications. This interference is not justified by its purpose i.e. countering money laundering and terrorist financing. On 22 November 2022, the European Court of Justice said the registers should be closed to the general public but remain open to the tax office and financial fraud investigators. As a consequence thereof, the Dutch Chamber of Commerce has suspended the UBO register to the public on a temporary basis, while the implications of the court ruling are examined.



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