

Bill on the Modernization of Partnerships: third time lucky?

Introduction

The [consultation document](#) on the bill on the Modernization of Partnerships ('Bill') was published on February 21, 2019. The current legislation on partnerships dates from the 19th century and, according to the government, no longer meet the needs of today's users. Since the publication of the current rules, two unsuccessful attempts have been made to update the legislation. The last draft was withdrawn by the Minister of Justice in 2011. In 2016, a report was published by the Partnerships task force (*Werkgroep personenvennootschappen*), consisting of lawyers and tax advisors from the professional, academic and business world. To a great extent, this report forms the basis for the current Bill. What is striking about the proposal is that it does not contain any rules about mergers, divisions or changes of corporate form.

The aim of the draft Bill

With this Bill, the legislator's main aim is to bring the legislation into line with the needs of current practice wherever possible. The intention is to facilitate entrepreneurship, offer certainty in respect of business transactions and provide appropriate protection for both partners and those who trade with the partnership.

Most important consequences

Unlike current legislation, the Bill provides for the existence of just two legal forms: the partnership and the limited partnership (*commanditaire vennootschap*; 'cv'). Below we will discuss the most important consequences of this Bill.

1. No notarial deed

The Bill does not require a notarial deed to set up a partnership and limited partnership. This is an important change for practice, as legal personality will be obtained without the intervention of a notary. At present, there is no legal option to incorporate a legal entity without notarial intervention.

2. Legal personality

As a starting point, the Bill states that partnerships have legal personality. Goods can thus be acquired in the name of the partnership. Registration of the partnership in the Trade Register of the Chamber of Commerce is, except for the limited partnership, in principle not mandatory. Incidentally, the obligation to register the limited partnership is not evident from the Bill. However, the authority to acquire estates and registered properties does require registration. A non-registered partnership cannot acquire any registered properties and cannot be an heir.

3. Assets

The Bill codifies the case law that all partnerships have separated assets. An exception to this is the partnership that is not registered in the Trade Register of the Chamber of

Commerce. If there are jointly-owned assets, they qualify as a simple community to which the provisions of Title 7, Book 3, of the Dutch Civil Code ('DCC') apply.

4. Entry and exit

The Bill aims to simplify entry and exit on the basis of an existing partnership agreement. This should lower the threshold to run a business through a partnership. An entering partner will only be bound by obligations that have been entered into or have become exigible after his entry. An exiting partner will remain liable for a period of five years for the obligations (legal act, law or tort) of the partnership existing at the time of exit.

5. Security interests

The Bill contains explicit rules for the establishment of a usufruct or a pledge on certain rights from the legal relationship between partner and partnership, particularly where distribution rights are concerned. The aim is to increase the possibilities for raising finance and to reduce the differences with respect to a private limited liability company ('BV').

6. Dissolution, liquidation and continuation

The Bill seeks to align the dissolution of a partnership with Book 2 DCC. The basic principle here is that the liquidation is carried out by all the partners jointly. This proposal also makes it possible for a remaining partner to continue the partnership as a one-person business. The dissolution under continuation of activities by a sole remaining partner constitutes a transfer under universal title. The Bill does not prescribe a notarial deed, but it does stipulate – somewhat differently – that the regulations for transfer of title must first be complied when transferring registered properties. The legislator is thus still in two minds in this respect.

7. Governance, representation and liability

As with current law, the Bill leaves the governance in the hands of all partners jointly. This is only different for the limited partnership, where this authority is vested in the managing partner(s). In principle, each partner is authorized to represent the partnership. Any restrictions in the authority to represent must be entered in the Trade Register. This also creates the possibility for partners in the classic partnership (*maatschap*) to impose restrictions in the power of representation.

According to the Bill, all partners in a partnership are jointly and severally bound to perform the partnership's obligations. This applies to both registered and non-registered partnerships. The Bill makes an exception for assignments that are explicitly entrusted to one of the partners in the engagement contract. Only partners responsible for the performance of the assignment are jointly and severally liable, in addition to the partnership, for the performance of that obligation.

8. *Ban on performing management activities for a limited partnership – power of attorney*

Finally, the Bill provides for the possibility for a limited partner to perform management activities on behalf of the limited partnership, provided that they have obtained a power of attorney from the other partners. Unlike under current law, this does not lead to a violation of the ban on performing management activities with the associated liabilities. The Bill thus aims to make the limited partnership a more flexible legal form than before.

Changes of corporate form, merger and division

The Bill does not provide for rules for changes of corporate form, merger and division of partnerships, but merely states that this will be included in a separate legislative process with regard to changes of corporate form. The ‘Modernization of partnerships’ report by the Partnerships task force did contain rules, however. These did not make it to the Bill therefore. The current statutory rules do not include any possibilities for changes of corporate form, merger or division of partnerships. This Bill is therefore incomplete and does not fully meet the need in practice to facilitate this.

Progress

Meijburg Legal will closely monitor the developments regarding this Bill and, if deemed necessary, will submit comments and questions. As already partially described above, the Bill contains a number of proposals for which better rules may be conceivable. The consultation runs until May 31, 2019. We will keep you informed of developments. If you have any questions about this Bill or about partnerships in general, you can of course contact us.

Meijburg & Co
March 2019

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