

DOING BUSINESS IN BELGIUM



Content

DOING BUSINESS IN BELGIUM	1
1. ESTABLISHING A BUSINESS.....	4
1.1. Concept of enterprise in Belgium	4
1.2. The legal status of the company	4
1.3. Which are the most common company forms?	5
1) The private limited company (BV)	5
2) The public limited company (NV/SA)	5
3) General partnership – commercial partnership	6
4) The cooperative company (CV).....	6
5) The limited partnership	6
6) The partnership	7
1.4. Enterprise counter.....	7
1.5. Holding a specific professional title	7
1.6. Entrepreneurial skills.....	8
1.7. Free and intellectual professions.....	8
1.8. Professional card	9
2. SOCIAL STATUS OF SELF-EMPLOYED PERSONS.....	9
3. EMPLOYMENT OF STAFF	10
3.1. Administrative obligations when employing staff	10
3.1.1. Affiliation with the National Social Security Office (RSZ-ONSS)	10
3.1.2. Tax: withholding tax	10
3.1.3. Affiliation with a recognised social secretariat.....	11
3.2. Labour law.....	11
3.2.1. Employment contract	11
1) Definition	11
2) Different kinds of employment contracts.....	12
3) Any formal requirements?.....	12
4) Language used	13
5) Specific clauses	13

3.2.2.	How to terminate the employment relationship?.....	14
1)	Employment contracts for indefinite duration.....	14
	What?	14
2)	Fixed term employment contracts	15
3)	Termination for cause.....	15
4)	Termination by mutual agreement.	15
5)	Protection against dismissal	15
4.	MISLEADING MARKET PRACTICES	16
4.1.	What is a misleading market practice?	16
4.2.	What if there is a misleading practice or unfair competition?	16
	Amicable or out-of-court settlement	16
	Civil action	16

1. Establishing a business

1.1. Concept of enterprise in Belgium

The concept of enterprise and regulations on enterprises are governed in Belgium by the Economic Law Code (WER) and the Companies and Associations Code (CPC).

An "enterprise" is:

- any natural person who independently exercises a professional activity (e.g. a sole proprietorship, a manager company, an artist);
- any legal person (any company, asbl or foundation);
- any other organisation without legal personality (e.g. a partnership)
- any natural person or legal entity pursuing an economic purpose in a sustainable manner, as well as its associations.

All enterprises and self-employed persons must register with the Crossroads Bank for Enterprises.

1.2. The legal status of the company

You have two options for carrying on your activity as a self-employed person:

- a sole trader (self-employed natural person);
- a company (with or without legal personality).

Each formula has advantages and disadvantages, and your choice has important implications for the future of your business. The following considerations come into play:

- the nature of the business activity;
- the number of employees;
- the available capital;
- the financial contribution of the partners;
- the most advantageous tax system;
- the prospects of the company, etc.

It is advisable to seek for advice from a Belgian lawyer and/or accountant.

The incorporation of a company requires, as appropriate:

- the intervention of a notary;
- a minimum capital;
- a financial plan;
- the drafting of articles of association;
- an auditor's report (e.g. in the case of a "contribution in kind").

The cessation of activity and the liquidation of the company also entail costs.

The operation of a company differs significantly from that of a sole proprietorship:

- a company has more administrative and legal formalities and obligations;
- the accounting obligations are greater (usually full accounting, usually filing annual accounts with the National Bank, etc.);
- for the important decisions, you have to take into account the company bodies (board of directors, general meeting, etc.).

1.3. Which are the most common company forms?

1) The private limited company (BV)

The private limited company (bv) is the most appropriate legal form for a small or medium-sized business.

- A bv can be established by one or more persons.
- The bv has its own legal personality and, as a legal entity, is therefore a different person from the shareholders or sole shareholder. It also has its own assets.
- It is basically a private limited company: the shares are basically registered and the possibilities to transfer them are limited, unless the articles of association provide otherwise.
- The bv has limited liability. This means that shareholders only commit to their contributions. In case of bankruptcy, creditors cannot claim the shareholders' private assets, but there are some exceptions to this.
- The articles of association must be drawn up by notarial deed.
- There is no minimum requirement for the initial capital, but it must be sufficient taking into account the activity of the company.

2) The public limited company (NV/SA)

The public limited company (nv/sa) is chosen as a company form for large companies, but also for SMEs (small and middle-sized companies). This form of company is preferable when a lot of capital is needed, as the company can call on new, outside capital or tap into savers.

- With the public limited company, the main focus is on the capital contribution of the shareholders.
- That form of company offers the advantage that the company is separate from its shareholders. Their liability is therefore limited to their contribution. The shares can generally be transferred easily and without restriction.
- The nv/sa must be established by notarial deed. Its starting capital is at least 61,500 euros.

3) General partnership – commercial partnership

The general partnership is a personal partnership. The law imposes no minimum capital. Its existence is tied to the fate of the partners. It is a form of company with few formalities. However, the partners are jointly and severally liable for the company's commitments without limitation.

4) The cooperative company (CV)

The CV is a form of company requiring a minimum of three founders. The CV has limited liability: the shareholders are only liable for the amount of their contribution.

In case the planned business project is in the social economy, the cooperative legal form is the only one that allows the application for recognition as a social enterprise, provided certain conditions are met.

5) The limited partnership

The limited partnership has working and silent (sleeping) partners.

- The working partners participate in the management.
- The silent partners are lenders but do not have a say in governance
- The law imposes no minimum capital.
- The working partner has unlimited and joint and several liability with his assets for the debts and losses of the company. The silent partner is liable only to the extent of his contribution, unless he (co-)managed the partnership.

6) The partnership

The partnership is an unincorporated company.

Two or more persons must agree to pool their resources for a purpose and share any direct or indirect profits.

The member-partners of a partnership have unlimited liability to third parties for the obligations of the partnership.

The partnership is exempt from many legal formalities that apply to incorporated companies. However, they must register in the Crossroads Bank for Enterprises. This registration is carried out by a company counter (see below under 1.4.).

1.4. Enterprise counter

Any self-employed activity, be it a sole proprietorship or a company, requires joining an enterprise counter.

The enterprise counter is convenient: it performs a number of tasks for which the entrepreneur, in the past, used to have to contact various bodies. In addition to the mandatory administrative formalities, the enterprise counter can also offer a wide range of additional services.

The enterprise counter has, among other things, the following tasks:

- the registration of commercial, craft and non-trading enterprises in the Crossroads Bank for Enterprises;
- allowing businesses and companies to complete all the procedures and formalities necessary for access to their profession and to process all the licence applications necessary for the pursuit of their activities.

1.5. Holding a specific professional title

In Belgium, some professions are regulated and the use of certain professional titles is protected: only those who meet the conditions are allowed to use the title. Specifically, we are talking about:

- - service-oriented intellectual professions
- - craft professions

1.6. Entrepreneurial skills

The regions in Belgium (Brussels, Wallonia and Flanders) are responsible for access to certain self-employed professions.

In the Flemish Region, the requirements in terms of professional competence have been abolished. Conditions may therefore differ from region to region.

You can contact an accountant, a lawyer or the enterprise counters for more information on the legislation in force.

1.7. Free and intellectual professions

By free and intellectual professions, we generally mean independent professions providing intellectual services or supplying certain goods. Entry conditions differ depending on the intended free or intellectual profession.

1.8. Professional card

If you do not have Belgian nationality or the nationality of one of the member states of the European Economic Area or Switzerland, you must have a professional card to pursue a self-employed activity in Belgium (unless you have been exempted).

An exemption is provided for beneficiaries of the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union.

The member states of the European Economic Area are:

- The countries of the European Union,
- Iceland,
- Norway,
- Liechtenstein.

2. Social status of self-employed persons

Any natural person who performs a professional activity in Belgium without being bound thereby by an employment contract or statute as civil servant, is considered "self-employed". There is no subordinate relationship in this case.

As a self-employed person, you are subject to your own social statute and benefit from a specific social security scheme. Every self-employed person must join a social insurance fund for the self-employed and pay social contributions to it.

If your self-employed activity is your sole source of income (full-time practice), you are self-employed in main occupation. You are subject to the social statute of the self-employed in main occupation, which entails rights and obligations, notably affiliation to a social insurance fund for the self-employed and quarterly payment of social security contributions.

In a company, managers, directors and working partners are considered self-employed and are subject to the social status of the self-employed.

3. Employment of staff

3.1. Administrative obligations when employing staff

The employment of personnel requires a number of administrative aspects, in terms of social security, tax and other administrative matters such as insurance.

3.1.1. Affiliation with the National Social Security Office (RSZ-ONSS)

When you hire one or more employees for the first time, you must:

- register as an employer with the National Social Security Office;
- file an electronic immediate declaration of employment (DIMONA);
- file a multifunctional quarterly declaration.

At the latest from the moment an employee starts working, the employer must file an electronic immediate declaration of employment (DIMONA-declaration).

From the salary, 13, 07% has to be deducted for social security contributions. In addition, about 28% must be paid by the employer in social security contributions. The RSZ-ONSS is responsible for collecting these social security contributions.

3.1.2. Tax: withholding tax

As an employer, you also have a number of tax obligations.

When you grant remuneration and other benefits to your employees, you are liable to pay withholding tax on this. You are entitled to deduct this withholding tax from the taxable income you grant to your employees.

Withholding tax is calculated on the basis of taxable income, which is gross income less social security contributions.

You must file the withholding tax return electronically within 15 days of the end of the month or quarter in which you paid or allocated the income.

There are various exemptions from paying withholding tax.

3.1.3. Affiliation with a recognised social secretariat

The employment of staff therefore requires an entire payroll administration: calculation of wages and contributions to the RSZ-ONSS and tax authorities.

Social secretariats are bodies recognised and controlled by the government. They intervene as the employer's agent at the RSZ-ONSS. They carry out all those administrative formalities for the employer.

Affiliation with a social secretariat is not compulsory. The employer can call on it if he wants it to carry out on his behalf the formalities imposed by social and tax legislation on staff recruitment and management. Business counters often have a link with the social secretariat they suggest you use.

Affiliation with a social secretariat is paying

You can also do the payroll administration yourself, but this is not recommended. You can also have the payroll done by another administrative or accountancy firm, but make sure they have the necessary expertise.

3.2. Labour law

3.2.1. Employment contract

1) Definition

An employment contract is a contract whereby one party (the employee) agrees, upon payment of remuneration, to work for the other party (the employer) under the authority of the latter.

Not the payment of remuneration, but the presence of a subordinate relationship is key for the existence of an employment contract. It enables the employment contract to be distinguished from other kinds of contracts where the contractor is a company or a self-employed person.

2) Different kinds of employment contracts

Depending on the nature of the work performed, the following employment contracts can, moreover, be distinguished:

- employment contracts for blue-collar employees (carrying out manual labour),
- for white-collar employees (carrying out intellectual activities),
- for sales representatives (canvassing and visiting customers to negotiate and conclude business),
- for domestic servants;
- for students;
- flexy-jobs.

Most of the employees of international associations carry out intellectual activities and will thus be considered as white-collar employees. The explanations below therefore focus on this category of personnel only (hereinafter “the employees”).

As to their duration, employment contracts can be concluded for:

- a fixed term *or* for the completion of a specific task: these contracts automatically end at expiry of the period agreed upon or the completion of the task in question. Be careful: successive fixed-term contracts are regulated
- unlimited duration: these contracts will come to an end when terminated by one party giving notice or paying a severance indemnity (see below).

All the above contracts can be concluded for full-time or part-time work.

3) Any formal requirements?

In principle, an employment contract needs not to be put down in writing. However, for reasons of proof and to avoid unnecessary misunderstandings, it is advisable to draw up a written employment contract at all times.

In addition, a written document must be established in various cases, such as:

1. when entering into a fixed term employment contract or for the completion of a specific task;
2. when entering into a part-time employment contract.

In all these cases, the employment contract must be established in writing at the latest by the time that the employee enters into the employer’s service.

4) Language used

Belgium has three official languages: French, Dutch and German. The language to be used when drafting the contract - as well as any other document addressed to the employee - will thus depend on the place where the exploitation unit to which the employee is attached, is located.

- For units located in Brussels
The contract must be drafted either in French or Dutch, depending on the employee's mother tongue. However, a contract drafted in another language, such as English, is not void.
- For units located in Flanders
The contract must be drafted in Dutch. Contracts drafted in another language are, in principle, null and void.
- For units located in Wallonia
The contract must be drafted in French. As to the sanction, the same goes as for the Flanders' region. Contracts drafted in another language are null and void.

However, a translation into, e.g., in English, is possible, but the original document must be drafted in the mandatory language.

5) Specific clauses

The Employment Contracts Act allows for specific clauses, such as:

- a non-compete clause
- a training clause
- an arbitration clause.

However, such clauses are subject to strict conditions.

3.2.2. How to terminate the employment relationship?

1) Employment contracts for indefinite duration

Two termination methods exist. An employment contract for an indefinite period of time may either be terminated by giving notice or by paying a severance indemnity in lieu of notice. In a nutshell, both routes are as follows:

	NOTICE	SEVERANCE INDEMNITY IN LIEU OF NOTICE
What?	Giving notice means to duly inform the employee of the beginning and duration of a period at the expiration of which the contract will come to an end. During the notice period, the employment contract continues to be exercised.	The employment contract is immediately terminated upon payment of a sum corresponding to the remuneration the employee would have received had the employment contract been terminated upon notice. Severance indemnities are computed on all contractual and statutory benefits, as well as on the employee's fringe benefits.
Formalities?	Yes. Notice of termination is valid only if given in a written statement specifying the beginning and the duration of the notice period. The statement must be sent by registered mail (taking effect only on the third working day following the day of the notification's mailing) or be communicated by writ of a process server.	No. However, for reasons of proof is advisable to confirm the immediate termination by registered mail.
Effective on?	The first working day of the week following receipt or presumed receipt of the notice statement by the addressee.	Immediately.
Length of the notice period /amount of the severance indemnity	The length of the notice period is foreseen by the Employment Contracts Law. It depends on the employee's seniority with the employer concerned.	

2) Fixed term employment contracts

Normally, a fixed term employment contract automatically comes to an end at expiry of the term agreed upon. However, this does not imply that a fixed term employment contract cannot be terminated earlier. Early termination is indeed possible. The terminating party must then pay an indemnity equal to the remainder of the remuneration due until the expiration date. Anyhow, this sum may not exceed double of the severance indemnity which would have been due should the employment contract be concluded for an indefinite duration. Also, the contract can be terminated by a normal lump sum in lieu of notice or by a normal notice period during the first 6 months of execution of the contract.

3) Termination for cause

In the case of serious misconduct (“cause”) by the employee, an employer is entitled to terminate the employment contract with immediate effect without giving notice or paying a severance indemnity in lieu of notice.

Cause is defined as a serious act rendering any further co-operation between the parties immediately and definitively impossible. The burden of proof is on the employer. In the event of a dispute, the labour courts have the exclusive jurisdiction to determine whether the reasons for the dismissal actually justify a dismissal for cause.

You must proceed to dismiss within 3 working days of having sufficient knowledge of the facts. After that, you have another 3 working days to notify the reasons for the dismissal by registered letter.

The law strictly regulates the procedure for the termination for cause. Non-compliance with this procedure results in the employee’s entitlement to payment in lieu of notice, regardless of the seriousness of his acts. It is advisable to be assisted by a lawyer.

4) Termination by mutual agreement.

It is always possible to terminate the employment contract by mutual agreement between employee and employer.

5) Protection against dismissal

Certain categories of employees benefit from a particular job protection, such as, for example, pregnant employees, candidates and members of the Works Council or the Committee for Prevention and Protection at Work, members of the union delegation, etc.

Moreover, in certain industries, particular rules on job protection are provided for by collective bargaining agreement.

4. Misleading market practices

One of the key principles of economic law is the proper conduct of companies in the market. Unfair practices, including misleading practices and unfair competition, are prohibited.

4.1. What is a misleading market practice?

A misleading practice is an act, omission, course of conduct or commercial communication, including advertising and marketing, that misleads a company about essential elements that determine its economic conduct.

Acts of unfair competition are prohibited.

4.2. What if there is a misleading practice or unfair competition?

An initial notice of default is required. It is recommended that you seek the assistance of a lawyer.

Amicable or out-of-court settlement

You can try to reach an out-of-court settlement through mediation.

Civil action

The Enterprise Court is competent to rule on unfair competition or misleading practices.

The Enterprise Court can compensate you for the damages you have suffered due to the deceptive practices.

However, the president of the Commercial Court can be sued for an injunction: this is an action on behalf of the other company to have the misleading or unfair market practice stopped immediately.