



GUIDE TO GOING GLOBAL CORPORATE

France



Downloaded: 23 Apr 2024

INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Corporate*.

GUIDE TO GOING GLOBAL SERIES

To compete and be successful today, companies need to develop and scale their businesses globally. Each country presents its own set of unique laws, rules and regulations and business practices that companies must understand to be successful. In order to help clients meet the opportunities and challenges of expanding internationally, we have created a handy set of global guides that cover the basics companies need to know when going into and doing business in new countries. The *Guide to Going Global* series reviews business-relevant corporate, employment, intellectual property and technology, executive compensation, and tax laws in key jurisdictions around the world.

CORPORATE

The *Guide to Going Global – Corporate* has been created based on our research, our experience and feedback we have received from clients in both established and emerging businesses that have expanded internationally. We hope it will be a helpful resource for you.

The *Guide to Going Global – Corporate* covers corporate basics in 54 key jurisdictions across the Americas, Asia Pacific, Europe and the Middle East. We touch on a wide range of corporate issues for companies expanding internationally, including establishing a corporate presence and choice of entity, liability considerations, tax presence and tax filings, capital requirements, the formation process, director, officer and shareholder requirements, registration processes, office lease processes and possible exit strategies.

With more than 600 lawyers, DLA Piper's global Corporate group is one of the largest in the world, with one of the widest geographical footprints of any global law firm and experience across the legal areas companies need as they expand internationally. With both global experience and local knowledge, we partner with our clients wherever they do business to find solutions and manage their risk in relation to their challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to seek advice regarding the specific matters that concern you. If you wish to speak to any of our contributors, you may find their contact details at the end of the guide.

We hope you find this guide valuable, and we welcome your feedback.

This publication is provided to you as a courtesy, and it does not establish a client relationship between DLA Piper and you, or any other person or entity that receives it.

This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that corporate law is dynamic, and the legal regime in the countries surveyed could change.

No part of this publication may be reproduced or transmitted in any form without the prior consent of DLA Piper.

FRANCE



Last modified 27 June 2022

FORM OF ENTITY

Société par actions simplifiée (SAS)

The SAS is an increasingly used type of company, mainly because of its great flexibility and low capital requirements. The SAS is a more flexible corporate form than the SARL which is a more binding vehicle. The SAS is essentially a simplified form of the SA. It has a number of advantages due to its flexibility such as:

- The law does not impose a particular management structure for the SAS; the president is the only compulsory corporate body
- There is greater freedom for organizing the management and operating structures of an SAS and
- The SAS does not have access to the capital markets and its shares cannot be listed on a stock exchange.

Société à responsabilité limitée (SARL)

Easy to set up and operate. Relevant for small businesses. One or more directors, who must not be corporate entities, but do not need to be shareholders. The SARL is a widely utilized form of corporation in France, mainly due to the number of advantages it offers to small businesses, such as low capital requirements and simple rules and regulations. It is more restrictive and less flexible than the SAS. Sweat equity permitted: a shareholder offers the company his time, work and professional knowledge (does not contribute to forming the capital but has right to shares in the company, share of profits and participation in collective decisions).

The SARL does not have access to the capital markets and its shares cannot be listed on a stock exchange.

Société anonyme (SA)

The SA is an historical legal form mainly used by large corporations in France, as it enables public offering of shares. Tailored for large companies needing external capital by resorting to the market, it is a very complex form of company, not commonly appropriate for a first incorporation in France.

Branch of a foreign company

Under French law, an entity operating in France shall register with the French Registry of Commerce and Companies (RCS) only if it is conducting a "commercial activity". A foreign company is only required to register with the local Registry of Commerce and Companies when its operations in France constitute a permanent establishment, where an autonomous activity (as opposed to "preparatory and auxiliary" activities) is being conducted and managed by an agent of the foreign company or a person who may bind the foreign company *vis-à-vis* third parties.

Under French law, the branch is a direct form of implantation in France of a foreign company. A branch is not a separate legal entity and is therefore deemed to be the same legal entity as the foreign company, which remains solely responsible for the operation of its branch in France.

The main difference between a French branch and a French subsidiary is that:

- A branch is a mere emanation of the parent company in France, with no legal existence or distinct assets or liabilities and
- A subsidiary is an independent entity with its own legal existence, bylaws and capital contributions.
- As a consequence, the parent company:
 - Has unlimited liability for any debts and liabilities incurred by the branch in France and
 - Has limited liability for the debts and liabilities incurred by its subsidiary (provided that the subsidiary is not incorporated under the form of a partnership, ie, SNC or civil company) in case it becomes insolvent (ie, limited to its initial capital contribution and the amount of any shareholder's loan which cannot be reimbursed within the context of a liquidation due to insufficiency of assets).

ENTITY SET UP

Société par actions simplifiée (SAS)

- Unlimited number of shareholders.
- Generally no personal liability of the shareholders.
- Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends.
- Typical charter documents include bylaws, organizational shareholders' meeting resolutions, share transfer register and shareholders' accounts.
- The president is the only required corporate body by law who gets the broadest powers to act in the name and on behalf of the company and to represent the company towards third parties
- Shareholders typically purchase stock in the SAS, either common or preferred.
- SAS does not have access to the capital markets and its shares cannot be listed on a stock exchange.

Société à responsabilité limitée (SARL)

- Up to 100 shareholders; only one class of stock allowed.
- Generally no personal liability of the shareholders.
- Typical charter documents include bylaws and organizational shareholders' meeting resolutions.
- Manager(s) get(s) the broadest powers to act in the name and on behalf the company and to represent the company towards third parties.

Société anonyme (SA)

- SA enables public offering of shares.
- Unlimited number of members allowed and at least 2.
- Generally no personal liability of the members.
- Typical charter documents include bylaws, organizational shareholders' meeting resolutions, share transfer register and shareholders' accounts. Shareholders typically purchase stock in the SA, either common or preferred.

MINIMUM CAPITAL REQUIREMENT

Société par actions simplifiée (SAS)

The minimum is EUR 1.

Société à responsabilité limitée (SARL)

There is a minimum of EUR 1.

Société anonyme (SA)

EUR37,000.

LEGAL LIABILITY

Société par actions simplifiée (SAS)

Shareholders of a SAS are generally not liable for the debts of a corporation aside from their financial contribution to the SAS.

Société à responsabilité limitée (SARL)

Shareholders of a SARL are generally not liable for the debts of a corporation aside from their financial

contribution to the SARL.

Société anonyme (SA)

Shareholders of a SA are generally not liable for the debts of a corporation aside from their financial contribution to the SA.

TAX PRESENCE

Société par actions simplifiée (SAS)

Are subject to French taxes, including corporate income tax (33 1/3 percent), withholding tax on profits and business tax as well as VAT.

Société à responsabilité limitée (SARL)

Are subject to French taxes, including corporate income tax (33 1/3 percent), withholding tax on profits and business tax as well as VAT.

Société anonyme (SA)

Are subject to French taxes, including corporate income tax (33 1/3 percent), withholding tax on profits and business tax as well as VAT.

INCORPORATION PROCESS

Société par actions simplifiée (SAS)

Must apply for registration with the Registry of Commerce and Companies (RCS) with filing of the bylaws. Process can take from 48 hours to 4 weeks (in the event the company's registered office is located in the east of France) following the filing of the required documents with the Registry of Commerce and Companies and depending on the reactivity of the Registry of Commerce and Companies where the document shall be filed. List of documents:

- A copy of the bylaws and list of subscribers
- A copy of the signed lease/sublease/domiciliation agreement
- A copy of the certificate of deposit of funds issued by the bank/notary
- A copy of the acceptance letter of the principal and substitute statutory auditors (if any)
- A copy of the valid passport of the president and of the statement of non-conviction
- In the event the president to be appointed is a legal entity, an original of less than 3 months of the up-to-date company extract issued by the competent Company Register and a copy of the valid passport of the legal representative of the legal entity to be appointed as president

- A copy of the valid passport of the general manager(s) and of the statement of non-conviction, if any
- A copy of the valid passport of the members of the board and of their statement of non-conviction, if any, and
- A copy of the beneficial owner declaration executed by the legal representative of the company. It is reminded that, pursuant to the provisions of Articles L. 561-2-2, L. 561-46 à L. 561-50, R. 561-1 à R. 561-3 and R. 561-55 à R. 561-63 of the French Monetary and Financial Code, any French company (having its registered office in a French department) must file a declaration with the clerk's office of the Commercial Court regarding its ultimate beneficial owner (otherwise the legal representative will be liable with a fine of EUR7,500 and imprisonment). In the event the beneficial owner changes, a new declaration must be filed within 30 days of this change.

For the beneficial owner to be disclosed, he or she must be an individual (not a legal entity) who:

- owns, directly or indirectly more than 25 percent of the share capital, or
- owns, directly or indirectly, more than 25 percent of the voting rights, or
- has a power of control over the management of the declaring entity or over the general meetings of its shareholders

In the event it is not possible to determine the identity of the beneficial owner (ie, at the level of the top company, no individual fulfills one of the above criteria), the legal representative(s) of the declaring entity will have to be declared as beneficial owner; in the event the legal representative of the declaring entity is a legal entity, it will be necessary to declare the identity of the individual acting as legal representative of this legal entity.

Société à responsabilité limitée (SARL)

Must apply for registration with the Registry of Commerce and Companies (RCS) with filing of the bylaws. Process can take from 48 hours to 4 weeks (in the event the company's registered office is located in the east of France) following the filing of the required documents with the Registry of Commerce and Companies and depending on the reactivity of the Registry of Commerce and Companies where the document shall be filed. List of documents:

- A copy of the bylaws
- A copy of the signed lease/sublease/domiciliation agreement
- A copy of the certificate of deposit of funds issued by the bank/notary
- A copy of the acceptance letter of the principal and substitute statutory auditors (if any)
- A copy of the valid passport of the *gérant* and of the statement of non-conviction and
- A copy of the beneficial owner declaration executed by the legal representative of the company: it is reminded that pursuant to the provisions of Articles L. 561-2-2, L. 561-46 à L. 561-50, R. 561-1 à R. 561-3 and R. 561-55 à R. 561-63 of the French Monetary and Financial Code, any French company (having its registered office in a French department) must file a declaration with the clerk's office of the Commercial

Court regarding its ultimate beneficial owner (otherwise the legal representative will be liable with a fine of EUR7,500 and imprisonment). In the event the beneficial owner changes, a new declaration must be filed within 30 days of this change.

For the beneficial owner to be disclosed, he or she must be an individual (not a legal entity) who:

- owns, directly or indirectly more than 25 percent of the share capital, or
- owns, directly or indirectly, more than 25 percent of the voting rights, or
- has a power of control over the management of the declaring entity or over the general meetings of its shareholders

In the event it is not possible to determine the identity of the beneficial owner (ie, at the level of the top company, no individual fulfills one of the above criteria), the legal representative(s) of the declaring entity will have to be declared as beneficial owner; in the event the legal representative of the declaring entity is a legal entity, it will be necessary to declare the identity of the individual acting as legal representative of this legal entity.

Société anonyme (SA)

Must apply for registration with the Registry of Commerce and Companies (RCS) with filing of the bylaws. Process can take from 48 hours to 4 weeks (in the event the company's registered office is located in the east of France) following the filing of the required documents with the Registry of Commerce and Companies and depending on the reactivity of the Registry of Commerce and Companies where the document shall be filed. List of documents:

- A copy of the bylaws and list of subscribers
- A copy of the minutes appointing the chairman of the board and the general manager
- A copy of the signed lease/sublease/domiciliation agreement
- A copy of the certificate of deposit of funds issued by the bank/notary
- A copy of the acceptance letter of the principal and substitute statutory auditors (if any)
- A copy of the valid passport of the directors, chairman of the board and general manager and of their statement of non-conviction and
- A copy of the beneficial owner declaration executed by the legal representative of the company: it is reminded that pursuant to the provisions of Articles L. 561-2-2, L. 561-46 à L. 561-50, R. 561-1 à R. 561-3 and R. 561-55 à R. 561-63 of the French Monetary and Financial Code, any French company (having its registered office in a French department) must file a declaration with the clerk's office of the Commercial Court regarding its ultimate beneficial owner (otherwise the legal representative will be liable with a fine of EUR7,500 and imprisonment). In the event the beneficial owner changes, a new declaration must be filed within 30 days of this change.

For the beneficial owner to be disclosed, he or she must be an individual (not a legal entity) who:

- owns, directly or indirectly more than 25 percent of the share capital, or
- owns, directly or indirectly, more than 25 percent of the voting rights, or
- has a power of control over the management of the declaring entity or over the general meetings of its shareholders

In the event it is not possible to determine the identity of the beneficial owner (ie, at the level of the top company, no individual fulfills one of the above criteria), the legal representative(s) of the declaring entity will have to be declared as beneficial owner; in the event the legal representative of the declaring entity is a legal entity, it will be necessary to declare the identity of the individual acting as legal representative of this legal entity.

Branch of a foreign company

The required documents to incorporate a branch in France are:

1. Name of the legal representative in France of the branch, together with a copy of his/her valid passport
2. Name of the legal representative in the US, together with a copy of his/her valid passport and his/her personal address (please note that this person can be the same as in (1) above. Consequently, the French branch would have only one legal representative, acting in France and in the US)
3. A copy of the articles of association and of the bylaws of the US company, to be certified conform to the original by the legal representative in France of the branch, together with a copy of a French translation, to be certified to conform to the original by the legal representative in France of the branch
4. Original of the certificate of incorporation of the US company issued by the relevant US authorities, dated less than 3 months (to be certified as being original by the legal representative in France of the branch), together with a French translation, certified to conform to the original by the legal representative in France of the branch
5. A short description of the business of the branch, the starting date of business and the number of employees, if any, at the time of the registration
6. A copy of the executed commercial lease or domiciliation contract for the premises where the French branch will be located (in French). We can provide for the whereabouts of a domiciliation company we are used to work with, if necessary, and
7. A copy of the beneficial owner declaration executed by the French representative of the French branch.

BUSINESS RECOGNITION

Société par actions simplifiée (SAS)

Highly regarded and widely used.

Société à responsabilité limitée (SARL)

Highly regarded and widely used.

Société anonyme (SA)

Highly regarded for large companies but considered as a very complex form. Not appropriate for a first incorporation in France.

SHAREHOLDER MEETING REQUIREMENTS

Société par actions simplifiée (SAS)

According to the bylaws. Obligation to hold an annual meeting each year to approve the annual accounts.

Société à responsabilité limitée (SARL)

Obligation to hold an annual meeting each year to approve the annual accounts.

Management structure

SA can be incorporated in accordance with 2 different management structures:

- Either with a board of directors (*Conseil d'Administration*) or
- With an executive board (*Directoire*) and a supervisory board (*Conseil de Surveillance*).

Société anonyme (SA)

Obligation to hold an annual meeting each year to approve the annual accounts.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Société par actions simplifiée (SAS)

The law does not impose a particular management structure for the SAS except the appointment of a president. There is no obligation to have a board of directors but it can be organized by the bylaws.

Société à responsabilité limitée (SARL)

There is no board of directors in SARL.

Société anonyme (SA)

Meetings shall occur at least when required by law and the bylaws for the statement of the annual accounts, interim accounts (when applicable).

ANNUAL COMPANY TAX RETURNS

Société par actions simplifiée (SAS)

Must annually file tax returns with French tax authority.

Société à responsabilité limitée (SARL)

Must annually file tax returns with French tax authority.

Société anonyme (SA)

Must annually file tax returns with French tax authority.

BUSINESS REGISTRATION FILING REQUIREMENTS

Société par actions simplifiée (SAS)

Require initial registration, as well as annual filings. There are additional, on-going filing requirements including, in particular, an obligation to file its bylaws whenever they are amended and its yearly financial statements.

Société à responsabilité limitée (SARL)

Require initial registration, as well as annual filings. There are additional, on-going filing requirements including, in particular, an obligation to file its bylaws whenever they are amended and its yearly financial statements.

Société anonyme (SA)

Require initial registration, as well as annual filings. There are additional, on-going filing requirements including, in particular, an obligation to file its bylaws whenever they are amended and its yearly financial statements.

BUSINESS EXPANSION

Société par actions simplifiée (SAS)

No need to change as business expands.

Société à responsabilité limitée (SARL)

No need to change as business expands.

Société anonyme (SA)

No need to change as business expands.

EXIT STRATEGY

Société par actions simplifiée (SAS)

File dissolution and liquidation documents with the Registry of Commerce and Companies (RCS).

Société à responsabilité limitée (SARL)

File dissolution and liquidation documents with the Registry of Commerce and Companies (RCS).

Société anonyme (SA)

File dissolution and liquidation documents with the Registry of Commerce and Companies (RCS).

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Société par actions simplifiée (SAS)

Annual shareholders' meeting to approve once a year the financial statements within 6 months from the closing of the last financial year.

Société à responsabilité limitée (SARL)

Annual shareholders' meeting to approve once a year the financial statements within 6 months from the closing of the last financial year.

Société anonyme (SA)

Annual shareholders' meeting to approve once a year the financial statements within 6 months from the closing of the last financial year.

DIRECTOR / OFFICER REQUIREMENTS

Société par actions simplifiée (SAS)

Shareholders enjoy total freedom to set in the bylaws the composition of the management structure of the SAS. The only obligation is to have the SAS represented by a president.

Société à responsabilité limitée (SARL)

One or more manager(s) (*Gérant(s)*) appointed by the shareholders is/are required. The number of managers is freely determined by the bylaws.

The SARL shall be managed by one or more individuals.

Société anonyme (SA)

One of the following management structures is required:

- Either a board of directors with 3 to 18 members (*Conseil d'Administration*) or
- Or an executive board (*Directoire*) (with a maximum of 5 members) with a supervisory board (*Conseil de Surveillance*) with 3 to 18 members.

LOCAL CORPORATE SECRETARY REQUIREMENT

Société par actions simplifiée (SAS)

Not applicable.

Société à responsabilité limitée (SARL)

Not applicable.

Société anonyme (SA)

Not applicable.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Société par actions simplifiée (SAS)

None beyond the required president.

Société à responsabilité limitée (SARL)

None beyond the required managing director(s).

Société anonyme (SA)

None beyond the required board of directors in the event of an SA with a board of directors (*Conseil d'administration*) or the required executive board (*Directoire*) with a supervisory board (*Conseil de Surveillance*) in the event of an SA with an executive board (*Directoire*) with a supervisory board (*Conseil de Surveillance*).

LOCAL OFFICE LEASE REQUIREMENT

Société par actions simplifiée (SAS)

Must justify the regular occupation of the registered office for incorporation.

Société à responsabilité limitée (SARL)

Must justify the regular occupation of the registered office for incorporation.

Société anonyme (SA)

Must justify the regular occupation of the registered office for incorporation.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Société par actions simplifiée (SAS)

Not applicable. Management decisions to be taken in France.

Société à responsabilité limitée (SARL)

Not applicable. Management decisions to be taken in France.

Société anonyme (SA)

Not applicable. Management decisions to be taken in France.

SUFFICIENCY OF VIRTUAL OFFICE

Société par actions simplifiée (SAS)

SAS must be at least domicile in a domiciliation company (domiciliation agreement to be signed prior the process of incorporation).

Société à responsabilité limitée (SARL)

SARL must be at least domicile in a domiciliation company (domiciliation agreement to be signed prior the process of incorporation).

Société anonyme (SA)

SA must be at least domicile in a domiciliation company (domiciliation agreement to be signed prior the process of incorporation).

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Société par actions simplifiée (SAS)

Law firms cannot provide for a registered address. The accountant may provide for a local registered address.

Société à responsabilité limitée (SARL)

Law firms cannot provide for a registered address. The accountant may provide for a local registered address.

Société anonyme (SA)

Law firms cannot provide for a registered address. The accountant may provide for a local registered address.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Société par actions simplifiée (SAS)

Not applicable.

Société à responsabilité limitée (SARL)

Not applicable.

Société anonyme (SA)

Not applicable.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Société par actions simplifiée (SAS)

None.

Société à responsabilité limitée (SARL)

None.

Société anonyme (SA)

None.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Société par actions simplifiée (SAS)

Not applicable.

Société à responsabilité limitée (SARL)

Nominee shareholders do not apply. The manager cannot be a corporate entity.

Société anonyme (SA)

Nominee shareholders do not apply. The chairman of the board/CEO or the members of the executive board cannot be a corporate entity.

SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF

Société par actions simplifiée (SAS)

The president is the highest authority in the management of the SAS and governs the organization by establishing broad policies, objectives and oversee day-to-day operations of the SAS.

Société à responsabilité limitée (SARL)

The manager is appointed by the vote of shareholders. He has the broadest powers to act in the SARL's interests, subject to powers that may be expressly attributed to the shareholders.

Société anonyme (SA)

Board of directors: the managing director (*ie*, CEO or *Directeur Général*) has broadest powers to act in the SA's interests, with full authority to manage the SA and represent it *vis-à-vis* third parties.

Executive board and supervisory board: The executive board is vested with full authority to manage the SA. In principle, the chairman of the executive board represents the company *vis-à-vis* third parties. The supervisory board's sole function is to control the company's executive bodies.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Société par actions simplifiée (SAS)

Identity of the president is publicly disclosed. Identity of shareholders is not publicly disclosed.

Société à responsabilité limitée (SARL)

Identity of the managing director and of the shareholders is publicly disclosed.

Société anonyme (SA)

Identity of:

- Members of the board of directors and managing director or
- Members of the executive board and members of the supervisory board are disclosed

Identity of shareholders is not publicly disclosed.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Société par actions simplifiée (SAS)

A SAS may have one or more shareholders (either individuals or corporate entities). The number of shareholders is not limited. There must be only one president.

Société à responsabilité limitée (SARL)

Between one and 100 shareholders, either individuals or corporate entities. The number of managers is freely determined by the bylaws.

Société anonyme (SA)

Board of directors: from 3 to 18 members.

Executive board: from 2 to 5 (and up to 7 members in listed companies). Note that, if stated capital is under EUR 150,000, the executive board may be composed of only one person referred to as sole managing director (*Directeur Général Unique*).

Supervisory board: from 3 to 18 members.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Société par actions simplifiée (SAS)

One shareholder is sufficient.

Société à responsabilité limitée (SARL)

One shareholder is sufficient.

Société anonyme (SA)

The number of members may not be less than 2.

The number of members may not be less than 7 if the company is a listed company.

REMOVAL OF DIRECTORS OR OFFICERS

Société par actions simplifiée (SAS)

Removal of the president allowed by a vote of the shareholders. Removal shall not intervene within vexatious circumstances and the president shall be able to defend his position with the shareholders prior to his removal.

Société à responsabilité limitée (SARL)

Removal of the manager allowed by a vote of the shareholders. Removal shall nevertheless be motivated and shall not intervene within vexatious circumstances, and the manager shall be able to defend his position with the shareholders prior to his removal. If dismissal is decided upon without just cause, it may give rise to damages.

Société anonyme (SA)

Removal of the CEO, the members of the executive board, the members of the board of directors, the chairman of the board of directors, the members of the supervisory board and the chairman of the executive board shall not intervene within vexatious circumstances, and they shall be able to defend their position with the shareholders prior to their removal (note that the removal of the CEO or the members of the executive board shall be also motivated).

REQUIRED AND OPTIONAL OFFICERS

Société par actions simplifiée (SAS)

Only one president is required by law. Possibility to appoint (if it is provided in the bylaws) managing directors, deputy managing directors or a collegial governing body.

Société à responsabilité limitée (SARL)

Typically one or more manager(s) is/are required; any other optional officer is not allowed.

Société anonyme (SA)

Board of directors: one individual to be the chairman of the board and CEO or 2 individuals to be chairman and CEO respectively is/are required. The board may appoint, upon CEO's proposal, one or more persons to act as deputy managing directors (*Directeurs Généraux Délégués*).

Executive board: an executive board comprises generally 2 to 5 members who shall be individuals.

A managing director (*Directeur Général*) may be appointed by the supervisory board with full authority to represent the company *vis-à-vis* third parties, if the bylaws so provide. If stated capital is under EUR150,000, the executive board may be composed of only one person referred to as sole managing director (*Directeur Général Unique*).

BOARD MEETING REQUIREMENTS

Société par actions simplifiée (SAS)

According to the bylaws.

Société à responsabilité limitée (SARL)

None.

Société anonyme (SA)

According to the bylaws and the French Commercial code, the board of directors must meet at least once a year to close the annual accounts and convene the shareholders' meeting called to approve the annual accounts; the executive board must meet at least once a year to close the annual accounts and convene the shareholders' meeting called to approve the annual accounts, and the supervisory board must meet at least 4 time per year.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Société par actions simplifiée (SAS)

According to the bylaws.

Société à responsabilité limitée (SARL)

For an ordinary general meeting, no quorum is required.

For an extraordinary general meeting (mainly for any decisions which imply a change of the bylaws):

- If the company is incorporated before August 4, 2005: no quorum is required
- If the company is incorporated after August 4, 2005: the general meeting's proceedings shall be considered valid only if the members present or represented have at least 1/4 of shares when first convened and 1/5 of those shares if the meeting is reconvened

Société anonyme (SA)

An ordinary general meeting may validly deliberate when first convened only if the shareholders present or represented hold at least 1/5 of the voting shares. Companies whose shares are not admitted to trading on a regulated market may provide for a higher quorum in their articles of association. If it is reconvened, no quorum is required. It makes its decisions on a majority of the votes held by the shareholders present or represented.

An extraordinary general meeting (mainly for any decisions which imply amendments of the bylaws) may validly deliberate when first convened only if the shareholders present or represented hold at least 1/4 of the voting shares and, if reconvened, 1/5 of the voting shares. Failing this, the second meeting may be postponed to a date not later than 2 months after the date originally scheduled. Companies whose shares are not admitted to trading on a regulated market may provide for higher quorums in their constitution.

The extraordinary general meeting shall make its decisions on a majority of 2/3 of the votes held by the shareholders present or represented.

Quorum and majority for board of directors:

Quorum: the board of directors may validly deliberate only if at least half of its members are present.

Majority: unless the bylaws require a larger majority, the decisions are taken on a majority vote of the members present or represented.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Société par actions simplifiée (SAS)

Initial capital contribution must be deposited prior to incorporation on a local bank account, or at the "Caisse des Dépôts et consignations," or a notary bank's account.

Société à responsabilité limitée (SARL)

Initial capital contribution must be deposited prior to incorporation on a local bank account, or at the "Caisse des Dépôts et consignations," or a notary bank's account.

Société anonyme (SA)

Initial capital contribution must be deposited prior to incorporation on a local bank accounts or at the "Caisse des Dépôts et consignations," or a notary bank's account.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY'S BOOKS BE KEPT LOCALLY?

Société par actions simplifiée (SAS)

The SAS must have statutory auditors when it meets two of the three following thresholds (no need to have an alternate statutory auditor when the principal statutory auditor is a legal entity):

- A balance sheet amounting at least to EUR4 million
- A turnover of at least EUR8 million (taxes excluded) and
- 50 employees
- The company's books are kept locally.

Société à responsabilité limitée (SARL)

Statutory auditor is necessary if SARL exceeds two of the following three thresholds (no need to have an alternate statutory auditor when the principal statutory auditor is a legal entity):

- A turnover over EUR8 million
- Total balance sheet over EUR4 million or
- 50 employees
- The company's books are kept locally.

Société anonyme (SA)

SA is required to have a statutory auditor when it meets 2 of the 3 following thresholds (no need to have an alternate statutory auditor when the principal statutory auditor is a legal entity):

- A balance sheet amounting at least to EUR4 million
- A turnover of at least EUR8 million (taxes excluded) and
- 50 employees
- The company's books are kept locally.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Société par actions simplifiée (SAS)

There is no statutory minimum par value of stock.

Société à responsabilité limitée (SARL)

There is no statutory minimum par value of stock.

Société anonyme (SA)

There is no statutory minimum par value of stock.

INCREASING OF CAPITALIZATION IF NEEDED

Société par actions simplifiée (SAS)

Effectuated by amending the bylaws which requires a majority of the shareholders according to the provisions of the bylaws. In the event of a capital increase, the shareholders have a preferential subscription right.

Société à responsabilité limitée (SARL)

Effectuated by amending the bylaws, which requires a majority of the shareholders, the shareholders have a preferential subscription right if provided for in the bylaws or by a decision of the general meeting.

Société anonyme (SA)

Effectuated by amending the bylaws, which requires a majority of the shareholders. In the event of a capital increase, the shareholders have a preferential subscription right.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Société par actions simplifiée (SAS)

Funds can be repatriated abroad via dividends, distribution of reserves or capital reduction by redemption of shares.

Société à responsabilité limitée (SARL)

Funds can be repatriated abroad via dividends, distribution of reserves or capital reduction by redemption of shares.

Société anonyme (SA)

Funds can be repatriated abroad via dividends, distribution of reserves or capital reduction by redemption of shares.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Société par actions simplifiée (SAS)

Shares are freely transferable, unless otherwise provided in the bylaws.

Société à responsabilité limitée (SARL)

The transfer of shares to a third party is subject to the prior approval of the majority of the shareholders representing at least half of the shares comprising the share capital, unless a stronger majority provided for the bylaws. The transfer of shares must be notified to the SARL to be enforceable against the SARL and third parties.

Société anonyme (SA)

Shares are freely transferable, unless otherwise provided in the bylaws.

OBTAINING A NAME AND NAMING REQUIREMENTS

Société par actions simplifiée (SAS)

Must check that the name of the SAS has not already been registered with the French Trademark and Patent Office (*Institut national de la propriété industrielle*).

Société à responsabilité limitée (SARL)

Must check that the name of the SARL has not already been registered with the French Trademark and Patent Office (*Institut national de la propriété industrielle*).

Société anonyme (SA)

Must check that the name of the SA has not already been registered with the French Trademark and Patent Office (*Institut national de la propriété industrielle*).

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Société par actions simplifiée (SAS)

Not required from a corporate law standpoint. However, at the time of the opening of a bank account in the name of the company, the bank will ask for KYC documents.

Société à responsabilité limitée (SARL)

Not required from a corporate law standpoint. However, at the time of the opening of a bank account in the name of the company, the bank will ask for KYC documents.

Société anonyme (SA)

Not required from a corporate law standpoint. However, at the time of the opening of a bank account in the name of the company, the bank will ask for KYC documents.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Société par actions simplifiée (SAS)

The bylaws freely determine the quorum and majority criteria, it being specified that the amendments of some specific provisions of the bylaws such as the temporary non-transferability of shares (*inaliénabilité des actions*) must be adopted by an unanimous decision.

Société à responsabilité limitée (SARL)

For an extraordinary general meeting (mainly for any decisions which imply a change of the bylaws):

- If the company is incorporated before August 4, 2005, the amendments to the bylaws shall be decided by the shareholders representing at least 3/4 of shares
- If the company is incorporated after August 4, 2005, the amendments to the bylaws shall be decided by the shareholders representing at least 2/3 of shares.

Société anonyme (SA)

For an extraordinary general meeting (mainly for any decisions which imply a change of the bylaws), the amendments to the bylaws shall be decided by the shareholders representing at least 2/3 of the shares.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Société par actions simplifiée (SAS)

The exercise of certain businesses is subject to administrative authorization or prior approval (eg, chartered accountant, removal firm, goods traffic).

Société à responsabilité limitée (SARL)

The exercise of certain businesses is subject to administrative authorization or prior approval (eg, chartered accountant, removal firm, goods traffic).

Société anonyme (SA)

The exercise of certain businesses is subject to administrative authorization or prior approval (eg, chartered accountant, removal firm, goods traffic).

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Société par actions simplifiée (SAS)

Not applicable.

Société à responsabilité limitée (SARL)

Not applicable.

Société anonyme (SA)

Not applicable.

KEY CONTACTS



Laurence Masseran

Partner

DLA Piper France

laurence.masseran@dlapiper.com

T: +33 (0)1 40 15 66 37

[View bio](#)

Disclaimer

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication.

This may qualify as 'Lawyer Advertising' requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2022 DLA Piper. All rights reserved.