

## **LIMITED LIABILITY COMPANY (*SOCIÉTÉ À RESPONSABILITÉ LIMITÉE* – SARL)**

The SARL is a special type of commercial company. On the one hand, it has the characteristics of a corporation, since the liability of the shareholders is limited to the amount of their contributions, and on the other hand, it has the characteristics of a partnership, since its shares are only transferable under strict conditions.

### **CORPORATE PURPOSE**

A SARL may be incorporated **for any purpose**. However, insurance, investment and savings companies may not adopt this form.

### **SHAREHOLDERS**

The SARL may have **between 1 and 100 shareholders**. These may be natural persons or legal entities.

### **BUSINESS YEAR**

The SARL may be established for a **limited or unlimited period**.

### **CAPITAL**

The share capital of a SARL is **at least EUR 12,000**. It consists of shares with or without nominal value.

### **INCORPORATION**

In order to establish a SARL, it is **necessary** that

1. the capital is fully subscribed and
2. at the time of the company's formation, the company's shares are fully paid up.

The SARL must be incorporated **before a notary public**.

It is mandatory that the articles of association contain the information **required by law**:

1. the identity of the natural or legal person(s) who signed the contract or on whose behalf it was signed;
2. the corporate form and the name of the company
3. the registered office;
4. the objects of the company
5. the amount of the subscribed capital;

6. the class of shares in the company, if different, the rights attaching to each of those classes and the number of shares subscribed for;
7. an indication of each contribution in kind, the conditions under which it is made and the name of the contributor;
8. the reason for and nature of any special privileges conferred on founders at the time of incorporation;
9. where applicable, the number of securities or shares not representing the capital and the rights attaching thereto, in particular the right to vote at company meetings;
10. in the event that they are not required by law, the provisions concerning the manner of appointment, as well as the number of members of the board, managing directors, supervisory and control bodies entrusted with the representation of the company vis-à-vis third parties, as well as the division of responsibilities between these bodies;
11. the duration of the company;
12. the amount, at least estimated, of the costs, expenses and remuneration or expenses of any kind incurred by the company as a result of the incorporation.

## **COSTS**

The establishment of a SARL entails some costs, including:

- the payment of the minimum capital of EUR 12,000;
- Notary fees;
- Costs for publication in the Trade and Company Register (*Registre de commerce et des sociétés* – RCS);
- Costs for registration in the Register of Beneficial Owners (*Registre des bénéficiaires effectifs* – RBE);
- Remuneration of an internal auditor (*commissaires aux comptes*) and/or a statutory auditor (*réviseur d'entreprise*), if required;
- any costs related to the issuance of official permits (such as a [business permit](#)).

## **TRANSFER OF COMPANY SHARES**

The transfer of shares in a **SARL to a third party is subject to strict conditions**. Accordingly, they may not be transferred among the living without the consent of the general meeting of shareholders representing at least three quarters of the company's shares. However, the articles of association may reduce this majority to half of the company's shares.

Subject to contrary provisions in the articles of association, **shares in the partnership are therefore freely assignable among partners.**

Company shares are transferred **by notarial or private contract.** This can only be held against the company and third parties after this has been notified to the company or confirmed by it in accordance with separate statutory provisions.

#### **MANAGEMENT**

The SARL is managed **by one or more directors** (natural or legal person(s)), who may or may not be shareholders and who may or may not be remunerated.

They are appointed by the shareholders in the articles of association or in a subsequent deed **for a fixed or indefinite term.** Irrespective of the form of their appointment, they may be dismissed only for justifiable reasons, unless otherwise provided for in the articles of association.

#### **LIABILITY**

The directors shall be liable to the Company in accordance with general principles of law for the performance of their duties and for any errors committed in the conduct of their business. They shall be jointly and severally liable to the Company and to third parties for any loss or damage suffered as a result of any breach of certain provisions of law or of the Articles of Association. They shall only be exempt from liability for violations in which they did not participate if they are not personally at fault and if they bring these violations to the attention of the company as soon as they become aware of them.

#### **SHAREHOLDERS' MEETINGS**

Resolutions of the shareholders shall be passed at shareholders' meetings. Except in the case of an amendment to the articles of association, it is not necessary to hold a shareholders' meeting if the number of shareholders does not exceed 60. In that case, each member shall receive the exact text of the resolutions to be adopted and shall cast its vote in writing.

A decision of the shareholders is only valid if it is taken by shareholders representing more than half of the share capital.

Companies with more than 60 shareholders must hold a shareholders' meeting at least once a year at the time determined by the articles of association.

The sole shareholder shall exercise the powers of the general meeting.

#### **LIABILITY**

The shareholders – and in the event of an increase in the share capital, the managing directors – are jointly and severally liable vis-à-vis third parties:

1. for the entire capital share not duly subscribed and the difference between the share capital and the subscribed capital;
2. for the actual payment of the company shares and the capital share they have subscribed for;
3. for the recovery of damages due to:
  - a. the nullity of the company
  - b. the absence or inaccuracy of the particulars in the company deed.

Otherwise, the shareholders shall be liable up to the amount of their share in the capital of the company.

### **DUTY OF SUPERVISION**

A SARL with **more than 60 shareholders** is subject to the duty of supervision **by one or more internal auditors** (*commissaires aux comptes*), who may be shareholders or non-shareholders, and who must be named in the company deed.

The **legal audit by a statutory auditor** (*réviseur d'entreprises*) is **compulsory in those companies which, at the time of the closure of the balance sheet and after two consecutive financial years, exceed two of the following three thresholds:**

- Balance sheet total of 4.4 million euros;
- Net sales of 8.8 million euros;
- Average number of employees (full-time) of 50 persons.

### **ACCOUNTING**

The management shall prepare the balance sheet and the profit and loss account. These shall be submitted to the shareholders for approval, who shall also decide separately on the discharge of the management as well as the internal auditors, if any.

### **TAX ASPECTS**

The SARL is subject to – among others – the following taxes:

- Communal business tax (*impôt commercial communal* – ICC);
- Net wealth tax (*impôt sur la fortune* – IF);
- Corporate income tax (*impôt sur le revenu des collectivités* – IRC);
- VAT declaration (*Déclaration de TVA*) according to the following criteria:
  - if the annual turnover is **less than EUR 112,000: annual** VAT declaration;

- if the annual turnover is **between EUR 112,000 and EUR 620,000**: **quarterly** VAT return;
- if the annual turnover is **more than EUR 620,000**: **monthly** VAT return.

#### **LEGAL BASIS**

- Law of 10 August 1915 on commercial companies (*Loi du 10 août 1915 concernant les sociétés commerciales*)
- Law of 19 December 2002 concerning the commercial and companies register and the accounting and annual accounts of companies and modifying certain other legal provisions (*Loi du 19 décembre 2002 concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises et modifiant certaines autres dispositions légales*)