

PUBLIC LIMITED COMPANY (*SOCIÉTÉ ANONYME – SA*)

The SA is a corporation, which means that the shares are freely assignable and the liability of the shareholders is usually limited to the amount of their contribution.

SHAREHOLDERS

You SA requires **at least one shareholder**. This may be a natural person or a legal entity.

LIABILITY

Notwithstanding any agreement to the contrary, the founders are jointly and severally liable to creditors:

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 on incorporation up to the amount of one quarter of the subscribed shares and, within a period of five years, for the payment of contributions on shares issued as consideration for contributions in kind;
3. for damages arising as a direct consequence of the nullity of the company or the absence or incorrectness of the particulars prescribed for the memorandum or draft thereof.

Otherwise, the shareholders shall be liable to the extent of their participation in the share capital.

BUSINESS YEAR

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

CAPITAL

The share capital of an SA is **at least EUR 30,000**. It consists of company shares with or without nominal value.

INCORPORATION

incorporate form an SA it is **necessary** that

1. there is at least one shareholder
2. the capital is at least EUR 30,000;
3. the capital is fully subscribed
4. at least one quarter of each share is paid up by a contribution in cash or in kind.

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 articles of association or on whose behalf it was signed;
2. the legal form of the company and its name;
3. the registered office of the company
4. the objects of the company;
5. the amount of the subscribed capital and, where applicable, of the authorised capital;
6. the initial paid-up amount of the subscribed capital;
7. the class of shares, if any, the rights attaching to each class, the number of shares subscribed for and, in the case of authorised capital, the shares to be issued of each class and the rights attaching thereto; and:
 - a. the nominal value of the shares or the number of shares of no-par value;
 - b. the restrictions applicable to the transfer of shares;
8. an indication of whether the shares are registered shares, bearer shares or dematerialised shares, as well as of any provisions in excess of or in derogation of the law;
9. details of any contribution in kind, the terms on which it was made, the names of the contributors and the statutory auditor's findings in accordance with certain provisions of the law;
10. the reason for and extent of any special favours granted in connection with the formation of the company to persons participating in the formation;
11. where applicable, the number of securities or shares other than the stated capital and the rights attaching to them, in particular the right to vote at general meetings;
12. the provisions concerning the number of and the procedure for appointing the members of the bodies which, for the purpose of representing the company vis-à-vis third parties, are responsible for the administration, management and supervision and control of the company, as well as concerning the allocation of responsibilities between such bodies, in so far as such provisions do not follow from the law;
13. the duration of the company
14. the amount, at least estimated, of the costs, expenses and remunerations or charges of whatever nature to be borne by or charged to the company on the occasion of its formation.

COSTS

The establishment of a SA entails some costs, including:

- the payment of the minimum capital of EUR 30,000;
- 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 a statutory auditor (*réviseur d'entreprise*), the latter if required;
- any costs related to the issuance of official permits (such as a *business permit*).

SHARES AND THEIR TRANSFER

The capital of SA is composed of shares with or without par value.

The shares are registered shares until fully paid up. Thereafter, fully paid-up shares are either:

- registered shares;
- bearer shares; or;
- dematerialised shares.

A register of **registered shares** shall be kept at the registered office of the Company and may be inspected by any shareholder. Ownership of a registered share is evidenced by entry in the register. Persons entered in this register shall, upon request, be issued with a certificate of the securities registered in that person's name.

The **assignment of registered shares** shall be effected by a declaration entered in the share register, dated and signed by the assignor and assignee or their authorised representatives, and in accordance with the further rules applicable by law to the assignment of claim.

Bearer shares shall be deposited with a depositary appointed by the Board of Directors or the Executive Board, as the case may be, which shall comply with the strict conditions laid down by law. The depositary may not be a shareholder of the issuing company. Among others, only the following tradesmen established in the Grand Duchy of Luxembourg may be appointed as depositary:

1. credit institutions;
2. asset managers;
3. statutory auditor (*réviseurs d'entreprises*) and approved statutory auditor (*réviseurs d'entreprises agréés*);
4. chartered accountant (*expert-comptable*).

The **assignment of bearer shares** shall be effected between the parties by mutual consent and vis-à-vis third parties by delivery of the security. The Depositary shall accept any document to establish the transfer.

The **assignment of dematerialised securities** shall be made by bank transfer.

MANAGEMENT AND SUPERVISION

Two different forms of management can be considered for an SA:

- **monistic**: a **board of directors** administers the company or
- **dualistic**: a **management board** manages the company, while a **supervisory board** supervises this management.

The choice of the form of management must be specified in the SA's articles of association.

MONISTIC SYSTEM: BOARD OF DIRECTORS

The SA is managed by representatives appointed for a fixed term, who may be shareholders or non-shareholders, who may be removed at any time and who may or may not receive remuneration.

A **minimum of three directors** is required. However, if the company is incorporated by a single person or if it is determined during a general meeting that the company has **only one shareholder, the board of directors may consist of a single person** until an ordinary general meeting determines the existence of more than a single shareholder.

The members of the Board of Directors shall be appointed for a term of office to be determined by the general meeting. The **maximum term** of their mandate shall be **six years**; they may be removed at any time by the general meeting. Unless the Articles of Association provide otherwise, Directors may be re-elected.

Directors may be natural or legal persons. If a legal person is appointed as a director, it must appoint a permanent representative to carry out its duties.

LIABILITY

The Directors shall not be liable for the debts of the Company.

They shall be liable to the Company in accordance with general principles of law for the performance of their mandate and for errors committed by their management. 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 the law or 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.

DUALISTIC SYSTEM: MANAGEMENT BOARD AND SUPERVISORY BOARD

No one may be a member of the Management Board and a member of the Supervisory Board at the same time.

MANAGEMENT BOARD

The SA shall be managed by its management board. The number of its members shall be determined in the articles of association or, in the absence of statutory provisions, by the supervisory board. If the capital of the SA is less than EUR 500,000, a single person may perform the duties incumbent on the management board. The members of the management board are appointed by the supervisory board and perform their duties under its supervision.

The members of the management board may be dismissed by the supervisory board and, if the articles of association so provide, by the general meeting. They are appointed for a term of office, which is defined in the Articles of Association and may not exceed six years. Re-election is possible.

SUPERVISORY BOARD

The supervisory board continuously monitors the management of the company by the management board without being allowed to intervene in the management of the company.

The members of the supervisory board are appointed by the general meeting. It shall be composed of at least 3 members, unless the company has only one shareholder, in which case only one member is required. The term of office of the members of the supervisory board is also limited to 6 years, with the possibility of re-election and early dismissal by the general meeting.

LIABILITY

The members of the Management Board and of the Supervisory Board shall be liable to the Company in accordance with general legal principles for the performance of their mandate and for any errors committed in their management or supervision. They are jointly and severally liable to the company and third parties for damages resulting from violations of certain legal provisions or 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 next general meeting as soon as they become aware of them.

SUPERVISION BY INTERNAL AUDITORS

The supervision of the Company shall be entrusted to **one or more internal auditors** (*commissaires aux comptes*) who may, but need not, be shareholders in the Company. They shall be appointed by

the general meeting. The duration of their mandate may also not exceed six years; they may be re-elected and may be dismissed at any time by the general meeting.

The legal audit by **one or more statutory auditors** (*réviseurs 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.

GENERAL MEETING OF SHAREHOLDERS

The general meeting of shareholders has the broadest powers to transact or approve business affecting the company. In cases where the Company has only one shareholder, the latter shall exercise the powers reserved to the general meeting.

At least one general meeting must be held each year in the Grand Duchy of Luxembourg. This shall take place within six months of the close of the financial year. The first general meeting may be held within 18 months of the incorporation of the Company.

ACCOUNTING

The Board of Directors or the Management Board, as the case may be, must submit the balance sheet, profit and loss account, required annexes and the annual report to the annual general meeting for approval, the latter then also decides on the discharge of the members of the Board of Directors, the members of the Management Board and the Supervisory Board (as the case may be) and the internal auditors.

TAX ASPECTS

The SA 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*)