


| | SA | SCA | SAS | SARL |
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| Key features → Companies limited by shares | <ul style="list-style-type: none"> It is anonymous because the identity of the shareholders is not disclosed, the shares are in principle freely negotiable | <ul style="list-style-type: none"> Definition: Art.600-1 The provisions relating to SAs apply, unless stated otherwise 2 classes of shareholders: <ul style="list-style-type: none"> <i>General Partner(s) – GP</i>: It has a joint and several + unlimited liability for the liabilities of the company <i>Limited partner(s) – LP</i>: Possibility to invest without bearing unlimited risk (in exchange for non-interference in the management of the company) Management power is usually vested in the hands of the GP only | <ul style="list-style-type: none"> Corporate form with a more flexible regime than the SA: more contractual freedom as regards the rules applicable to management and general meetings The provisions relating to SA are applicable insofar as they are consistent with each other | <ul style="list-style-type: none"> Hybrid company with the characteristics of partnerships and stock companies Not possible for insurance companies and credit institutions |
| Type of enterprise | <ul style="list-style-type: none"> Companies limited by shares or joint-stock companies ("<i>sociétés de capitaux</i>") | | | |
| Form of deed of incorporation | <ul style="list-style-type: none"> Notarial deed Publication of the entire deed | | | |
| Legal personality | <ul style="list-style-type: none"> Yes, it has a legal individuality distinct from that of its shareholders (Art.100-2, §2) As soon as the notarial deed is signed by the notary, the company validly exists and can enter into transactions (for instance, it can contract) Exception: the SE acquires legal personality on the day of its registration with the company registry (RCS) (Art.100-2, §2) | | | |
| Causes of nullity of companies | <ul style="list-style-type: none"> The causes of nullity are strictly limited and listed in the 1915 law (Art.100-18 (1)) The nullity must be pronounced by a court decision (with effect from that date) | | | |
| Number of shareholders / partners | <ul style="list-style-type: none"> Min. 1 shareholder No Maximum (legal or natural persons) | <ul style="list-style-type: none"> Min. 2 different shareholders (natural or legal persons) <ul style="list-style-type: none"> 1 or more GP 1 or more LP | <ul style="list-style-type: none"> Min. 1 shareholder No Maximum (legal or natural persons) | <ul style="list-style-type: none"> Min. 1 partner Max. 100 (natural or legal person) |
| Share capital | <ul style="list-style-type: none"> Min.: EUR 30,000 Paid-up capital: min. 1/4 at incorporation | | | <ul style="list-style-type: none"> Min.: EUR 12.000 Fully paid-up |
| Form of equity instruments | <ul style="list-style-type: none"> Registered, bearer or dematerialised shares Shares must be in registered form until fully paid-up | | | <ul style="list-style-type: none"> Registered shares only ("<i>Parts sociales nominatives</i>") (Art.710-11) |
| Shareholder financial obligations | <ul style="list-style-type: none"> Limited to contributions | <ul style="list-style-type: none"> LP: Limited to contributions GP: Joint and several + unlimited liability for all the company's liabilities | <ul style="list-style-type: none"> Limited to contributions | <ul style="list-style-type: none"> Limited to contributions |

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| Contributions | <ul style="list-style-type: none"> Contributions of shareholders may be in the form of contributions in cash ("<i>apports en numéraire</i>"), in kind ("<i>apports en nature</i>") or a mix thereof As regards in-kind contributions: <ul style="list-style-type: none"> valuation by the board report by an external auditor ("<i>réviseur d'entreprises</i>") with limited exceptions | | | <ul style="list-style-type: none"> Contributions of shareholders may be in the form of contributions in cash, in kind or sweat contributions ("<i>apports en industrie</i>") As regards in-kind contributions: <ul style="list-style-type: none"> valuation by the manager(s) no audit report is required |
| Public offering | <ul style="list-style-type: none"> Yes (both shares + bonds) | | <ul style="list-style-type: none"> Shares: No Bonds: Yes | |
| Management | <ul style="list-style-type: none"> Management: <ul style="list-style-type: none"> 1-tier system: 3 members (1 if sole shareholder), or 2-tier system: management board ("<i>directoire</i>") + supervisory board ("<i>conseil de surveillance</i>") The members of the board of directors or the management board represent the company and act as a collegial body vis-à-vis third parties Delegation of powers: <ul style="list-style-type: none"> creation of committees management committee ("<i>comité de direction</i>") or CEO ("<i>directeur général</i>") delegation of the day-to-day management | <ul style="list-style-type: none"> One or more managers, who may but need not be GP(s) (Art.600-5) If there is more than one manager, they may act alone or jointly or form a college | <ul style="list-style-type: none"> Nomination of president with unlimited powers as against third parties required The articles may provide for the appointment of other executive directors ("<i>directeurs</i>") or a board with such management powers as are set out in the articles | <ul style="list-style-type: none"> One or more managers acting individually or jointly (Art.710-14) If there is more than one manager, the articles may provide that the managers form a board ("<i>collège</i>") Delegation of powers: <ul style="list-style-type: none"> creation of committees delegation of the day-to-day management |
| Appointment / Removal | <ul style="list-style-type: none"> The directors are appointed by the general meeting Duration: max. 6 years They can be removed or replaced by the general meeting, at any time, with or without cause (<i>ad nutum</i>) | <ul style="list-style-type: none"> The manager(s) may be appointed either in the articles or outside the articles (natural or legal person) Revocation according to the terms of the articles: e.g. simple or enhanced majority, with the manager consent, legitimate reasons... or even <i>ad nutum</i> | <ul style="list-style-type: none"> President: Obligation to appoint a president in accordance with the conditions laid down in the articles Directors, if any: They are appointed in accordance with the rules laid down in the articles | <ul style="list-style-type: none"> The managers are appointed by the shareholders for a limited or unlimited duration. Unless otherwise laid down in the articles, they may only be dismissed for legitimate reasons (Art.710-14) |

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| Delegation of powers | <ul style="list-style-type: none"> In charge of <i>inter alia</i> the administration and the representation of the company, the management is authorised to delegate its management powers in various forms: | | | |
| | <ul style="list-style-type: none"> constitution of a management committee ("<i>comité de direction</i>") or CEO ("<i>directeur général</i>") (Art.441-11) constitution of committees delegation of the day-to-day management (Art.441-10) specific powers of attorney | <ul style="list-style-type: none"> constitution of committees (Art.441-6 by reference) delegation of the day-to-day management specific powers of attorney (for limited acts) | | <ul style="list-style-type: none"> constitution of committees delegation of the day-to-day management (Art.710-15 (4)) specific powers of attorney (for limited acts) (Art.1984 et seq. Civ. Code) |
| Supervision | <ul style="list-style-type: none"> The supervision must be entrusted to 1 or more internal auditors ("<i>commissaires</i>"), who may but are not required to be shareholders (Art.443-1) | <ul style="list-style-type: none"> The supervision must be entrusted to 3 internal auditors ("<i>commissaires</i>"), which constitute the supervisory board ("<i>conseil de surveillance</i>") (Art.600-7) | <ul style="list-style-type: none"> The supervision must be entrusted to 1 or more internal auditors ("<i>commissaires</i>"), who may but are not required to be shareholders | <ul style="list-style-type: none"> No mandatory obligation to appoint an internal auditor (the supervision is then directly ensured by the shareholders) However, it needs to be entrusted to one or more internal auditors if there are more than 60 shareholders (Art.710-27) |
| | <ul style="list-style-type: none"> The company which exceeds two of the following three criteria must appoint an external auditor ("<i>réviseur d'entreprises</i>") (Art.35 L.2002): <ul style="list-style-type: none"> Balance sheet total: EUR 7.5 million Net turnover: EUR 15 million Average number of full-time employees during the financial year: 50 Where the company voluntarily appoints an external auditor ("<i>réviseur d'entreprises</i>"), it need not appoint an internal auditor (Art.69 (3) L.2002) | | | |
| Pre-emptive subscription right | <ul style="list-style-type: none"> Yes, on capital increases in cash only <ul style="list-style-type: none"> Not applicable to increases by in-kind contributions May be limited or removed (qualified majority) | | | <ul style="list-style-type: none"> Not mandatory but can be agreed <i>inter partes</i> in the articles or in a separate agreement By contrast, the law provides for a mandatory pre-approval ("<i>agrément</i>") procedure for third parties who wish to join the company |
| Disposal of shares | <ul style="list-style-type: none"> Shares are freely transferable <ul style="list-style-type: none"> Possible statutory restrictions (lock-up clauses, pre-approval clauses, pre-emption clauses) (Art.430-1 (2)) | <ul style="list-style-type: none"> Same as for the SA <ul style="list-style-type: none"> GP: Usually, the articles contain a provision on this point (read the articles!) | <ul style="list-style-type: none"> Shares are freely transferable Any transfer carried out in breach of the statutory clauses is null and void (Art. 500-9) | <ul style="list-style-type: none"> Share transfers among shareholders: No transfer restrictions Share transfers to third parties are subject to a shareholder pre-approval given under the conditions laid down in Art. 710-12 |
| Voting Rights | <ul style="list-style-type: none"> In principle, the shares are issued at the same nominal value or par value and each share gives the right to one vote It is now possible to have shares of unequal value (by counting for 1 vote the share with the lowest value) | | | <ul style="list-style-type: none"> In principle, the shares are issued at the same nominal value or par value and each share gives the right to one vote |

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| | | | | <ul style="list-style-type: none"> It is now possible to have shares with different nominal values (further advice required) |
| Amendment of the articles | <ul style="list-style-type: none"> Decisions are taken before a notary by at least 2/3 of the votes cast (qualified majority), with a quorum of at least half of the capital represented (1st call) and with no quorum at 2nd call (Art.450-3 (2)) | | <ul style="list-style-type: none"> According to the procedures and conditions laid down in the articles (ordinary, qualified, enhanced majority or unanimous consent) | <ul style="list-style-type: none"> One or more shareholders in front of a notary representing 3/4 of the share capital at least (Art.710-27) |
| Annual general meeting | <ul style="list-style-type: none"> Each year by way of an actual shareholder meeting in the Grand Duchy | | <ul style="list-style-type: none"> Holding of an annual general meeting is not mandatory: a written consultation may suffice (Art.500-7) (read the articles of association). | <ul style="list-style-type: none"> <i>More than 60 shareholders:</i> The holding of general meetings is compulsory <i>Up to 60 shareholders:</i> resolutions may be adopted by shareholders either in general meetings or by way of written resolutions (Art.710-27) |
| Annual accounts | <ul style="list-style-type: none"> Prepared by the management, the annual accounts are each year approved by the board and, thereafter, at the annual general meeting within 6 months as of the end of a given financial year (along with the management and audit report) and filed within the following month with the company registry (RCS) The 1st general meeting needs to be held within 18 months following a company's incorporation (Art.450-8) | | | <ul style="list-style-type: none"> Prepared by the management, the annual accounts are each year submitted for approval to the shareholders (in general meeting if more than 60 shareholders) and filed within the following month with the company registry (RCS) |
| Legal reserve | <ul style="list-style-type: none"> Yes | | | |