



## Summary description of key types of French commercial companies (SARL, SA, SAS)

By Luis Wolff Kono<sup>1</sup>

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A business owner wishing to create a company in France can choose among a number of different types of companies available. As the choice of the company type has important implications for how the company is structured and managed, it is advisable to consider what those implications are, as well as the conditions for each company type.

This document provides a summary description of the key legal requirements for the following types of French commercial companies:

- SARL (société à responsabilité limitée)
- SA (société anonyme)
- SAS (société par actions simplifiée)

The information provided here applies only to companies whose shares are not traded on a regulated market or public exchange.

Tax considerations are not addressed here.

### I. General

The following characteristics apply to all three types of companies:

- a) Members or shareholders enjoy limited liability for company debts, their liability for company debts being limited to their capital contributions. This general rule must be qualified by the following exceptions:
  1. Where the member or shareholder gives a personal guaranty of company debts to a creditor, or
  2. Where the member or shareholder commits "separable negligence" (*faute détachable*) from its member or shareholder capacity, in other words an intentional act of particular gravity incompatible with the normal exercise of member or shareholder prerogatives, or
  3. Where the member or shareholder fraudulently over-evaluated capital contributions made in kind, in the form of property, or

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<sup>1</sup> Luis Wolff Kono is a corporate and commercial attorney based in Paris, France. He is admitted in Paris, New York and New Jersey, USA. Email: [luis@wolffkono.com](mailto:luis@wolffkono.com). Internet site: <http://wolffkono.com>.



4. In case of judicial liquidation, if the member or shareholder who was also a manager is condemned of gross negligence or fraud to pay company debts.
- b) The general manager of the company need not be a shareholder or member: the general manager therefore can be either a shareholder, member or a third party.
- c) The right to vote of a shareholder or member at general assemblies is a fundamental right which cannot be eliminated. So there cannot be, for example, "no voting" shares or membership interests.

However, multiple-voting shares can be provided for, in SA or SAS, as discussed below.

- d) No fixed dividends can be provided, regardless of profits earned by the company. A shareholder or member thus must share the risk of receiving no or lower dividends, in case of poor company performance. This is a fundamental aspect of being a shareholder, as opposed to a lender.
- e) The right of a shareholder or member to receive dividends or share in the profits of the company, cannot be eliminated. So there cannot be, for example, "no dividend" shares.

However, companies enjoy flexibility in deciding how to distribute dividends or profits, which may not be necessarily proportional to the relative ownership of shareholders or members.

## II. SARL

SARL is a popular vehicle for family-owned small businesses, wishing to keep tight control on who becomes a member<sup>2</sup>, and to enjoy some degree of flexibility in how to organize and manage the company. But SARL may also, depending on circumstances, be a good corporate form for medium-sized companies as well.

SARL is subject to a medium level of regulation (less than SA, more than SAS), which provides predictability and protection for members, especially minority members.

SARL companies must meet the following requirements:

- a) Number of members: between 1 and 100
- b) Minimum capital amount: none
- c) Capital contributions can be partially made at the time of company creation, with a minimum 20% initial contribution. The balance contributions must be made within 5 years.

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<sup>2</sup> "Member" and "membership interests" refer respectively to "*associé*" and "*parts sociales*" in a SARL, which is not a company organized by shares (*actions*). This terminology serves to distinguish from "shareholders" (*actionnaires*) and "shares" (*actions*) in a SA or SAS, which are companies organized by shares (*actions*).



For recapitalizations, 25% of the contribution must be made at the time of the recapitalization, with the balance due within 5 years.

- d) Capital contributions can be made in kind, by a transfer of property (other than money) to the company. The contributed property must be evaluated and described in the company articles.

An evaluation report must be prepared by an auditor, and attached to the company articles, if:

- a) any item of contributed property is valued at more than 30 000 €, or
- b) The value of all contributed property is greater than half the company capital.

- e) Capital contributions can be in the form of labor ("apport en industrie"). But membership interests acquired through labor are not transferrable.

- f) Members' capital ownership must be stated in company articles, and is publicly available information.

- g) Age limit for general manager: None, except as provided in company articles

- h) Governance structure: consists of a general manager(s).

- i) Member voting rights: are proportionate to a member's relative capital ownership, without possibility for derogation. No super-voting membership interests are allowed, which may present an issue if the founders expect to open the capital to investors while retaining control.

- j) Dividends: are paid within a maximum 9-month period following the close of the fiscal year. No "fixed interest" dividends (regardless of losses) are allowed, which may limit the flexibility to attract venture capitalists.

- k) Annual report: approved within 6 months from fiscal year's end

- l) External auditor ("*commissaire aux comptes*"): required for large companies, i.e. for whom 2 of the following 3 conditions are met at the end of a fiscal year:

- i) Balance sheet total > 4.000.000 €
- ii) Revenues excluding tax > 8.000.000 €
- iii) More than 50 employees on average<sup>3</sup>

- m) Transfer of membership interests:

- a. To third parties: approval of acquirer by a majority of other members (holding a majority of membership interests) is required. The company articles can provide for a higher majority requirement.

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<sup>3</sup> The conditions set forth here regarding outside auditor use in SARL (and below in SA and SAS) reflect the revisions made by art.20 of PACTE law n° 2019-486 of 22 May 2019 for the growth and transformation of companies.



- b. To existing member, ascendant, descendant or wife or husband: approval of acquirer by other members is required if company articles say so.

Transfers require amendment of company articles and regulatory filing.

- n) Negotiable instruments: cannot be issued by company, except for nominative bonds. The SARL cannot offer securities (stocks or bonds) to the public.
- o) Parent company shares: an SARL cannot own shares (actions) in a parent company owning more than 10% of the membership interests in the SARL.

If a parent company owns 10% or less of the membership interests in the SARL, the SARL cannot own more than 10% of the shares (actions) in the parent company.

### **III. SA**

SA is the most regulated form of company, subject to specific requirements on governance structure, leaving little room for flexibility.

For companies having owners dealing with each other at "arm's length" (rather than in a family or personal context), this extensive regulation provides protection and predictability to owners, especially minority owners.

But even in the case of a French affiliate fully-owned by a foreign group, SA may be an appropriate form in view of the size and complexity of the operations, justifying well-defined governance and control procedures.

As for transferability of shares, SA and SAS present a greater degree of transferability (than SARL), rendering shares more liquid. A company may however provide for restrictions on transferability, such as shareholders' approval of the transfer.

SA companies must meet the following requirements:

- a) Number of shareholders: 2 or more
- b) Minimum capital amount: 37 000 €
- c) Capital contributions can be partially made at the time of company creation, with a minimum initial contribution of 50% of capital contributed in cash. The balance contributions must be made within 5 years.
- d) Capital contributions can be made in kind, by a transfer of property (other than money) to the company. The contributed property must be evaluated and described in the company articles.

An evaluation report must be prepared by an auditor, and attached to the company articles.

- e) Capital contributions cannot be in the form of labor ("apport en industrie").
- f) Age limit for general manager: 65 years, except as provided otherwise in company articles



- g) Governance structure: in the most popular model (moniste), board of directors and general manager. The same individual may be both general manager and president of the board ("Président directeur général" or "PDG").
- h) Number of board members: minimum 3, maximum 18. Board members representing employees are not counted for purposes of the minimum or maximum numbers.
- i) Shareholder voting rights: can be freely determined in company articles, and can be proportionate to shareholder relative capital ownership, or not. Super-voting shares are allowed, which may be desirable if the founders expect to open the capital to investors while retaining control.

This represents a major difference, and source of flexibility, in SAS and SA compared to SARL.

- j) Limitation of director and management posts: directors and managers in a SA are subject to rules limiting how many similar positions they can hold in other SA's.

For example, an individual cannot have more than 5 director positions (or 4 director positions and 1 general manager position) in SA's. Exceptions apply in the case of controlled SA's or sister SA's.

As another example, the general manager of a SA must not have any other general manager position in another SA based in France. As exceptions, one additional general manager position can be held (a) in a controlled subsidiary SA, or (b) in another SA if both SA's are privately-owned.

- k) Annual report: approved within 6 months from fiscal year's end
- l) External auditor ("*commissaire aux comptes*"): required for large companies, i.e. for whom 2 of the following 3 conditions are met at the end of a fiscal year:
  - i. Balance sheet total > 4.000.000 €
  - ii. Revenues excluding tax > 8.000.000 €
  - iii. More than 50 employees on average
- m) Transfer of shares : possibility for company articles to require approval by existing shareholders, except that no approval can be required for transfers to wife, husband, ascendant or descendant of transferring shareholder.

It is even possible for the company articles to prohibit transfer of shares to other shareholders or third parties for a limited period of time, if the prohibition is supported by a legitimate business interest.

Transfers are recorded in company records, but do not require amendment of company articles or any regulatory filing.

#### IV. SAS

SAS is an extremely flexible form of company, affording a great deal of flexibility to shareholders on how to structure and manage the company.

Great freedom is also available with regard to deciding whether and how to limit transferability of shares.

The drawback from this great flexibility, is that the company articles may have to be longer and more detailed than for the other company types. This may also lead to negotiation on many points, which may take time and effort if shareholders don't quickly agree.

As for transferability of shares, SA and SAS present a greater degree of transferability (than SARL), rendering shares more liquid. A company may however provide for restrictions on transferability, such as shareholders' approval of the transfer.

SAS companies must meet the following requirements:

- a) Number of shareholders: 1 or more
- b) Minimum capital amount: none
- c) Capital contributions can be partially made at the time of company creation, with a minimum 50% initial contribution. The balance contributions must be made within 5 years.
- d) Capital contributions can be made in kind, by a transfer of property (other than money) to the company. The contributed property must be evaluated and described in the company articles.

An evaluation report must be prepared by an auditor, and attached to the company articles.

However, unlike in the SA, the shareholders in SAS can unanimously agree not to have an evaluation report prepared by an auditor, if:

- i. No item of contributed property is valued at more than 30 000 €, and
  - ii. The value of all contributed property (not evaluated by an auditor) does not exceed half the company capital.
- e) Capital contributions can be in the form of labor ("apport en industrie"). But shares acquired through labor are not transferrable.
  - f) Age limit for general manager: None, except as provided in company articles
  - g) Governance structure: consists, at a minimum, of a president. Additional officers are possible, at shareholders' discretion, such as general manager(s).
  - h) Shareholder voting rights: can be freely determined in company articles, and can be proportionate to shareholder relative capital ownership, or not. Super-voting shares are allowed, which may be desirable if the founders expect to open the capital to investors while retaining control.



This represents a major difference, and source of flexibility, in SAS and SA compared to SARL.

- i) Preferred shares: can be issued by SAS, conferring special rights or benefits (such as dividends) to a category of shareholders.
- j) Annual report: approved within 9 months from fiscal year's end
- k) External auditor ("*commissaire aux comptes*"): required for large companies, i.e. for whom 2 of the following 3 conditions are met at the end of a fiscal year:
  - i) Balance sheet total > 4.000.000 €
  - ii) Revenues excluding tax > 8.000.000 €
  - iii) More than 50 employees on average
- l) Transfer of shares : possibility for company articles to require approval by existing shareholders.

It is even possible for the company articles to prohibit transfer of shares to other shareholders or third parties for a limited period of time up to 10 years.

Transfers are recorded in company records, but do not require amendment of company articles or any regulatory filing.

- m) Public offer of shares or trading in a regulated market: is forbidden, except in case of offers to the issuer's directors or employees, qualified investors, existing shareholders, or "participative finance" investors.