

France

Legal overview

Executive Summary

The establishment of a foreign company in France

Contrary to popular belief, it is not difficult to establish a company in France. The administrative formalities have been simplified, and the entire process can be done electronically online.

The procedures do, however, vary according to the background of the managing director or chief executive of the foreign company.

For nationals of the European Union (EU), a State Party to the Agreement on the European Economic Area (EEA), or the Swiss Confederation, no specific procedure is needed. This is also the case for other foreign nationals who do not wish to reside in France.

On the contrary, for foreign nationals outside of the EU or EEA who want to reside in France, they need to obtain a specific visa from the diplomatic and consular authorities of their country of origin, in order to enter France.

There are three 'vehicles' through which a foreign company can operate in France, depending on the degree of autonomy desired by the foreign company, which are:

- A Liaison Office: this carries out exclusively non-commercial activities, and is not generally subject to taxation (whether a Liaison Office is subject to taxation will depend on the specifics of the activity being exercised by the Liaison Office). This is a 'light' establishment, and the foreign company will have the option to recruit an employee to represent it in France.
- A branch: this engages directly in industrial and commercial activities, yet represents a structure without legal autonomy and without assets. Nonetheless, it is subject to income tax, VAT and all other French taxes.
- A subsidiary: this is a legally autonomous company, which engages in industrial and commercial activities. Subsidiaries have the same legal, accounting, and tax obligations as domestic French companies.

Classification of companies in France

In France, there are three main ‘types’ of companies, as follows:

- Limited liability (LLC) (Société à Responsabilité Limitée, SARL): this is the most common type of company in France. The liability of the members is limited strictly to their own contribution. Where an LLC has only one shareholder, the company is called an EURL.
- Simplified joint-stock company (Société par Actions Simplifiée, SAS): this company may be formed by (and consist of) natural or legal persons. Its members, who remain anonymous to third parties, freely determine the internal functioning of the company. The liability of the shareholders is limited to their own contribution. Where the simplified joint-stock company has only one shareholder, the company is called an SASU.
- Public limited company (Société Anonyme, SA): the main characteristic of this type of company is that its share capital is publicly traded. As above, the liability of its shareholders is limited to their contribution, however, its mode of functioning is strictly regulated.

Articles of association and related agreements

Underpinning every company are ‘articles of association’ which have been drafted, registered, and publicised, and which regulate the characteristics and operation of the company.

There are also statutes which are more or less developed and applied according to the type and form of the company itself and the will of its members.

The articles and statutes may be supplemented by further documents such as shareholders’ agreements, however such documents are not public and are not necessarily divulged to third parties.

Share capital, shares and stocks

The share capital is the total value of the sum of money or assets provided to the company on its incorporation by its founding shareholders.

In return, they receive shares or stocks which represent their financial contribution to and participation in the company, and the implications of its corporate purpose.

The value of the share capital must be set out in the articles of association, however it may well change throughout the period of time that the company is in operation.

The share capital can take various forms (for example a capital contribution or contribution in kind) and is a guarantee for the company's creditors.

For SARL and SAS companies, there are no minimum capital requirements. It is therefore possible to incorporate a company with a share capital of one euro. In comparison, the incorporation of an SA requires a minimum capital contribution of 37,000 euro.

In terms of the shareholders, the position is the same for all companies in that they will only be liable up to their own contribution to the company's capital.

Public offering of securities

The public offering relates to financial securities, which include capital securities issued by companies (mainly in the form of shares or stock).

In considering the tree 'types' of companies above, only the SA may offer securities to the public. Other companies issuing shares, such as SARL's, cannot offer securities to the public.

With regard to SAS companies, the general principle is that such companies are prohibited from offering securities to the public. But since 2009, under certain circumstances, SAS companies can issue bonds by way of 'private placement' or private offering.

The issue to the public of bonds is, regardless of their amount, subject to the control of the 'Autorité des Marchés Financiers (AMF)', who are the regulatory authority for the French market. The AMF require complex formalities to be complied with prior to the issue of bonds. Such formalities include the publication of a document called the 'prospectus'.

General Meetings

There are Ordinary General Meetings, which serve the purpose of, amongst other things, validating the annual accounts, and Extraordinary General Meetings, which may be held to amend the articles of association of the company.

The formalities involved in convening General Meetings are relatively relaxed and flexible, and will depend on the legal structure

of the company.

In some cases, as far as every day decision-making is concerned (for instance one involving a vote by the directors), decisions may be taken by simple written consultation without the need for a physical meeting.

Business leaders

The chief executive of a company acts as the face of the company, representing it day to day. The chief executive will make everyday decisions, with the exception of those decisions reserved to the members/partners/shareholders.

The SARL is managed by one or more managing partners.

The SAS is managed by its president (in some cases referred to as the chairman of the board).

The SA is managed by a board of directors comprised of 3 to 18 members.

In France, the chief executive of a company can be a foreign national.

The articles of association freely determine the responsibilities of a company's chief executive. The company's chief executive is not liable to third parties, the company assumes any liability and accepts the consequences of the mistakes of the company's chief executive. That being said, a company may have a direct claim against the chief executive under certain circumstances.

If, however, a chief executive knowingly acts in contravention of their duties and responsibilities, and their actions are considered to be of a sufficiently serious nature, they may be held personally liable for this.

The chief executive of a company can be a partner/member (in case of a SAS) or shareholder of the company, and in certain conditions can also be an employee of the company.

Financing of a company

A company may be financed by:

- The contributions made by the partners at the time of incorporation (the share capital);
- Any savings of the company;

- Bank financing (borrowings, lines of credit etc.);
- Non-bank loans and subsidies;
- Current accounts owned by directors or shareholders; or
- The issue of stocks and/or bonds on financial markets.

Commencing operations of the company

Before a company begin to function, the members must draft and register the articles of association after having chosen a company name, find a location from which the company will operate, and open a bank account in the company's name.

Details of the company's incorporation must be published by way of a legal notice in a newspaper, before being submitted to the relevant 'competent business formalities center' (Centre de Formalités Compétent).

This is usually a quick process, although the timescales are often dictated by the complexity of the company and its proposed activities.

Mergers and acquisitions

A company can be sold in two different ways:

- 'share/stock sale', where the assets and liabilities transfer to the buyer; or
- 'asset sale', where only the business assets transfer to the buyer (the seller remaining responsible for the debts).

For example, a company may choose to purchase another company to expand its 'group'. Alternatively, a company may seek to restructure its existing companies by merging with another company. In either scenario, the procedure to do so is specifically set out in relevant legislation.

Companies in difficulty

Where a company is experiencing financial difficulties, they may be subject to suspension and/or cessation of payments. The suspension of payments procedure will arise where the liabilities of a company outweigh the assets of the company.

In the absence of the 'suspension of payments' procedure, the company may decide to resort to judicial proceedings and initiate a safeguard procedure, a conciliation procedure, or an ad hoc mandate.

If, however, the company has ceased payments, the suspension of payments must be reported within 45 days. Depending on the financial situation of the company, proceedings for legal redress or liquidation of property will be put in place.

The proceedings for legal redress recognise the fact that the company is not irreparably compromised. Thus, the company can continue its activity under the control of the Commercial Court.

In the case of liquidation of property, however, the legal redress of the company is no longer possible and consequently, at the end of the procedure, the company is dissolved. There is a simplified liquidation procedure for small companies.

Voluntary liquidation

In addition to judicial liquidation, a company may be dissolved by the partners or shareholders.

There are many reasons why directors might decide to enter into voluntary liquidation, particularly where they are a shareholder/creditor of the company.

Once the decision has been taken to dissolve the company, steps will be taken to realise the assets and discharge the liabilities.

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Tax overview

Company Registration

In France, company registration is carried out by a company formalities centre.

There are several company formalities centres, the jurisdiction of which is determined by the status of the operator (individual entrepreneur or company) and the type of business:

Chambre des Métiers (Chamber of Trades): natural persons and companies who are required to register with the trades directory: trades and crafts

Chambre d'Agriculture (Chamber of Agriculture): natural persons and companies with agriculture as their main business

Registry of Commercial Tribunals: civil companies and non-commercial companies

URSSAF: natural persons who are professionals

Chamber of Commerce: all other companies that are not registered with the previous formalities centres.

The company formalities centre takes charge of registration with the tax authorities and employee welfare bodies, for employees.

Taxation arrangements

Once the company has been registered with the company formalities centre, the tax authorities and employee welfare bodies are informed of its existence. It can thus declare and pay the taxes and welfare contributions owing from it.

The cost of registration with a formalities centre is small, and does not exceed €250.

Current national tax

Corporation tax

The taxable profit of companies and subsidiaries operating in

France attracts corporation tax at the rates of:

15 % for the first €38,120 of profit,

28 % between €38,120 and €500,000 of profit

and 31% above that amount.

The 15% rate only applies to companies with a turnover below

€7.63 million where over 75% of the capital is held by natural persons.

If a French resident company owns 5% or more of the shares of a company (foreign or otherwise), the French company is not liable for tax on 95% of the dividend received from its holding, , subject to compliance with applicable conditions.

Commercial tax: tax on local profit

There is no tax on local profit in France.

But there is a tax called the contribution on the added value of companies.

The rate of that tax based on the added value produced ranges from 0.5 to 1.5 % depending on the turnover. Companies must also pay the business land contribution every year.

This tax is calculated in relation to the value of the buildings used by companies.

Other taxes (VAT, land taxes, registration duties)

VAT

There are four VAT rates in France:

2.1% rate: applies to refunded medicines.

5.5% rate: mainly applies to food products

10% rate: particularly applies to housing rental and the sale of food products in restaurants.

20% rate: applies to all products and services to which the previous rates are not applicable.

Each company must declare and pay its VAT every month, between the 16th and 24th of the following month. The declaration is submitted online and paid by direct debit.

Any credit is refunded.

Land taxes and registration duties

In France, all owners of real property must pay land tax.

Companies are also required to pay transfer duties in the event of the disposal of some assets:

Transfer of buildings: 5 %

Transfer of business assets: 3 to 5 %

Transfer of shares: 0.1 %

Transfer of membership shares: 3 %

Treaties to avoid double taxation

General rules

France has signed tax agreements with a number of countries in order to avoid double taxation (approximately 120).

They chiefly apply to income tax, wealth tax and succession duties.

Special characteristics with the other countries addressed in the book

Double taxation issues are addressed by tax agreements, and also by the European Union when a difference in treatment is observed between citizens or European countries within a member state.

Distribution of dividend

(anticipatory national taxes, international tax exemption options)

France applies withholding tax on the distribution of dividend to a foreign company or natural person. The rate depends on the stake held in the French company.

If the shareholding is substantial (at least 10%, and the rate varies depending on the agreement), the withholding rate ranges from 5 to 15%

For other, less significant holdings the rate ranges from 10 to 25%.

The rates may be lower if so provided by French regulations.

The dividend paid to non-residents (natural persons) may also attract CSG contribution at the rate of 17.2% but this decision of the French state has been challenged before the French courts.

Tax treatment of losses

Losses are carried forward indefinitely, unless the business of the company undergoes a significant change. In that case, the loss cannot be carried forward to the new business.

Losses can, however, be carried forward within the limit of €1 million, plus 50 % of the profit above that limit.

Losses may also be carried back to the previous financial year, subject to a limit of €1 million.

Obligations of employers (taxes on salaries, welfare treatment)

Every month, each employer is required to prepare a pay slip for its employees. The pay slip must set out the contributions to be paid by the employee and those to be paid by the employer.

Contributions for healthcare insurance, retirement and unemployment and CSG are paid to URSSAF, as regards both the share withheld from the employee and that paid by the employer. This payment is made every month.

A supplementary pension contribution is paid to a fund identified in the relevant collective agreement applying to the employees.

Supplemental health insurance contributions are paid to a body identified by the company.

The contribution rates for all of these matters generally amount to approximately 23% to be paid by the employee and 40% by the employer.

The 23% and 40% rates are calculated on the gross salary.

From 01 01 2019 the employer has also been required to collect income tax from the employee's and detail this on the employee's pay slip.

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