Main legal characteristics of the French Limited Liability Company (SARL)

The limited liability company (société à responsabilité limitée or SARL) is set up by one or several entities or individuals. The share capital is divided into equal interest-shares (parts sociales) which may not be represented by share certificates. The shareholders (associés) are only liable for the company’s losses up to the amount of their capital contribution. They are not considered as merchants, to the exception of the individual who manages the company (gérant).

Together with the SAS (société par actions simplifiée), the SARL is the most adequate structure for both small and medium-sized companies having a small number of shareholders. It is less expensive than an SAS when the SAS must appoint statutory auditors i.e. when it controls or is controlled by another company, or is under joint control.

One-Owner SARL: EURL

Such a company, called an EURL (entreprise unipersonnelle à responsabilité limitée), is set up by a sole shareholder, either an entity or a natural person. An EURL may also be the natural result of one shareholder owning all of the interests-shares in an existing SARL. The EURL operates essentially in the same way than the SARL, but particular operating rules have been rationalized to accommodate the fact that the EURL has a sole shareholder.

The sole shareholder may be the manager or may appoint a third party as manager.

The rules relating to the convening of general meetings of shareholders are not applicable, but the decisions of the sole shareholder must be recorded in the corporate minute book of the company.
1. **Organization**

The SARL is prohibited from carrying out certain business activities such as issuing insurance policies, acting as an investment company, or being a savings institution.

It must have at least two and no more than one hundred shareholders.

There is no minimum stated capital which may be as low as € 1. Share par value can be set freely provided that all interest-shares (*parts sociales*) have the same par value.

1.1 **Contribution to Capital**

Capital contribution in cash must be deposited with a financial establishment and may only be withdrawn after the SARL is registered at the commercial register. At least 20% of the par value of interest-shares must be paid in prior to registration. The balance must be paid within the five-year period following registration.

The contribution of property in kind to the SARL is subject to specific rules. The asset must be assigned a value by an expert appraiser (*commissaire aux apports*) unless none of the contributed assets has a value exceeding € 30,000 and the total value of contributed assets does not represent more than 50% of the share capital.

1.2 **Name and Duration**

The name of the SARL may be freely chosen (provided it does not infringe third parties’ intellectual property rights), and must be preceded or followed by the words "société à responsabilité limitée" (or the initials "S.A.R.L.") as well as the amount of the stated capital. On the SARL’s official correspondence, this is typically indicated by putting this official information at the bottom of the letterhead.

The SARL’s articles of association must be in writing. A notary is not required unless real estate property is contributed.

These articles can be more or less detailed depending on the objectives of the SARL’s shareholders. The following must be indicated in the articles, however:

- the legal form adopted;
- the duration of the company;
- the company’s name;
- the address of the SARL’s head office;
- its corporate purpose;
- its stated capital;
- the evaluation of any contribution in kind;
- the allocation of interest-shares among the shareholders;
- whether or not the interest-shares have been fully paid up and the fact that all capital contributions in cash have been deposited in the official depository account.
In addition to the above information, the SARL’s bylaws must detail the organization of the company, the choice of one or more managers, their powers, how interest-shares may be transferred, how shareholder’s meetings are organized; the majority required for certain resolutions; the rules governing the approval of the annual accounts, the method for distributing income and any liquidation surplus, and the rules for liquidating the company.

1.3 Registration and publication

As for any commercial company, registration with the register held by the commercial court and publication formalities are required.

2. Internal Operations

2.1 Shareholders’ meetings

2.1.1 Official Meetings

In principle, shareholders supervise and control the SARL’s management through decisions made during official meetings. Holding an actual meeting is legally required to approve the SARL’s annual accounts or when a meeting has been requested by a sufficient number of shareholders (representing at least 10% of the shareholders and 10% of the shares or only one-half of interest-shares).

Otherwise, bylaws can provide that the SARL’s shareholders can be consulted by correspondence. Bylaws may even limit consultation by correspondence to certain decisions (such as, deciding upon an amendment to the bylaws). In most cases, the shareholders of an SARL can make their decisions by signing a unanimous written consent, provided that bylaws expressly allow this means of making decisions. Certain decisions must be made by an actual meeting, however, such as decisions to approve annual accounts.

2.1.2 Calling Meetings

A shareholders’ meeting can be called by the SARL’s manager(s). In the absence of a manager, the SARL’s statutory auditor may call the meeting. Should the SARL’s manager fail to call a meeting when a sufficient number of shareholders have so requested, a shareholder (without any minimum shareholding specified) may request the court to designate an individual empowered to convene the meeting and set its agenda.

The official convening to a shareholders’ meeting is sent by registered letter at least 15 days in advance of the meeting. Verbal convocation suffice, provided that all of the shareholders are present or represented at the meeting.

2.1.3 Agenda

The official convening includes the agenda of the meeting. A shareholder cannot request that a proposed resolution be placed on the official agenda unless the bylaws expressly provide for this facility.
2.1.4 Holding the Meeting

Shareholders’ meetings are presided over by the SARL’s manager(s). Shareholders may be represented by their spouse or another shareholder, or even a third party if the bylaws provide for this facility.

Each shareholder must have the same number of votes as interest-shares i.e. interest-shares with multiple voting rights are not permitted. Voting by correspondence at an actual meeting is also forbidden.

The minutes of all shareholders meetings must be recorded on a special registry that is officially marked by the clerk of the commercial court and must be signed by the manager who presided over the meeting.

2.1.5 Majorities

A distinction must be made between "ordinary decision" and "extraordinary decisions".

Ordinary decisions include the approval of accounts, appointment and dismissal of the manager and other decisions which do not imply an amendment of the bylaws.

Extraordinary decisions include decisions modifying the bylaws, increasing or reducing the share capital, mergers, dissolutions etc.... (to the exception of the capital increase deriving from the incorporation of equity).

At the first call of a meeting, an absolute majority of more than 50% of the SARL’s interest-shares must be voted to pass a resolution. Should this majority not be reached due to insufficient attendance, a simple majority of votes cast (notwithstanding the number of shareholders voting) is sufficient to pass ordinary decisions at a second meeting. Nevertheless, the SARL’s bylaws can prohibit a second meeting and, in so doing, impose an absolute majority vote for any ordinary decisions.

For extraordinary decisions, at least one-quarter of holders of interest-shares must be present or represented, at the first call, one-fifths at the second call. Then, the resolution amending the bylaws must be adopted by at least two-thirds of holders of interest-shares whether present or represented.

The following types of amendments are exceptions to this rule, however: the shareholders must unanimously vote to change the nationality of the SARL, transform it into a partnership, or increase the shareholders’ financial commitments.

A majority in number of shareholders and a vote of one-half of the interest-shares must approve a transfer of interest-shares to a non-shareholder.

2.1.6 Consultation by postal mail

The bylaws may stipulate that, with the exception of approving annual accounts, any decision (or certain categories of decisions) can be made through written consultation of the shareholders by mail.
2.2 Shareholders’ Information Rights

2.2.1 Pre-Meeting Information Rights

Prior to the annual shareholders’ meeting that will review the SARL’s accounts of the last financial year closed and at least 15 days before the meeting, the manager must send documentation to shareholders: the SARL’s inventory, its annual accounts, the manager’s report; the text of any resolutions that will be proposed and the statutory auditors’ report (if an auditor is required).

2.2.2 Permanent Information Rights

Any shareholder is entitled to review the following documents at the SARL’s head office for the prior three financial years: the SARL’s annual accounts, its inventory, the reports submitted to any shareholders’ meeting, and their minutes. Copies may be made of these corporate records.

2.3 Interest-shares

2.3.1 Characteristics

An SARL’s ownership is evidenced by the attribution of interest-shares ("parts sociales"). An SARL may not issue negotiable securities, may not have its shares quoted, nor may it make a public offering of its interest-shares. All interest-shares must have the same par value.

2.3.2 Sale of Interest-Shares

Since no certificate is issued, the transfer of shares must be made through a private sales contract. The parties will sign a sufficient number of duplicate originals of the contract for the purchaser, the seller and the company to have a copy, for a copy to be submitted for the registration formality and for the filing of registered copies with the clerk of the commercial court.

The transfer will not be binding on third parties, until copies of the contract have been filed with the clerk of the commercial court.

2.3.3 Registration Duties

A sale of interest-shares in an SARL entails a registration duty of 3%. The basis of this duty is the price as set forth in the contract (or the market value of the interest-shares, if higher). The duty payment is the acquirer’s liability, but this cost may be shifted to the seller, if the sales contract so provides.

2.3.4 Approval Procedure

The SARL is a closed company form. Any sale of interest-shares to a third party must be specifically approved. Unless the bylaws provide for specific conditions, no approval is required for a sale to another shareholder, a shareholder’s spouse or his immediate family.
The shareholder who contemplates the transfer of interest-shares to a third party must send a prior notice to the SARL and all of its shareholders, by registered letter with return receipt requested or through a huissier (a type of bailiff) or, since January 23, 2012, deliver the notice personally. Within 8 days of notifying the SARL, the manager must call a shareholders’ meeting to vote on the transfer or (if the bylaws so provide) consult the shareholders by mail.

Shareholders’ approval to the transfer may be express, tacit or implied. Express authorization is given when a majority of shareholders representing at least one-half of the SARL’s interest-shares consents (unless the bylaws impose a larger majority). Tacit authorization is deemed given when the SARL fails to advise the transferring shareholder of a decision within three months of the last notice. Authorization is implied when, after refusing an express approval, the SARL’s shareholders do not purchase or redeem the interest-shares that are offered.

A shareholder whose transfer was denied may force the SARL or the other shareholders to purchase his interest-shares. The SARL’s other shareholders have three months from their denial to purchase the interest-shares or have them purchased by an approved third party. If the transferring shareholder and the other shareholders cannot agree on the price, an expert designated by mutual agreement determines the price. If an agreement cannot be reached on an expert, the president of the commercial court designates him/her.

3. Management

3.1 Managers

An SARL is managed by one or more managers (gérants). The manager needs not be one of the SARL’s shareholders. If the manager is a non-EU or non-EEA national, he/she must hold a resident card or a temporary resident permit if residing in France. If the manager does not reside in France, a special declaration must be filed together with a criminal record with the “Préfecture” prior to his/her appointment.

A manager may have an employment contract with the SARL for a job unrelated to his/her managerial role if he/she is not a majority shareholder.

3.1.1 Election and Term

The SARL’s initial manager is named in the bylaws or in a subsequent shareholders’ resolution. When not named in the bylaws, the nomination must follow within a short time period since the SARL’s entry in the commercial register must indicate the manager’s name.

The manager’s term is set in the bylaws or in the nominating resolution. Unless otherwise provided in the bylaws, the manager serves for the full life of the company. When the manager’s term expires, he/she automatically loses his/her mandate. Failing a contrary provision in the bylaws, a manager may be re-elected.
### 3.1.2 Termination

A manager may be dismissed by a decision of the shareholders representing more than one-half of the interest-shares (unless the bylaws impose a larger majority). The dismissal does not allow the ex-manager to sue for damages unless the dismissal is decided under onerous circumstances or without grounds.

### 3.1.3 Powers

The bylaws of an SARL can limit the manager’s powers or impose a prior approval of shareholders on the making of any specific category of decisions. Failing such a limitation, the manager can accomplish any managerial act in the interest of the company.

When the SARL has more than one manager, each has full capacity to act separately unless the bylaws stipulate otherwise.

A manager has *apparent authority* to bind the SARL with third parties without limitation i.e. limitation in the SARL’s bylaws is not binding on third parties.

### 3.1.4 Compensation

The manager’s compensation is decided by the shareholders’ meeting

For social security contribution purposes, a majority manager is not considered as an employee, but rather as an independent worker and, if not compensated for his/her duties, must pay French social contributions on a minimum lump sum basis. A minority manager is subject to the social security system for employees.

### 3.1.5 Liability

Managers are jointly and severally liable to the company or to third parties for violations of legal and regulatory rules, violations of the bylaws, and for faults committed in their management.

### 3.1.6 Designation of Statutory Auditor

An additional level of supervision is imposed on managers and shareholders by requiring them to designate at least one statutory auditor when at the end of any financial year, at least two of the following three thresholds are met by the company:

- its total balance sheet exceeds € 1,550,000;
- its turnover exceeds € 3,100,000; or
- the number of its employees exceeds 50.
The individual or firm selected as statutory auditor must be listed by the local court of appeals. Statutory auditors serve a term of six years (which can be renewed). Their role is to review certain financial documents concerning the SARL’s financial year (annual accounts, annual management report if necessary, etc.)

3.1.7 Court Designated Expert

As another control on the management, one or more shareholders holding at least one-tenth of the SARL’s interest-shares can request a court to designate an expert whose role is to present a report on transactions entered into by the SARL’s management.

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