

RUSSELL-COOKE SOLICITORS

**THE
FRENCH LAW
DEPARTMENT**
SETTING UP A
BUSINESS IN
FRANCE

Setting Up a Business in France: Individual or Corporate Ownership?

With few exceptions (related to banking, insurance, public authority, public health or defense), foreign investments in France only need to be declared to the tax administration and are free from any prior administrative control.

As EU members, UK citizens are free to set up any commercial business and to manage a French company.

Setting up a business in France benefits from a secure legal framework that offers a large variety of options from individual ownership to listed companies.

The legal framework will depend on the investor's development strategy regarding different aspects such as:

- > Personal property and liability
- > Financial commitment
- > Taxation
- > Social security

Individual Ownership

The individual ownership remains the most common form of business but appears to be only suitable to businesses of limited levels of investment and liability.

Financial commitment/personal property

The notion of capital contribution does not apply here, since the

business and its owner's property constitute a sole legal entity. As a consequence the investor:

- > Benefits from a total freedom of action to take any business decision
- > Has no reports to draw to any Shareholder's Meeting
- > Does not have to file his accounts with the Commerce Court Register
- > The notion of abuse of corporate assets (abus de biens sociaux) does not apply, and the owner can freely withdraw any business asset without formality.

Liability

The individual owner is indefinitely responsible (indéfiniment responsable) on his entire property for the business liabilities.

As a consequence, the choice of a separate property marriage contract is essential to protect the spouse's assets from the business creditors.

However, it should be underlined that as from 1st January 2004, individual owners may keep their principal housing unseizable by simple declaration to a Notaire, this declaration being published by the Land Registry and by the Commerce Court Registry.

Taxation of the benefits

Taxation is set up at the owner's level and based upon the global business income actually

withdrawn or not.

A deduction is granted if the owner joins an authorized management center (Centre de gestion agréé) that will fill his tax and social returns.

Social security

The individual owner is submitted to the independent worker's (travailleurs indépendants) social security scheme, which main characteristics are a minimum contribution on the first year of activity (even with no profits) and the absence of unemployment insurance.

Development/Sale

The development capacity of an individually own business is virtually nonexistent since its conversion into any corporate form triggers heavy taxes and costs.

The sale of an individually owned business necessarily takes the form a cession de fonds de commerce procedure (law of 17th March 1909), which main characteristics are its publicity and the fact that the price remains under custody to allow the business creditors to be paid by privilege. The registration cost is of 4,80 % based on a fair market value with an allowance of €23.000.

Therefore is recommended to set up one's business even of a small level through one of the limited liability corporate forms French law provides.

Corporate Ownership

General Overview/Common Characteristics

Setting up a company gives birth to a separate legal entity independent from its founding members.

As a consequence:

Liability

The business benefits from its own a distinct property separate from that of the owner. In case of bankruptcy and as long as no management faults can be proven, the investor's property remains safe from the business creditors (With some exceptions with particular corporate forms such as the Société en Nom Collectif - SNC , which is seldom used by individuals).

Financial commitment/personal property

In return, this limited liability form leads to legal constraints:

> A capital contribution is mandatory, being the creditors only guarantee. Its minimum amount will depend on the chosen corporate form (SARL or SA)

> The personal use of corporate assets is strictly forbidden and may lead to criminal prosecutions (abus de biens sociaux)

> The withdrawal of a business asset can only take place through a dividend payment or a capital decrease, which both require a Shareholders' General Meeting's

decision

> The annual accounts and the management report are published by the Commerce Court Register.

Executives

Companies need to be represented and managed by individuals or other companies represented by individuals.

Executives (Gérants of SARL, Président and members of the Board of SA/SAS) are vested with the broadest powers to represent the company and to act in its name in any and all circumstances.

In return for these powers, French law provides that the executives can be dismissed at any time by the Shareholders' General Meeting and incur both criminal and civil liability.

Dismissal

Members of the Board of a SA/SAS or Gérants of an SARL can be dismissed at any time and without notice by the Shareholders General Meeting. In the case of a Gérant, the dismissal needs to be properly motivated. A Member of the Board of a SA/SAS can be dismissed without motivation.

Criminal liability

Executives incur criminal liability if they infringe on one of the provisions of the criminal law concerning the operating of a company. These main provisions are the following:

> Executives must not use the assets of the company and their powers personally or in a way that is opposed to the Company's interests

> Each year, executives must draft the annual accounts with a fair presentation

> Each year, within the six-month period following the closing of the financial year, executives must convene the Shareholders' General Meeting to approve the annual accounts and to allocate the result. In this respect, a management report and the minutes of the Shareholders' General Meeting have to be drafted

> Executives must not support the allocation of illegal dividends to the shareholders

> Should the equity capital become lower than one half of the share capital, executives have to convene the Shareholders' General Meeting in order to decide whether or not the Company should be liquidated

Civil liability/Bankruptcy
Executives are liable towards their company and third parties for any breach of the law or of any provision of the Articles of Association, as for any mismanagement.

These main provisions are the following:

> Breach of any legal and statutory provision applicable to

French companies, granting of a loan to a shareholder or an executive, agreement entered between an executive and the Company without prior approval by the Shareholders' General Meeting

> Breach of the Articles of Association

> Any mismanagement: tax fraud, default of information of the shareholders upon the seriousness of the company's financial situation, negligence leading to the condemnation of the company to damages

> With regards to third parties, in case of fault of the executive separable from his office and attributable to him: the decision to voluntarily deceive one of the company's supplier upon the solvency of the company

Fault is never presumed. In case of bankruptcy, any shareholder or creditor of the company needs to prove its existence in order to seek the executive's liability.

Taxation of the benefits
Companies are subject to French corporation tax (impôt sur les sociétés), which is assessed on the net earnings of the company (the management's wages being deductible). Its rate is currently of 34,33%.

A social contribution of 3 % was instituted by Law of 1st January 2000 on the benefits of companies with a turnover above €7,630,000.

By exception individually or family owned SARL (by option for the latter) are taxed as individual businesses (transparency regime).

Most Common Corporate Forms

The most common corporate forms used in France are the Société À Responsabilité Limitée (SARL) and the Société Anonyme (SA). A variant of the latter appeared recently and is becoming widespread: the Société par Actions Simplifiée (SAS).

The business premises are usually owned through a Société Civile Immobilière (SCI) setup by the business owners. The use of the premises is granted through a Bail commercial (commercial lease), which rent eventually finances the construction or the purchase of the premises.

The Société à Responsabilité Limitée (SARL)

Since it may be set up with less capital than the SA and has most of the time no audit requirements, the SARL lends perfectly itself to small to medium business activities.

> Shareholders

The SARL can be set up by 1 or up to 50 persons.

> Capital/Transfer of shares

The capital amount is freely determined by the shareholders according to the needs of the company. The necessity of a minimum amount of €7.500 was suppressed by law dated 1st

August 2003. It remains recommended to set up a coherent amount regarding the level of the investment. Otherwise and in case of bankruptcy, the liability of the shareholders and of the management may not be excluded.

Contributions may be in cash or in kind. Contributions in cash must be paid up at least 20% immediately, while the remainder must be paid up within 5 years. Contributions in kind (equipment, patents, etc.) remain exceptional, since they require prior intervention of an auditor appointed by the Court of Commerce to guarantee the fair value of the contribution.

The SARL's capital is divided into equal interest's shares (parts sociales), which are not transferable except by deeds and not represented by share certificates.

Transfer of shares needs prior approval from the shareholders or the Gérant (manager). The registration duty is of 4,80%, based on a fair market value with an allowance of €23.000 proportional to the number of shares purchased as from 1 January 2004.

> Legal

representation/Management

General framework

At least one Gérant (Manager) must be appointed to represent the company.

The Gérant can be a legal entity represented by an individual person. The Gérant does not have to be a shareholder.

Social security

When holding a majority of shares, the Gérant is submitted to the independent worker's (travailleurs indépendants) social security scheme as an individual owner, which main characteristics are a minimum contribution on the first year of activity (even with no profits) and the absence of unemployment insurance.

When being a minority shareholder, the Gérant is regarded as an employee and benefits from the employee's social security scheme, which is more protective. Social costs are settled on the actually paid wages.

However, the Gérant even in a minority position, does not benefit from the national unemployment insurance scheme (ASSEDIC).

> Shareholders' Meetings

Shareholders are called to Extraordinary General meetings (amendment of the Articles) and to Ordinary General meetings (any but Extraordinary: approval of the annual accounts, Gérant's wages, etc.) to take major decisions.

The Articles of Association may authorize voting by correspondence or signed acts.

The majority for Ordinary General Meeting is more than 50% of the

voting rights.

The majority for Extraordinary General Meeting is more than 3/4 of the voting rights.

> Audit requirements

A statutory auditor must be appointed as soon as the company meets two of three criteria:

- Turnover of ≥100,000 or more
- Balance sheet total of €1,550,000 or more
- 50 or more employees

> Public offering of shares

The SARL cannot issue public offering of its shares.

The Société Anonyme - SA
The SA is the company form most commonly chosen for a large business. It remains a legal framework of excessive rigidity and formality for small to medium activities.

> Shareholders

The SA must be set up with a minimum of 7 shareholders.

> Capital/Transfer of shares

A minimum amount of 37,000 is necessary.

Contributions in kind must be paid up in full immediately, and contributions in cash at least 50% immediately while the remainder must be paid up within 5 years. Contributions in kind remain exceptional and require prior intervention of an auditor appointed by the Court of Commerce to guarantee the fair value of the contribution.

The SA's capital is divided into shares of stock (actions), some of which may have preferred interests.

Shares are transferable by simple transfer order.

Transfer of actions is normally free but the Articles of Association can provide that any sale to a non-shareholder is subject to prior approval of the Board of Directors or of the Supervisory Board.

The registration duty is of 1%, based on a fair market value with a ceiling of €3,000, which makes the SA easy to purchase (and to sell).

> Legal representation/Management

General framework

The legal representation and management of an SA may be structured into 2 different ways:

> Either with a Board of Directors (Conseil d'administration) of 3 to 18 members appointed for a maximum period of 6 years with a Président.

The Président. (individual only) is appointed by the Board of Directors and is necessarily one of its members. The President's responsibility is to chair the Board.

The day-to-day management is under the responsibility of the General Manager (Directeur Général) who may be the Président himself (acting as

Président-Directeur Général) or another person (individual only) member of the Board or not.

> Or with a Management Board (Directoire) of 1 to 5 members (individuals only) working under the control of a Supervisory Board (Conseil de Surveillance) of 3 to 18 members.

Holding several offices concurrently

Since law of 15th May 2001, an individual cannot hold more than 5 Member of the Board offices concurrently.

The offices held in controlled companies or in sister companies (common holding) are not taken into account (in the latter case: insofar as the sister companies are not listed on the stock market).

An individual cannot hold more than one office of Directeur Général.

By exception, a Directeur Général may hold a second office in a controlled company and in any other company insofar as none of the companies is listed (which makes a total of 3 offices).

Social security

Even holding a majority of shares, the Président is considered as an employee and benefits from the employee's social security scheme (with social costs settled on the actually paid wages).

However the Président does not benefit from the national

unemployment insurance regime (ASSEDIC).

Member of the Board's office is normally free but can benefit from presence fees (Jetons de présence) granted by the Shareholders' Meeting. No social security scheme is attached to these presence fees, which are considered as a dividend form.

> Shareholders' Meetings

Shareholders are called to Extraordinary General meetings (amendment of the Articles) and to Ordinary General meetings (any but Extraordinary: approval of the annual accounts, Members of the Board presence wages, etc.) to take major decisions.

Shareholders have the possibility to vote by correspondence and to use electronic means if authorised by the Articles of Association.

The majority for Ordinary General Meeting is more than 50% of the voting rights.

The majority for Extraordinary General Meeting is more than 2/3 of the voting rights.

> Audit requirements

The SA must have a statutory Auditor whose function is to guarantee the fair presentation of the financial statements and to denounce the breach of any criminal provision within the management of the company.

> Public offering of shares

The SA can issue public offering

of its shares and become a listed company.

The Société par Actions Simplifiée (SAS)

The SAS was created by law of 3rd January 1994 as a new company form and was initially designed to be a vehicle for French or foreign corporate joint ventures.

Law of 12th July 1999 made the SAS accessible to medium businesses by suppressing the condition of a minimum capital amount of FF 1,500,000 (€228,000) and allowing individuals to be shareholders.

The SAS is basically a simplified variant of the SA, setup with a minimum capital amount of €37,000, divided into shares of stock (actions), transferable with a registration duty of 1% (limited to €3,000). The SAS must have a statutory auditor.

The SAS differs from the SA on the following issues:

> Shareholders

The SAS can be set-up by a sole shareholder.

> Capital/Transfer of shares

The Articles of Association can provide approval clauses, inalienability clauses (for a maximum period of 10 years), exclusion clauses and preemptive clauses.

> Management

General Framework

The management is freely organized by the Articles of Association (Board of Directors, Supervisory Board, etc...).

However there must be at least one Président who may be an individual or a company represented by an individual. The Président represents the company with the broadest powers and renders the company liable for all of his acts.

Holding several offices concurrently

The limitations of the law of 15th May 2002 do not apply to SAS.

> Shareholders' Meetings

The Articles of Association decide for the field covered by the collective decisions, as well as for the procedure (written consultations, signed acts, videoconference, etc.) and the conditions of these decisions (majority, unanimity).

However, certain major decisions relating to matters such as increase or reduction of the capital, merger, transformation etc. must be taken collectively.

> Public offering of shares

The SAS cannot issue public offering of its shares.

The Société Civile Immobilière (SCI)

A proper management requires the business activity to be separated from the real estate assets for two main reasons:

> Real estate assets need to be sheltered from the company's creditors

> Investors are often interested by the sole business activity and the existence of real estate assets make the company difficult to sell.

This conducts to holding the business premises through a separate company, which may be a SARL or an SA/SAS, but which is most of the time a SCI preferred for its simple (and cheap) operating.

> Shareholders

The SCI needs to be setup by a minimum of 2 shareholders (with no maximum).

> Liability

Unlike most of commercial corporate forms, civil companies such as the SCI do not provide a limited liability. Shareholders are liable in proportion to their capital holding towards the company's creditors.

> Capital/Transfer of shares

The capital amount is freely determined by the shareholders according to the needs of the company.

Contributions may be in cash or in kind. Contributions do not have to be paid up immediately.

Due to the non-limited liability principle, contributions in kind do not require prior intervention of an auditor appointed by the Court of Commerce to guarantee the fair value of the contribution.

The SCI's capital is divided into equal interest's shares (parts sociales), which are not transferable except by deeds and not represented by share certificates.

Transfer of shares needs prior approval from the shareholders or the Gérant (manager). The registration duty is of 4,80 %, based on a fair market value.

> Business purpose and capacity

The purpose and capacity of an SCI is strictly limited to civil businesses: holding and leasing real property. Buying or selling real property on a regular basis is a commercial activity and must therefore remain exceptional.

> Legal representation/Management

Like the SARL, the SCI is represented and managed by at least one Gérant (individual or company represented by an individual) who does not need to be a shareholder.

Gérants benefit from no particular social security scheme. Most of the time the Gérant's office is free.

> Shareholders' Meetings

The Articles of Association decide for the field covered by the collective decisions, as well as for the procedure (written consultations, signed acts, videoconference, etc.) and the conditions of these decisions (majority, unanimity).

> Audit requirements

A statutory auditor must only be

appointed when the company meets two of three criteria:

- > Turnover of €3,100,000 or more
- > Balance sheet total of €1,550,000 or more
- > 50 or more employees.
- > Public offering of shares

The SCI cannot issue public offering of its shares.

Company's Premises

The company (as the individual business) needs to have the use of its premises. The registered office can be settled in a business center or at a personal address. Most of the time the use of the premises will be granted by a commercial lease (bail commercial).

Domiciliation in a business center
Business centers provide domiciliation and other services (telephone, secretaries, mail, etc.). Domiciliation in a business center (or at a personal address) is actually possible when the business activity does not involve particular equipment or client's visits.

Domiciliation at the legal representative's personal address
Since Law of 1st August 2003 the headquarters of a company can be at the legal representative's (Gérant/Président) personal address, unless this domiciliation contravenes legal or conventional

provisions (lease contract, joint ownership regulations, etc.).

In this latter case, the domiciliation at the legal representative's personal address remains possible but only for a newly set up company and for a maximum of 5 years from the date of its registration.

Commercial lease

Industrial and commercial premises generally enter into the commercial lease (bail commercial) scheme, which is strictly regulated by the law of 30th September 1953 with a view of protecting the lessee's interests:

> The lease has a minimum duration of 9 years and may be terminated every 3 years upon the lessee's initiative

> The rent increase is limited according to a national index published by the INSEE

> The lessee benefits from protection against the non-renewal of the lease through dismissal indemnities based upon the value of the business and the cost of its transfer.

Setting up a Company Procedure

Preliminaries

The preliminaries of the setting up of a company are:

> To conclude with a the owner of the premises or with a business center to serve as the

company's registered office

> To appoint the executives of the company. If the Gérant (SARL) or Président (SA/SAS) is non-EU citizen, application must be made for a trade permit

> To open a bank account and to deposit the capital amount.

Setting up

The setting up procedure requires:

> The signature of a commercial lease contract or a domiciliation contract with a business center

> The signature of the Articles of Association

> To file the Articles of Association with the tax office where the company's registered office is situated (free except for some contributions in kind)

> To publish a notice containing the company's main characteristics in a legal gazette.

Formalities

Formalities required for setting up a company are conducted through one single point of contact the Centre de Formalité des Entreprises - CFE, which is in charge of informing:

> The Commercial Court Clerk's Office in charge of registering the company

> The Institut National de la Statistique et des Etudes Economiques - INSEE in charge allocating a line of business code

as well as the SIREN (identification number) and the SIRET (premises number).

These codes and numbers are required for recruiting staff

> The tax and social security authorities.

The documentation attached to the registration must be written in French (or translated into French). The documentation to be filed consists of:

> 1 registration request form

> 2 original copies of the Articles of Association, mentioning manager's identity and the auditors name if applicable

> 1 copy of the deed regarding the company's premises

> 1 copy of the legal gazette containing the company's main characteristics

> 1 extract of the executives' identity cards or passports

> 1 declaration of non-conviction to be signed by each executive

> 1 copy of the executive's trade permit if applicable (non-EU citizens only)

> 1 certificate stating that the company's funds have been deposited on a bank account (previously to the signature of the Articles of Association).

The time necessary for registering the company is approximately 2 weeks. In the meantime the company is allowed to start its activity as a company in the course of registration.

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