

**YOU WANT TO DO BUSINESS IN FRANCE?
WE TELL YOU HOW...**

► Creating a Company in France

International companies setting up in France benefit from a secure legal framework that offers a wide choice of options concerning the status of their operations and the type of contracts they enter into. They can select those best suited to their position and commercial strategy at every stage, from prospecting to business expansion. In practical terms, companies that opt for a particular status on arrival and wish to change at a later date can do so quite simply. In most cases, the tax impact is also limited. Foreign companies can operate in France without officially registered representation. They may, for example, rent an office or set up operations at a business-service center and open a non-resident bank account. They may also employ one person, to whom they pay a salary plus the relevant social security amounts and other levies. In this case, the employee is responsible for paying these amounts on to the bodies concerned. Once the company has its own premises and/or employs two or more people in France, it must be officially represented by a registered liaison office, branch or subsidiary. Registration takes place with the register of companies (Registre du Commerce et des Sociétés).

» Liaison Office

Liaison office: exempt from corporate income tax and VAT

A company whose activities in France are not of a commercial nature and are limited to advertising, the supply of information, or any other preliminary operation (i.e. "an observation post") may be represented by a liaison office (bureau de liaison).

A representative office of this type is not subject to corporate income tax or VAT, but is liable for some local taxes and wage-based levies. A representative office is suitable for a foreign company simply interested in establishing contacts in France.

The formalities are very simple. It is not subject to company law or accounting standards. As long as no legal acts are performed, the representative need not be registered. As a rule, over time a representative becomes a branch empowered to represent the foreign company. It must then be entered in the trade and companies register, for which reason some court clerk's offices will register representative offices which are destined to be turned into branches.

» Branch

• Necessary for industrial and commercial activities

If the company conducts industrial or commercial activities in France, it must set up a branch office or subsidiary. Branches are considered permanent establishments for tax purposes, and are subject to corporate income tax and VAT. If the company is taxed on its worldwide income in its country of origin, the profits or losses of its branch office are included in its taxable income. However, this inclusion has no effect on tax liabilities of the branch office in France.

• A good temporary arrangement

It is quicker to set up a branch office than a subsidiary. Managed by a legal representative, a branch office operates under the authority of company headquarters and there are no special procedures for decision-making.

Yet there are also drawbacks. In the event of financial difficulties, the company has unlimited liability for the debts of the branch office. A branch office also tends to have a less positive image with potential customers and suppliers, and its status is much less favorable as regards State aid, tax exemptions, taxation of intra-group transactions, etc. In some cases, it may also be difficult to turn it into a subsidiary or sell it at a later date, in particular for tax reasons. As a result, in general it is preferable to set up a subsidiary.

"Commercial activity" refers to any activity involving the signature of documents or contracts by an employee or representative and engaging the responsibility of the foreign company. Examples include contracts for direct sales in France, or contracts for providing services to a customer of the company.

There is no minimum legal capital requirement for branches of foreign companies.

They are managed by one or more managers, whose powers are established and may be limited by the foreign head office.

For legal purposes, a branch is not a separate legal entity; therefore, it is not subject to Commercial Law and, consequently, does not have to produce financial statements.

A tax return must be filed. The French Tax Authorities can investigate the branch record.

Legal Entities in France

Where a subsidiary company is incorporated in France, the filing requirements are less extensive. A foreign company investing in France would generally incorporate or acquire shares of a company, SA, SAS or SARL.

The French private limited company has the attributes of both the partnership and the corporation. It has limited liability and limitations on interest share negotiation.

The procedures for setting up a company are:

- Drafting a proposed Memorandum and Articles of Association;
- Deciding on the capital structure and amassing the capital itself;
- Depositing the funds for cash subscribers;
- Obtaining the depositary's certificate of funds paid in;
- Signing the Memorandum and Articles of Association;
- Selecting management;
- Complying with publication and registration procedures:
 - Payment of registration duties,
 - Announcements in legal journals,
 - Filing the articles with the Commercial Court,
 - Registration with the Register of Companies,
 - An announcement in the BODACC (the official bulletin of commercial and civil announcements),

» Private Limited Companies

• **SARL: Société à Responsabilité Limitée**

An SARL company is a limited company with at least two shareholders and a maximum of 100. There is no minimum capital. 1/5 of the capital must be paid when it is incorporated and the balance over 5 years. The liability of the shareholders, of whom there must be at least two, is limited to their investment. In principle, a shareholder may sell or otherwise transfer his or her shares only with the consent of the other shareholder(s).

The manager's status is akin to that of an employee if s/he is a minority or equal shareholder.

This type of company is appropriate for a medium-sized business not requiring a large amount of financing. It is the simplest type of limited-liability company other than a one-man company.

They are no statutory audit requirements.

• **EURL: Entreprise Unipersonnelle à Responsabilité Limitée**

An EURL company is a limited-liability company with a single shareholder. It is more complicated to organize such a company than to do business as a sole proprietor. There is no minimum capital. 1/5 of the capital must be paid when it is incorporated and the balance over 5 years.

However, the sole shareholder's legal liability for the company's debts and losses is limited to his or her investment in the company even though s/he is in full and sole charge of the business. (It must be borne in mind as a practical matter, however, that persons contracting with such a company usually require the owner to sign a contractual guaranty of the company's liabilities, in which event s/he is liable for the company's debts to the extent specified in the guaranty contract.)

• **SAS: Société par Actions Simplifiées**

A SAS must have a minimum capital of 37,000 euros, at least 50% of which must be paid in full when it is incorporated and the balance over five years.

It must have at least one shareholder, which can be a company and whose liability is limited to the investments.

The organization and operation of such a company are defined in the articles of incorporation in accordance with the common wishes of its members.

- They appoint the Company Chairman and, where relevant, define the other organs of the company, together with the Chairman's powers for managing the company. The Chairman alone represents the company before third parties; the other directors appointed in the statutes do not legally represent the company before third parties.

- They appoint Auditors by common agreement for a minimum period of 6 fiscal years.

- The Company is subject to Company Tax (Impôt sur les Sociétés - IS).

» Public Limited Companies

• SA: *Société Anonyme*

A public company must have a minimum capital of 39,000 euros, at least 50% of which must be paid in when it is incorporated and the balance over five years.

It must have at least seven shareholders whose liability is limited to their investments. The board of Directors must have at least three directors with a maximum of 18.

The organization and operation of such companies is defined by the law (commercial code).

The shares are negotiable and there is no legal restriction on transfers of shares, although the shareholders may agree to share-transfer restrictions in the company's charter.

A public company is more complicated and expensive to incorporate and operate than a private limited company. It is suitable for a business requiring a large amount of capital.

Such companies can make public offerings of shares and bonds.

The appointment of Auditors for 6 fiscal years is obligatory.

The Company is subject to Company Income Tax (Impôt sur les Sociétés - IS).