

Luxembourg public and private limited liability companies

Formation process

The incorporation of a Luxembourg public limited liability company (*société anonyme*) (**SA**) or a private limited liability company (*société à responsabilité limitée*) (**SARL**), which are the two most widely-used business entities in Luxembourg, generally requires the following steps:

- Checking that the company's name is available with the Luxembourg Trade and Companies Registry (the **RCS**).
- Opening a Luxembourg bank account for the company under incorporation, in which the amount of the share capital must be deposited. The funds will be blocked until the company has been incorporated. The share capital can also be paid by a contribution in kind, in which event a bank account may not be required for incorporation.
- Where the incorporation capital is paid in cash, obtaining certification by the bank (*certificat de blocage*) addressed to the notary handling the formation, that the share capital is available for incorporating the company.
- Anti-money laundering declarations by the ultimate beneficial owners of the company.
- Drafting the company's articles of incorporation (the **Articles**). The Articles may be in English (with a mandatory translation into German or French).
- Obtaining consent from the director(s) and auditor (if any) to be appointed at incorporation.
- Incorporation of the company in the presence of a Luxembourg notary once the *certificat de blocage* referred to above has been delivered by the bank to the notary. Usually, the incorporation is implemented by means of a power of attorney of the shareholder/(s) delivered to the notary. The company comes into existence immediately on incorporation, from which date its share capital is released and freely available to the company and the directors can use it to run the company's business. The notary provides a certification addressed to the bank that the company has been incorporated and the blocked share capital is released.
- A first extraordinary general meeting of the company's shareholder(s) is held in order (amongst other matters) to appoint the directors/managers of the company and determine their term of office.
- The notary electronically files the company's Articles with the RCS within one month and they are published in full on the Luxembourg Electronic Journal of Companies and Associations (*Recueil Electronique des Sociétés et Associations*).
- The company must comply with the Luxembourg law of 13 January 2019 establishing the register of beneficial owners (**RBE**) and is required to identify, obtain and maintain specific up-to-date information concerning its beneficial owner(s) and to file such information with the Luxembourg RBE within one month following its incorporation. The initial filing on the RBE is made by the notary who incorporates the company. The RBE is accessible online.
- Thereafter, the board will appoint (or ratify the appointment of) its service providers.

The constitutional documents of the company

The Luxembourg Law of 10 August 1915 on commercial companies, as amended, governs public and private limited liability companies as well as the mandatory content of the Articles (and related documents) required to incorporate an SA or SARL. There are no "model" Articles, although local service providers have standardised the structure and drafting

of the Articles. Both Luxembourg law and corporate practice are based on freedom of contract and there is great flexibility in the way Articles of public and private limited liability companies can be drafted.

There is limited use of “shelf companies” (that is, pre-incorporated companies with standard Articles) because of the requirement to have paid the corporate capital prior to incorporation and due to the need to comply with “know your customer” requirements. Investors usually prefer to incorporate a company tailored to their own needs as, once the company's bank account is opened, a company can be incorporated within a short space of time. The Articles of an SA or SARL are published and are available on the RCS. Shareholders' agreements are frequently used in Luxembourg and are not published. Certain provisions of shareholders' agreements may be inserted in the Articles.

Registered office

A company needs to have a registered address in Luxembourg from the time of its incorporation. Depending on the level of substance to be achieved, the company could either sign a domiciliation agreement with a regulated domiciliation agent or rent its own office space and take the necessary steps to recruit staff and/or organise the outsourcing of certain tasks.

Business licences and other authorisations

Depending on the purpose of the company, a business licence and/or prior authorisations may be required by Luxembourg law in order for the company to carry out its activities. No authorisation or business licence will however be required for a pure holding company.

Brief overview

	Public limited liability company (SA)	Private limited liability company (SARL)
Legal entity	It has a separate legal personality distinct from that of its shareholders	It has a separate legal personality distinct from that of its members
Notarial deed required to constitute the entity	Yes	Yes
Minimum subscribed capital under the corporate law. The share capital may be denominated in any convertible currency	€30,000	€12,000
Transferability of shares	Freely transferable subject to any restrictions in the Articles	Restricted. Cannot raise funds from the public through the issuance of shares
Management/minimum number of directors/managers	<p>One-tier SA: managed by a board of directors with at least three directors but may be reduced to one where there is a sole shareholder</p> <p>Two-tier SA: managed by a management board of at least two members, supervised by a supervisory board of at least three members, if the SA has several shareholders. Sole member exercising the functions of the management board, if the SA has one shareholder only</p> <p>No nationality or residency requirements from a corporate perspective</p>	<p>Managed by one or several managers. If several managers are appointed, they will constitute a board of managers</p> <p>No nationality or residency requirements from a corporate perspective</p>

	Public limited liability company SA	Private limited liability company SARL
Maximum number of shareholders, partners or members	Any number of shareholders which may be natural or legal persons	100, which may be natural or legal persons
Minimum number of shareholders, partners or members	One	One
Financial liability	Liability limited to the amount of contributions of the shareholders	Liability limited to the amount of contributions of the members
Term of office of directors/managers	A director's term of appointment may not exceed six years but directors are eligible for re-election	A manager's term of appointment can be unlimited
Annual general meeting	Annual general meeting of the shareholder/s must be convened to approve the annual accounts within six months from the end of the financial year	No annual general meeting required to approve the annual accounts unless there are more than 60 members. If no annual general meeting is held, the resolution approving the annual accounts must be passed by circular resolution within six months from the end of the financial year
Accounting/auditing obligation	<p>Approval of annual accounts within six months following the end of the financial year. Publication of the annual accounts with the Luxembourg RCS</p> <p>At least one statutory auditor (<i>commissaire</i>) must be appointed. If certain thresholds are met, the auditing must be entrusted to an independent expert auditor (<i>reviseur d'entreprises agréé</i>) and in that case a statutory auditor (<i>commissaire</i>) is no longer required</p>	<p>Approval of annual accounts within six months following the end of the financial year. Publication of the annual accounts with the Luxembourg RCS</p> <p>One or more statutory auditors (<i>commissaires</i>) must be appointed if the SARL has more than 60 shareholders</p> <p>If certain thresholds are met, the auditing must be entrusted to an independent expert auditor (<i>reviseur d'entreprises agréé</i>) and in that case a statutory auditor (<i>commissaire</i>) is no longer required</p>



Charl Brand
+352 27 86 71 02
charl.brand@harneys.com
Luxembourg



Chiara Deceglie
+352 27 86 71 03
chiara.deceglie@harneys.com
Luxembourg



Mathieu Gangloff
+352 27 86 71 05
mathieu.gangloff@harneys.com
Luxembourg



Massimiliano della Zonca
+352 27 86 71 04
massimiliano.dellazonca@harneys.com
Luxembourg



Aksel Isitmez
+352 27 86 71 11
aksel.isitmez@harneys.com
Luxembourg



Cara Furniss-Scott
+352 27 86 71 19
cara.scott@harneys.com
Luxembourg



For more information and key contacts
please visit [harneys.com](https://www.harneys.com)

© Harneys, March 21

Harneys is a leading international offshore law firm. From more than 12 offices around the globe, Harneys advises the world's top law firms, financial institutions and corporations on the laws of Bermuda, British Virgin Islands, Cayman Islands, Cyprus and Anguilla. For more information about Harneys please visit www.harneys.com or contact us at marketing@harneys.com.

The foregoing is for general information only and not intended to be relied upon for legal advice in any specific or individual situation. Bermuda legal services are provided through an exclusive association with Zuill & Co which is an independently owned and controlled Bermudian law firm.