

Brief overview of the main features of an SA and an SARL

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 Register (*Registre de Commerce et des Sociétés de Luxembourg* – 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 declaration(s) by the ultimate beneficial owner(s) 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)/manager(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/managers 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. At the same time, 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 (*Registre des Bénéficiaires Effectifs* – **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 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 (under certain conditions) by the professionals subject to the Luxembourg law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended (the **AML Law**).
- Thereafter, the board of directors/managers 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 (the **Company Law**), 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 shareholders
Notarial deed required to constitute the entity	Yes	Yes
Minimum subscribed capital under the Company Law. The share capital may be denominated in any freely convertible currency	€30,000 Fully subscribed. Partially paid-up: at least 25% of the share capital must be paid-up in cash or by means of contribution in kind.	€12,000 Fully subscribed and fully paid-up
Ability to list/trade on a stock exchange	Yes	Equity cannot be listed/traded on a stock exchange, but issuance of public bonds is permitted
Transferability of shares	Freely transferable subject to any restrictions in the Articles	Transfers to third parties (who are not existing shareholders) require the agreement of the other shareholders.
Management/minimum number of directors/managers	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 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 No nationality or residency requirements from a corporate perspective	Managed by one or several managers. If several managers are appointed, they will constitute a board of managers No nationality or residency requirements from a corporate perspective
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 shareholders
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 shareholders. If no annual general meeting is held, the resolution approving the annual accounts must be passed by written resolutions signed by all shareholders

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		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 RCS</p> <p>At least one supervisory/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 supervisory/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 RCS</p> <p>One or more supervisory/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 supervisory/statutory auditor (<i>commissaire</i>) is no longer required</p>
Public information	<p>Full publication of articles of incorporation (and amendments thereto), annual accounts, details on directors and auditor(s)</p> <p>Beneficial ownership disclosure to professionals subject to the AML Law</p> <p>Identity of shareholders not disclosed</p>	<p>Full publication of articles of incorporation (and amendments thereto), annual accounts, details on managers and auditor(s) (if any), identity of shareholders</p> <p>Beneficial ownership disclosure to professionals subject to the AML Law</p>
Summary of advantages	<p>Shares are freely transferable</p> <p>Confidentiality of shareholding</p>	<p>No audit requirements unless certain thresholds are met</p> <p>Structuring flexibility</p>



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