

**By : Laurent VERDES,
Partner
e-mail : lverdes@23bosquet.com
Tel : + 33 1 40 62 63 26
Mobile : + 33 6 08 24 37 90**

Setting up a business or a company in France

An individual or a company can set up a business in France through several different legal forms.

An individual person or a company may choose to set up a business without creating a company or by creating a company, which will be a separate entity.

When a foreign European or non-European commercial company wishes to set up in France, it can choose to start its activities between three different types of structure: the representation office, the branch or the subsidiary, ie a company.

I – SETTING UP A BUSINESS WITHOUT CREATING A COMPANY

1 – By an individual person :

A commercial activity by a individual out of any company's structure is called "*Entreprise individuelle*".

This type of structure is naturally found in very small businesses.

An individual business does not have a separate legal personality from the owner. The assets of the owner and the business are pooled.

However, French law has also created a special status called *Entreprise Individuelle à Responsabilité Limitée (E.I.R.L)* which intends to protect as much as possible the businessman's personal assets.

French lawmakers have also created the status of "*auto entrepreneur*" to encourage the creation of business activities by simplifying the conditions of declaration of profits to the State.

A – Setting up an individual business (*Entreprise individuelle*)

In such case, no commercial company will be created and the owner's personal assets are pooled with his assets dedicated to his business. The owner is therefore personally and indefinitely liable for his business's debts with his personal assets.

The business and the owner form one entity from a taxation point of view. The business owner will declare profits in the industrial and commercial profits category called "*Bénéfices industrielles et commerciaux*".

The procedure for setting up an individual business is very simple. The owner must register his business activity at the Trade and Companies Register (*Registre du Commerce et des Sociétés*) where his business is located.

All foreigners can create a business in France.

However, the citizens from a member state of the European Union or from the European Economic Area (Iceland, Liechtenstein, and Norway) and citizens from the Swiss confederation who wish to run a business in France do not have to obtain a residence permit but they must register at the Town Hall for their residence in France within three months of their arriving.

Citizens of other countries must hold a residence permit if they wish to work. If a Non-European citizen wishes to keep his or her residence abroad whilst working in France they will not need a residence permit but must make a declaration to the Prefecture competent for their place of work.

The documents required to create an individual business are the following:

- a sworn declaration that the owner has no criminal convictions ;
- a certificate of the owner's filiation
- a copy of the owner's identity document, passport or residence permit
- for non-residents, acknowledgement of receipt of the declaration made to the Prefect of the department where the commercial activity will be run ;
- Proof that premises are properly occupied for the registered office.

The business will be registered on the competent Trade and Companies' Register for the place where the business is run.

Additional information can be obtained at the following website : www.Infogreffe.fr

The “*auto entrepreneur*”

When a person believes that his turnover will not exceed a certain amount, he may benefit from the special status of *Auto-entrepreneur*.

Such status has been created to encourage and simplify business creation. It is a very interesting status for those who start an

activity without knowing if its will work or not.

The advantage of this scheme is that the declaration and the payment of taxes and social costs are simplified and lower.

A business owner can chose the “auto entrepreneur” status if his turnover does not exceed €82,200 out of VAT for a purchase/sale business or €32,900 out of VAT for a services business.

There is no need to register on the Trade and Companies register, but simply to register on the web site: www.lautoentrepreneur.fr.

Also, the Auto-entrepreneur will invoice his clients without applying VAT.

The Auto-entrepreneur will have social security protection because he or she will be affiliated to the Social Security system and will make pension contributions.

If the Auto-entrepreneur realizes no turnover, he or she will pay no tax or Social Security charges.

B - The Individual limited liability business (*Entreprise Individuelle à Responsabilité Limitée*)

French lawmakers have created the *Entreprise Individuelle à Responsabilité Limitée* to protect the businessman personal assets if his business goes bankrupt.

To do so, the businessman must declare the list of the assets, he will use to run his business, at the Trade and Companies Register (*Registre du Commerce et des Sociétés*).

As a result, his professional creditors will only be able to size those assets declared and not any personal assets, such as his house or his personal furniture.

2 – By a company:

The representative office (*bureau de representation*):

The representation office is a direct establishment which has no legal personality or specific taxation. Its functions are restricted to contacting customer prospects.

It cannot conclude contracts on behalf of the foreign company or issue invoices.

In order to create a representation office, the company must contact the corporate tax office for the place where the representation office is situated. The corporate tax office will then send the dossier to the French Statistics Office (*INSEE*) which will give localization (SIRET) and identification (SIREN) numbers to the representation office.

However, the representation office must be registered with the Centre for corporate formalities (*Centre de formalités des entreprises*) if the foreign company wants its representation office to have a Trade and Companies Register number.

The following documents must be handed to the companies tax office:

- Form M0,
- Copy of the foreign company's Articles of Association and translation if necessary,
- Copy of the extract from company's Trade register and its translation,
- copy of the lease contract or the domiciliation contract,
- Copy of the representative's identity document or passport.

The representation office is not subject to income tax in France because it does not conclude any sale and does not supply any direct service to the company's customers. It is also exempt from value-added tax (VAT) because it does not invoice its services.

If the representation office performs a commercial activity in France, it will be

subject to tax and must keep commercial accounts. It will then be necessary to consider setting up a branch or a subsidiary.

The branch (*succursale*):

A branch is not independent from its parent company although its operating rules give it a certain amount of autonomy. It is basically a second establishment of the company with an independent business activity.

The parent company will remain fully liable for the branch's debts.

The branch must be registered at the Trade and Companies register within 15 days of opening.

It will have to draft every year financial accounts.

The branch will be liable for income tax and must keep commercial accounts.

The following documents must be supplied:

- two copies of the foreign company's updated of Articles of Association,
- two copies of the Articles of Association translated into French and certified to conform by the manager and the French branch,
- the copy of the commercial lease.

II – SETTING UP A COMMERCIAL COMPANY

There are several kinds of commercial companies and a distinction must be made between companies comprising people and company comprising capital.

The general partnership '*société en nom collective (SNC)*' is one example of companies of people where the partners are jointly and unlimitedly liable for the debts.

Public limited companies (*société anonyme*) and simplified joint-stock company (*société par actions simplifiée*, or *société à responsabilité limitée*) are examples of companies with capital.

A business person wishing to set up a commercial company will generally choose between a *société à responsabilité limitée* and a *société par actions simplifiée* because of the limited liability of the shareholders and the simplicity in setting up and managing these structures.

A – Limited Liability Company *La Société à Responsabilité Limitée (SARL)*

- Constitution

A foreigner is free to become a shareholder in a SARL. He or she does not require a residence permit.

The minimum number of shareholders is one and the maximum is 100. The amount of share capital is fixed in the Articles of Association and is 1 euro minimum.

- The management

The SARL is managed by one or more managers, called “gérant”. A manager must be a physical person, but he does not need to be a shareholder.

The manager can be liable to the company and to third parties for infringing the law or rules, violations of the Articles of Association or for mismanagement.

A European citizen can be a manager without any authorization being required. A non-European citizen must hold a resident’s card or a residence permit.

- The shareholders

The shareholders of a SARL can be French or foreign physical or legal persons.

Shareholders’ decisions are taken in ordinary general meetings if the purpose of the decision is rule on the accounts for the past fiscal year, to authorize the manager to perform a specific operation, to appoint or replace managers and generally to decide any questions which do not modify the Articles of Association.

If they are intended to modify the articles of Association, the decisions are taken in an extraordinary general meeting.

Decisions in ordinary general meeting are taken on a majority of more than half of the share capital.

Decisions in extraordinary general meetings are taken on a two third majority of the votes although a higher majority can be stipulated in the Articles of Association but cannot be unanimity.

- Transfer of company shares

All share transfers to a person outside the company must be authorized by the shareholders.

Transfers between shareholders are in principle free. Nevertheless the Articles of Association can limit this transferability. Transfers by a shareholder to his or her spouse, parents or children are also free in principle. Nevertheless the Articles of Association can stipulate that other shareholders must give their approval.

The documents needed to create a SARL are:

- Proof of occupation of premises for the company’s registered office (commercial lease, Contract of domiciliation),
- Drafting and signing the Articles of Association
- opening a bank account and depositing funds constituting the share capital,

- copy of the managers identity document, passport or residence permit,
- Sworn declaration that the manager has no criminal convictions,
- certificate of the manager's filiation,
- advertisement in a newspaper of legal advertisement.

B – The simplified joint-stock company (La Société par Actions Simplifiée (SAS))

- Constitution

The advantage of an SAS structure is that the shareholders have great freedom in drafting the Articles of Association and in organizing the management's powers inside the company.

The SAS can be constituted by one or several physical person or legal person shareholders, French or foreign. There is no maximum number of shareholders but the SAS cannot be listed on a regulated market (stock market).

The amount of share capital is fixed by the Articles of Association and can be €1.

- Management

The SAS is directed by at least one chairman who can be a legal or physical person.

The Articles of Association can also create the position of chief executive or a collegiate managerial body like the board of directors although this is not an obligation.

- The shareholders

The shareholders must take certain decisions such as:

- increasing or reducing or redeeming the share capital,
- approving the annual financial statements and the appropriation of the profits,
- transforming the company into a company in a different form.

The majorities required for shareholders decisions are freely fixed in the Articles of Association.

Nevertheless certain decisions must be taken unanimously such as clauses to adopt or modify the Articles of Association concerning the temporary inalienability of shares, the approval of share transfers, or the power to exclude a shareholder.

A specificity of the SAS is the ability to exclude a shareholder. The SAS structure is therefore often used in arrangements involving investment funds or private and institutional investors as they can arrange the terms of their or the controlling shareholder's exit in the Articles of Association.

Documents required to set up a SAS:

- Proof of the occupation of premises for the company's registered office (commercial lease, domiciliation contract),
- Drafting and signing the Articles of Association,
- opening a bank account to deposit the sums constituting the share capital,
- Copy of the chairman's identity document, passport or residence permit,
- sworn declaration that the chairman has no criminal convictions,
- Chairman's certificate of affiliation,
- Notice in a newspaper of legal advertisements.