

## **BACKGROUND INFORMATION ON FORMING A START-UP COMPANY IN FRANCE**

### **Objectives of this note**

As in each country, there are several forms of company structure possible in France. In order to assist candidates, envisaging to incubate in the ISU incubator in Strasbourg, a legal study was made by ISU. As a result of this study, this document therefore proposes a flexible structure as a support to the decision process for potential start-ups.

### **Approach**

#### 1. Proposed legal structure

As a first step, a study was made on the different structures, compliant with the general requirements of a start-up company (it goes without saying that in case of growing success other forms will have to be envisaged after a few years).

The conclusion of this study is that a simple structure with limited responsibility and reduced need for governing bodies and decisions can be found under the form of an SAS. An SAS stands for 'Société par Actions Simplifiées', which can be translated as a 'Simplified Joint Stock Company' in English.

The advantages are elaborated in attached detailed document, but can be summarized as follows:

- Liability is limited to the original foundation capital
- Founding capital is limited to 10,000-50,000 € (recommended range, but if need can be lower)
- The creator(s) possess(es) initially all shares
- Only a president is needed initially, evidently more directors can be nominated as appropriate.
- Registration costs are limited to a few hundred €.

2. Template for legal documents

As a second step a template was produced to explain the different aspects and to help communication with the legal office.

Note from the attached document that several variants on e.g. governing bodies, share distribution and voting are possible. It is therefore impossible to propose a document template covering all cases.

A pragmatic solution taken is therefore to prepare a questionnaire format, which will guide the applicant to decide for the different steps which need to be known and defined before approaching a legal office, at the same time reducing legal support costs.

This template is annexed to this note.

**Further Info**

1. Legal support

A legal office specialized in start-ups is referred to at the end of this document.

2. ISU advice

For general advice, feel free to contact Yannick Lafue

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For contract-technical advice, feel free to contact Prof. Walter Peeters

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**ADDENDA :**

- **TEMPLATE - SETTING UP A START-UP**
- **LEGAL BACKGROUND INFORMATION**
- **INFORMATION ON WORKING PERMIT**

## TEMPLATE - SETTING UP A START-UP

**SAS is the recommended legal form for a Start-Up.** The Simplified Joint Stock Company (SAS) is the most suitable corporate form for start-ups by reason of:

- **its legal flexibility:** the SAS is relatively little regulated by the law so that the shareholders have very wide freedom in defining the rules of operation and organization of the company (conditions for collective decision-making, governance of the company, etc.). This flexibility makes it easier to attract investors when raising funds.
- **the limited liability of the shareholders to the amount of their contributions:** this means that they only risk their "initial investment" (the contributions), with their personal assets remaining protected from creditors in the event of the company's compulsory liquidation (except for personal guarantees granted by the founders or mismanagement on the part of the managers).

**The different stages in the formation of the SAS are:**

- Drafting the articles of association (possibly supplemented by a shareholders' agreement (see below));
- Opening a blocked bank account in the name of the company under formation. To this end, the draft articles of association and statement of subscriptions and payments must be communicated to the bank;
- Payment of the funds constituting the cash contributions to the blocked bank account;
- Signature by the shareholders of the company's incorporation documentation;
- Publication in a legal journal of a notice of incorporation of the company;
- Submission of the file to the '*Centre de Formalité des Entreprises*' (Centre for Business Formalities), which will forward it to the Trade and Companies Register or submission of the file by electronic means directly to the Trade and Companies Register via *Infogreffe*;
- Registration of the company by the '*Registre du Commerce et des Sociétés*' (Trade and Companies Register), which will issue a *Kbis* extract. The funds deposited in the blocked bank account will be available as soon as a copy of the *Kbis* extract has been communicated to the bank.

**The costs of setting up an SAS:**

- ✓ Centre for Business Formalities fees: EUR 70 including tax (except for electronic filing via *Infogreffe*)
- ✓ Registration fees at the Trade and Companies Register: EUR 63 (including VAT)
- ✓ Legal announcement fees: EUR 150 to 200 TTC (including VAT)
- ✓ Legal Fees: determined by mutual agreement with the lawyer.

**The time limit for registering the company:** once the complete file has been transmitted to the Registry, the *Kbis* extract is generally issued within one to two weeks (but this time limit is still quite uncertain and may vary considerably depending on the relevant Registry).

**The interest of entering into a shareholder's agreement in addition to the articles of association.** In the event of a plurality of shareholders, it is strongly recommended to conclude, in addition to the articles of association, a shareholders' agreement in order to adapt the operation of the company to the interests of each one. Here are some examples of clauses frequently inserted in shareholders' agreements:

- Clauses limiting the powers of the management bodies : (e.g. the need for the management bodies to obtain authorization from the other founders prior to any major decision);
- Joint exit right (*tag along clause*): the shareholder (generally the majority shareholder) who plans to sell part of his corporate rights to a third party undertakes to have the third party acquire the shares held by the other shareholders who are parties to the agreement (generally the minority shareholders), under the same financial conditions as those offered to the majority shareholder. The minority shareholder is thus assured of being able to benefit from the possibility of a sale under conditions as advantageous as those offered to the majority shareholder.
- Joint disposal obligation (*drag along clause*): in the event that a shareholder, generally the majority shareholder, receives an offer from a third party for all the shares of the company that they wish to accept, all shareholders party to the agreement undertake to sell all of their shares to the same third party and under the same conditions. This clause is intended to prevent the minority shareholder from depriving the majority shareholders of the benefit of an attractive exit offer for the entire share capital.
- Unilateral promises to sell shares: for example, in the event of a founder ceasing all functions within the Company, with the possibility of adding a formula for determining the exit price (*good leaver/bad leaver*).

The shareholders' agreement has the advantage of:

- **Confidentiality**: contrary to the articles of association, the agreement is in principle never published, so that it is only known by its signatories.
- **Flexibility**: unlike the articles of association whose modification is subject to a certain strict and costly formalism (decision of the community of shareholders and filing of updated articles of association at the registry,) the shareholders' agreement can be modified by simple amendment. However, unlike the articles of association, which can be amended by a majority stipulated within the articles of association, the amendment of the shareholders' agreement requires the unanimous agreement of its signatories.



5.	<b>SOCIAL PURPOSE</b>										
6.	<b>FINANCIAL YEAR</b>	<i>(Start and end date of the financial year <u>and</u> end date of the first financial year)</i>									
7.	<b>COMPANY DIRECTOR</b>	<p><b>President:</b></p> <p><i><b>If a natural person</b> (Surname, first name, address, date and place of birth, name and surname of parents including mother's maiden name, copy of valid identity card or passport).</i></p> <p><i><b>If it is a legal entity</b> Company name, corporate form, amount of share capital, registered office, number and place of registration in the Trade and Companies Register, surname and first name of legal representatives, Kbis up to date less than 3 months.</i></p> <p><i>(Is a Chief Executive Officer appointed? a founders' committee? a supervisory board?)</i></p>									
8.	<b>SHARE TRANSFER</b>	<p>Would you like the insertion of:</p> <table border="1" data-bbox="547 1424 1366 1637"> <thead> <tr> <th data-bbox="547 1424 983 1458"></th> <th data-bbox="983 1424 1155 1458">YES</th> <th data-bbox="1155 1424 1366 1458">NO</th> </tr> </thead> <tbody> <tr> <td data-bbox="547 1458 983 1559">An approval clause:</td> <td data-bbox="983 1458 1155 1559"></td> <td data-bbox="1155 1458 1366 1559"></td> </tr> <tr> <td data-bbox="547 1559 983 1637">A pre-emption clause:</td> <td data-bbox="983 1559 1155 1637"></td> <td data-bbox="1155 1559 1366 1637"></td> </tr> </tbody> </table>		YES	NO	An approval clause:			A pre-emption clause:		
	YES	NO									
An approval clause:											
A pre-emption clause:											

**RELEVANT INFORMATION**

1.	<b>ASSOCIATIONS</b>	<p>The SAS may be formed by one or more shareholders. No maximum number of shareholders is provided for by law.</p> <p>If it has only one shareholder, it is called a single-person simplified joint stock company (SASU).</p> <p>It should be noted that it is perfectly possible to create the company with a single shareholder, while bringing other persons into the capital at a later date, by means of a transfer of shares or a capital increase.</p>
2.	<b>CORPORATE DENOMINATION</b>	<p>You are free to choose the name of your company provided it does not infringe the rights of third parties (rights resulting from a trademark, a trade name, etc.).</p> <p>You can check the availability of the desired corporate name yourself by carrying out a search on the <i>Infogreffe</i> (<a href="https://www.infogreffe.fr/">https://www.infogreffe.fr/</a>) and <i>INPI</i> (<a href="https://bases-marques.inpi.fr/">https://bases-marques.inpi.fr/</a>) websites.</p>
3.	<b>HEAD OFFICE</b>	<p>You are free to choose the location of the registered office. It may be located at the home of one of the managers, or in an incubator, a domiciliation company, etc.</p> <p>After the registration of your company, it will still be possible to transfer your registered office to a new address but this will require a modification of the articles of association (strict formalism with a cost).</p>
4.	<b>SHARE CAPITAL</b>	<p>The share capital corresponds to the amount of contributions in cash or in kind made by the shareholders. It is divided into shares which are distributed among the shareholders in proportion to their contributions.</p> <p>There is no minimum share capital in an SAS. However, for the sake of credibility vis-à-vis your future shareholders and in order to meet the initial expenses, we recommend that you provide the company with a sufficiently large capital.</p> <p>The financial rights (e.g. right to dividends), and the voting rights of the associates are proportional to the percentage of share capital held (except in the case of preference shares).</p>

5.	<b>SOCIAL PURPOSE</b>	<p>The corporate purpose reflects the type of activity that the company is intended to carry out. It constitutes a limit on the powers of the company's directors, whose liability may be incurred if they engage in acts outside the corporate purpose.</p> <p>It is advisable to plan a list of activities that is as broad as possible, even mentioning activities that you do not plan to carry out immediately.</p> <p>Any subsequent modification of the corporate purpose would require a modification of the articles of association (strict formalism with a cost).</p>
6.	<b>FINANCIAL YEAR</b>	<p>The financial year must necessarily last 12 months. As an exception, the first fiscal year, which begins from the date of registration of the company, may last less than or more than 12 months (up to a maximum of 23 months).</p> <p>It is customary to close the fiscal year on December 31 and to opt for a first fiscal year longer than 12 months. However, if the company is to benefit from the Research Tax Credit (CIR), a "short" first fiscal year is recommended.</p>
7.	<b>MANAGING BOARDS</b>	<p>The SAS is obliged to appoint a President. This is the only body that the law imposes on the SAS. The powers of the Chairman, as laid down by law, are those of representing the company vis- à-vis third parties.</p> <p>In addition to the President, it is possible to:</p> <ul style="list-style-type: none"> <li>• <b>appoint a Chief Executive Officer</b> (or several Deputy Chief Executive Officers) with the same powers of representation as the President.</li> <li>• <b>create committees</b>, such as a supervisory committee, responsible for overseeing the management of the President, or an executive committee, which will have the power to manage the company internally.</li> </ul> <p>Attention, persons of foreign nationality other than European Union nationals who wish to exercise management functions in France while establishing their residence there must hold an appropriate residence document (<i>see: next page</i>).</p> <p>The temporary residence permit "student looking for work" does not allow you to become a manager of a French company. A request for modification of the residence permit must be made to the Prefecture.</p> <p>The procedures for the appointment, dismissal and powers of the directors are freely defined in the Articles of Association.</p>

8.	<b>SHARE TRANSFER</b>	<p>In an SAS, shares are in principle freely transferable. However, it is possible to limit the free transferability of shares by introducing:</p> <ul style="list-style-type: none"><li>• <b>an approval procedure in the event of transfer of shares:</b> this clause makes the entry of a new shareholder in the company subject to the prior agreement of the shareholders (or any other body), under the conditions provided for in the articles of association or the shareholders' agreement;</li><li>• <b>a pre-emption clause:</b> this clause requires the shareholder who wishes to sell his shares to notify the other shareholders of his intention to sell them, to allow them to acquire them as a matter of priority.</li></ul>
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## **FOCUS ON RESIDENCE PERMIT**

Foreigners, other than nationals of the EU, another state of the European Economic Area (Iceland, Liechtenstein, Norway) or Switzerland, who intend to become a manager of a commercial company must hold an appropriate residence permit.

### 1. Temporary residence permit "Entrepreneur/Professional".

This residence permit is valid for a maximum of one year; renewable for 4 years if the conditions are still met.

To obtain this residence permit, a file containing numerous documents must be submitted to the Prefecture (see **Annex 1**).

It is important to be able to justify the economic viability of the project, as the applicant must derive from the planned activity "*sufficient means of subsistence*", i.e. income at least equal to the legal minimum wage in France for a full-time job (gross amount of the annual minimum wage in 2020: €18,473 gross).

For this reason, a presentation of the business creation project, the business plan and a provisional multi-year budget must be provided.

The administrative cost of this residence permit amounts to EUR 269.

Please note that it can take a particularly long time to process the case, so it is advisable to start as soon as possible.

### 2. "Talent Passport - Innovative business project leader recognised by a public body" endorses the accelerated procedure "French Tech Visa for Founders".

This visa is valid for 4 years and renewable.

To be eligible for this visa, you must:

- have financial resources or a gross annual salary corresponding to at least one year's minimum wage (gross amount of the annual minimum wage in 2020: €18,473 gross);
- official admission in one of the incubators, accelerators or other shareholders of the French Tech visa;
- the startup must be certified as an "*Entreprise Tech Innovante*" by the public body DIRECCTE.

The official letter of recognition from the DIRECCTE must be attached to the visa application file, which also includes numerous documents to be submitted to the Prefecture (cf: **Annex 2**).

The administrative cost of this residence permit amounts to EUR 269.

**ANNEX 1 – DOCUMENTS REQUIRED FOR THE “ENTREPRENEUR - LIBERAL PROFESSIONAL” VISA**

**ATTENTION: This list is provided for your information. Take care to contact the prefecture authority in charge of processing your file in order to obtain the list of required documents adapted to your personal situation.**

**Good to know:**

- **The supporting documents must be accompanied, if necessary, by their translation into French by a translator-interpreter sworn before the courts of appeal. If necessary, consult the list of sworn translators.**
- **List of items to be provided: ORIGINAL and PHOTOCOPIES**

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Valid **residence card**.

**Proof of civil status and nationality:**

\* Passport (pages relating to marital status, dates of validity, entry stamps and visas)

\* Short-form birth certificate with parentage or full copy of birth certificate (except if the applicant is already a holder of a residence permit)

\* If the foreigner is married and/or has children: marriage certificate or short-form birth certificates of the children with parentage (documents corresponding to the situation at the time of the application).

**Proof of address less than 3 months old:**

\* Electricity bill (or gas, water, fixed line telephone, internet) or lease less than 3 months old.

\* if you are staying with a private individual: certificate of accommodation dated and signed by the host, original and copy of your identity card or residence card, and electricity, gas, water, fixed line telephone or internet bill of the host dated less than 3 months ago.

**3 recent passport photographs** (format 35mm X 45 mm - standard ISO/IEC 19794-5:2005) - No copies

**Declaration of honour regarding your family situation** (form furnished by Prefecture)

CERFA form "trader, craftsman, industrialist" complete (form furnished by Prefecture)

Extract from the criminal record or equivalent document of the country of which the applicant is a national

Tax form relating to the payment of income tax in France

Supporting documents relating to the applicant's ability to carry out the commercial, industrial or artisanal activity envisaged (diplomas, curriculum vitae, work certificates, etc.)

- Proof of company registration (articles of association, extract K or Kbis) or affiliation to the social regime for self-employed persons (to be submitted as soon as possible after the receipt of the application for a residence permit is issued)
- Presentation on plain paper of the business creation project, the business plan and a multi-year provisional budget.
- Proof of a guarantee commitment made by a credit institution or an insurance company approved to act as guarantor and having its registered office in France, or a certificate of credit balance for an account in the name of the applicant opened with a credit institution having its registered office in France
- Any evidence of the economic viability of the business creation project
- Copy of the commercial lease agreement mentioning the activity or of the sublease agreement mentioning the activity and possibly the authorisation of the owner of the premises or any other document relating to the premises assigned to the activity.
- Copy of the draft articles of association of the company showing the proposed distribution of share capital

**ANNEX 2 – DOCUMENTS REQUIRED FOR A RESIDENCE PERMIT "PASSEPORT TALENT -  
FOUNDER OF AN INNOVATIVE BUSINESS PROJECT" - FRENCH TECH VISA FOR  
FOUNDERS**

**WARNING:** This list is provided for your information. Take care to contact the prefectural authority in charge of processing your file in order to obtain the list of required documents adapted to the purpose of the stay and your personal situation.

**Good to know:**

- **The supporting documents must be accompanied, if necessary, by their translation into French by a translator-interpreter sworn before the courts of appeal. If necessary, consult the list of sworn translators.**
- **List of items to be provided: ORIGINAL and PHOTOCOPIES**

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- a valid passport issued within the last 10 years and valid for at least 3 months after the visa expiry date;
- a valid residence card;
- Proof of civil status and nationality:
  - \* passport (pages relating to marital status, dates of validity, entry stamps and visas);
  - \* extract of birth certificate with parentage or a full copy of the birth certificate;
  - \* where appropriate: spouse's residence card (or passport); marriage certificate or short-form birth certificates of the children with parentage;
- a proof of residence dated less than 6 months ago (or, failing this, a certificate of accommodation with a private individual or a hotel establishment);
- 3 recent passport photographs in accordance with the standards;
- Proof of payment of the tax on the residence permit and of the stamp duty payable upon issue of the permit.

In addition, the creator of a start-up must produce the following elements in support of his application:

- an official admission in one of the incubators, accelerators or other partners of the French Tech visa, through the usual selection process;
- a letter from DIRECCTE certifying the innovative nature of the economic project to be developed in France;
- proof of means of subsistence corresponding to the minimum wage, i.e. **€18,473** on 1 January 2020.

## CONTACT

This document was drawn up in partnership with the law firm HELORY AVOCATS

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