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CORPORATE
ACQUISITIONS
AND MERGERS
IN FRANCE



Wolters Kluwer
Law & Business

Corporate Acquisitions and Mergers in France

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This book was originally published as a chapter in Corporate

Acquisitions and Mergers

General Editor: Peter B. Berger



Wolters Kluwer

Law & Business

Published by:

Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

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Printed on acid-free paper

ISBN 978-90-411-5269-5

This title is available on www.kluwerlawonline.com

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Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

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INTRODUCTION

[01] Alongside European harmonization of laws and standards, French law is going through an ongoing process of adaptation as the result of the constant evolution of international business and finance practice and to meet the expectation and needs of the development of French companies. France is also developing specific rules to reinforce its competitiveness as a financial market and its 'attractiveness' to foreign investors (see information on the website of the Invest in France Agency of the French government, <www.invest-in-France.org/fr>). The 2005 report of the World Bank set France as top reformer within the European countries for reduction in time and cost for business start up (*Doing Business in 2005: Removing obstacles to growth*). Furthermore, the 2010 report of the World Bank emphasizes that France significantly improved its regulation with regard to the insolvency process, reduced time needed to transfer properties, and made it easier to obtain encumbrance and ownership documents from the registry (*Doing Business in 2010: European Union*).

[02] The French practice of mergers and acquisitions does not differ from the international standards for private companies (due diligence, private bids, letter of intent, share purchase agreement, reps and warranties, etc.) or for listed companies. Transactions regarding listed companies must comply with French financial or market rules harmonized with European directives or issued by NYSE Euronext Paris, which operates the French stock markets. The key word for listed companies is 'transparency': i.e., France was one of the first European countries to reinforce its law after the Enron failure (Financial Security Act, *loi de sécurité financière* No. 2003-706 promulgated on 1 August 2003).

[03] A specificity of the French law of mergers and acquisitions is the large choice of corporate structures; nevertheless, recent changes in law allow more and more flexibility (particularly with regard to drafting articles of association) and the differences between these corporate structures are becoming less clearly defined.

[04] The first part of this chapter presents a general overview of the corporate environment in France, while the second addresses the prior administrative and other consents which must be obtained in relation to French merger and acquisition transactions. Merger and acquisition techniques are then reviewed, and related tax considerations are covered. Finally, issues related to labour law in the context of mergers and acquisitions are addressed.

[05] Please note that some French words which have a specific meaning according to French law cannot be translated into English without leading the reader astray; this is why French words have been used below, following their translation in English.

NB French laws and regulations are codified; the different codes in force can be consulted on <www.legifrance.gouv.fr> and for listed companies, the regulations of the *Autorité des Marchés Financiers* (AMF) is available in French and in English on <www.amf-france.org>.

CORPORATE OVERVIEW

Common Forms of Legal Entities in France

Branches versus Subsidiary Companies

[06] Foreign companies may conduct business in France either through branches or subsidiaries.

A *branch* is a mere office opened by the foreign company in France that has no legal independent personality. As a result, the foreign mother company is jointly and severally liable for the debts of its branch. Under French tax rules, a branch is a permanent establishment in France and is liable for the payment of the same amount of taxes as any other legal entity in France. Branches, as foreign entities having their head office abroad, may conduct business in France subject to prior registration with the Trade and Companies Registry (*Registre du Commerce et des Sociétés*). The conversion of a branch into a subsidiary may result in a transfer of business, and therefore must comply with the rules governing such transfer, and may give rise to payment of transfer and/or capital gain taxes.

[07] Foreign companies interested in doing business in France also have the option of assessing the French market through sales representatives (employees of the foreign company in France), sale agents (via self-employed individual or sale agency agreements entered into by the sale agent with a French company in order to act on behalf of the foreign company), or by opening a *liaison* office in France, in order to minimize administrative charges and procedure. A *liaison* office is entitled to prospect the market and advertise for the foreign company's products, but it cannot conduct any business and shall consequently be treated as a branch as soon as it starts doing business.

[08] A *subsidiary* is a separate legal entity incorporated in France: the foreign parent company is not liable for the subsidiary's debts, and the losses of the subsidiary cannot be offset against the profit of the parent company, subject to rules described below for *sociétés civiles* and *sociétés de personnes*. A corporate entity is incorporated in France as of the date of its registration with the Trade and Companies Registry. Under French law, a company can be created by two or more individuals or legal entities, French or foreign, except when French company law provides for a legal form of companies which can be created by a single individual or legal entity

Sociétés Civiles versus Sociétés Commerciales

[09] Distinction between *sociétés civiles* and *sociétés commerciales*: Companies are organized for gain and profit, as opposed to *associations*, which bring together individuals or entities for non-profit making purposes. French company law makes a distinction between 'commercial companies' (or *sociétés commerciales*), which pursue business, trading or commercial objectives and 'non trading companies' (or *sociétés civiles*), whose purpose under French law is considered as non commercial (or *civil*), such as agriculture, real estate, mining, intellectual activity (writing, music, sales of

artwork by artists, research), and professional activities (consulting, law, architecture, physicians, medicine, dentistry, etc.). It should be noted that 'non commercial purpose' does not necessarily exclude commercial concerns.

[10] *Sociétés civiles* are regulated by Articles 1832 to 1873 of the French Civil Code, Decree No. 78-704 and 78-705 of 3 July 1978. *Sociétés commerciales* are regulated by Articles 1832 to 1844-17 of the French Civil Code, Articles L.210-1 to L.252-12 and Articles R.210-1 and seq. of the French Commercial Code, Decree No. 78-704 of 3 July 1978. These provisions set out a statutory framework applicable to the various types of companies which can be registered in France.

[11] In addition to the legal forms of company referred to herein above, there are other forms of special entities under French law, such as the *groupement d'intérêt économique* ('GIE') or in English 'economic interest group', which is a special legal entity created for the purpose of facilitating or developing the economic activity of its members, and whose activities must be ancillary to those of its members. There is also the *société en participation* (silent and unincorporated partnership), which is a collective enterprise whose partners have decided not to register and which is therefore not a separate legal entity, distinct from its partners.

Sociétés Civiles

[12] Main features of a *Société Civile*: a *société civile* is an entity formed between at least two partners who may be individuals or legal entities. The French Civil Code does not set forth a minimum amount of share capital but each partner must contribute to the company either in cash (*apport en numéraire*) or in kind (*apport en nature*). The interests in the capital are represented by shares called *parts sociales* issued by the *société civile* to remunerate the contributions of the partners. A partner may also contribute his/her expertise or knowledge, services or work (*apport en industrie*); such contribution is not taken into account in the share capital, however shares may still be allocated to such contributors. The share capital need not be paid up immediately after the issue of the shares or by a specific deadline.

[13] Profits and losses of the company are allocated to the partners in accordance with the articles of association, which may provide that such allocation is different from the allocation of shares between the partners. However, allocating all the profits or all the losses to one or several partners, or depriving one partner of any portion of the profits, or exempting one partner from any losses is prohibited under French law. Each partner is liable for the *société civile*'s debts in proportion to his/her/its ownership interest at the date the liability arises (or at the date the *société civile* is declared bankrupt). The partner who contributed his/her expertise or knowledge, services or work (*apport en industrie*) is considered to have the same share in the capital as the lowest partner in equity.

[14] A partner remains liable for the liabilities until the date of the transfer of his/her/its shares has been notified to the company and filed with the clerk of the Commercial court.

[15] Transfer of shares of a *Société Civile*: The *parts sociales* (shares) are considered as partners' claims against the company and therefore are transferable as claims by a

deed of transfer (executed in as many original copies as parties, except for the case of a deed of transfer drafted by a *notaire* (or 'notary public' in English) who is a public officer in France, plus an original copy to be filed with the tax authorities and two with the clerk of the Commercial court in the jurisdiction in which the *société civile* is registered. The Notice of transfer must either be given to the company by service of process or acknowledged in an official deed.. Any transfer of shares (including by donation or contribution in kind and transfer between partners) are subject to the prior approval of the partners (or the general manager). Furthermore, the articles of association can require a prior approval for transfer by merger or split-up, or transfer to parents and descents of partners or conversely the articles of association can exempt from prior approval any transfer of shares between partners or to a partner's spouse. If the transfer is not approved, the partners must purchase the shares or cause the shares to be purchased within six months (unless otherwise provided in the articles of association).

[16] Shares of a *société civile* can be pledged; such pledges are recorded by the clerk of the Commercial court.

[17] Management and partners' decisions: A *société civile* is run by one or several general managers called *gérants*. The partners can appoint as *gérant* individuals or legal entities, partner or non-partner, French or alien.

[18] The *gérant* is vested with all necessary powers to act and to represent the company and no limitation placed on the powers of the *gérant* is binding *vis-à-vis* bona fide third parties. The *gérant* appointed by the partners may delegate part of his powers to an employee of the *société civile*.

[19] The *gérant* is liable to the *société civile* and third parties for violations of the law, breaches of the articles of association and misconduct in the management of the company. The *gérant* can be dismissed by a decision of the majority of the partners unless otherwise stipulated in the articles of association. Dismissal of a *gérant* without real cause shall give right to damages.

[20] Except for *sociétés civiles* carrying out a regulated activity for which the law may provide specific rules such as majority and quorum rules for partners' decisions, the articles of association govern the decision-making process of the *société civile*: majority rules for ordinary decisions or extraordinary decisions (it be noted that extraordinary decisions usually are those which amend the articles of association), and if no majority rule is fixed by the articles of association, the partners decisions are taken unanimously. The articles of association can provide for written consultation of the partners. Collective decisions may also result from consent expressed by all the partners in a private written agreement (*acte sous-seing privé* or *acte ssp*) or official deed (*acte authentique*) drafted by a notary public. Partners meetings are convened by registered letters with a fifteen-day prior notice period. A breach of the convening rules may not be raised later to oppose decisions if all the partners attend or are represented at the meeting.

[21] Partners must meet or take a decision once a year for the approval of the annual accounts within six months following the end of each financial year.

[22] The main advantages of the structure are its flexible organization and the limited corporate formalities during the lifetime of the company. There are also tax advantages which may determine the choice of this structure as a result of its fiscal transparency; however the *société civile* can decide to opt for the same fiscal regime as commercial companies (see below). *Sociétés civiles* are the legal form of corporate most currently used to hold real estates.

Sociétés commerciales

[23] ***Sociétés de personnes versus sociétés de capitaux***: There are two main types of commercial companies: (i) the *sociétés de personnes* (private companies) and (ii) the *sociétés de capitaux* (joint stock companies).

[24] *Sociétés de personnes* (private companies) bear high similarities with *sociétés civiles* in terms of organization and operating process, including the transfer of *parts sociales*: the identity of partners joining the company is a critical factor (*intuitu personae*), and the partners' liability for the corporate debts is unlimited. However contrary to *sociétés civiles*, partners of *sociétés de personnes* are considered as *commerçants* (merchants), and consequently, their liability for corporate debts is joint and several (except limited partners in *société en commandite simple*). There are two types of *sociétés de personnes*: the *société en nom collectif* ('SNC') and the *société en commandite simple* ('SCS'). *Sociétés de personnes* are prohibited from going public.

[25] ***Sociétés de capitaux*** (joint stock companies): The *intuitu personae* of the shareholders of *sociétés de capitaux* is not an essential factor. The underlying principles of this corporate form are the limitation of liability of the shareholders to their respective contributions to the share capital and the free transfer ability of the shares (unless specifically provided otherwise). A *société de capitaux* is commercial whatever its corporate object. However, by contrast with the SNC or SCS, its shareholders do not acquire the status of 'merchant' (except general partners of *société en commandite par actions* who are merchants). The shareholders' liability is limited to their respective contributions to the share capital. The three types of *sociétés de capitaux* are (1) the *société anonyme* ('SA', French equivalent to a corporation), (2) the *société en commandite par actions* ('SCA') and (3) the *société par actions simplifiée* ('SAS'). These companies are also called *sociétés par actions*, which means that their capital is divided by shares (*actions*). To favour the development of the capital markets, French company law sets out a statutory framework applicable to *sociétés de capitaux* with respect to the provision of information to the shareholders and the exercise of shareholders' rights. Thus shareholders have little latitude to organize their relationships within such companies, with the exception of *société par actions simplifiée* ('SAS') which as described below is the only *sociétés par actions* which cannot go public.

[26] Another kind of company, the *société à responsabilité limitée* ('SARL', French equivalent to a limited liability company) has the same characteristics of each of *sociétés de personnes* and *sociétés de capitaux*: the identity of the partners joining the company is a critical factor (*intuitu personae*), its capital is divided into *parts sociales*, but the partners' liability is limited to their contribution and they are not merchants. The SARL is prohibited from going public.

[27] It should be noted that the distinction made under French company law between *sociétés de capitaux* and *sociétés de personnes* is mitigated in practice for a number of reasons: the importance of the identity of the partners in the *sociétés de personnes* may be diminished by stipulating in the company's articles of association that, for example, the death of a partner will not result in the dissolution of the company, which may survive with the partner's heirs. Conversely, in the *sociétés de capitaux*, the identity of the shareholders may be reinforced by the insertion of a prior approval clause (*clause d'agrément*) regarding transferees of the shares in a close company.

[28] Medium or small-sized companies are essentially incorporated for tax and social security reasons, although an individual can very often, from an economic viewpoint, run his or her business individually without incorporating a legal entity. For this reason, the *société à responsabilité limitée* (SARL), which offers simplicity of organization combined with limited liability, is the most common corporate structure in France.

[29] Due to the flexibility of its organization, the *société par actions simplifiée* (SAS) is becoming the most common form of incorporation in France, except for large publicly held companies and businesses requiring substantial capital investment, for which the *société anonyme* (SA) remains the form required to go public. Pursuant to European Council Regulation No. 2157/2001 of 8 October 2001 on the Statute for a European company and Articles L.229-1 and *seq.* of the French Commercial Code, a *societas europaea* (SE) with its head office in France should be organized as a *société anonyme*.

[30] According to French statistics agency (INSEE), 549 788 new *sociétés commerciales* were registered in 2011 (622 000 in 2010, 152 300 in 2009), among which 79% were SARL. The statistics emphasize 88% of 549,788 companies registered during 2010 where individual companies (*entreprises individuelles*) and 94% were self-employed (*auto-entrepreneurs*). According to the statistics of the clerk of the Commercial court of Paris for 2011, 50% of the *sociétés commerciales* registered in Paris were SARL, 19% were SA or SAS, 1,5% were SNC or GIE, and 26% were *sociétés civiles*.

[31] French *sociétés par actions* as SA, SCA or SAS may issue different categories of shares and securities, including preferred shares (*actions de préférence*), negotiable bonds, warrants (*bons de souscription*). Securities issued by French *sociétés par actions* are dematerialized and are recorded in the issuing company's books.

Main Characteristics of the Different French *Sociétés Commerciales*

[32] The main characteristics of the most common corporate forms of French commercial companies are briefly set out below.

*Sociétés de personnes**Société en Nom Collectif (SNC)*

[33] An SNC, or 'General Partnership' in English, is a company formed between at least two partners who may be individuals or legal entities, French or foreign. Each partner is considered as merchant (*commerçant*) and is accordingly indefinitely and jointly and severally liable for the corporate debts.

[34] There is no minimum share capital requirement and the share capital need not be paid up immediately after the issue of the shares or by a specific deadline. The interests in the capital are represented by shares which are not freely transferable: a transfer of shares to other partners or to third parties remains subject to the unanimous consent of the other partners notwithstanding any provision to the contrary in the articles of association.

[35] The sharing of profits and losses is determined by the articles of association of the SNC. It is possible to allocate to one partner a proportion of the results which does not necessarily correspond to his or her share in the capital.

[36] The sharing of profits may be different from the sharing of losses. However, it is unlawful to allocate to one or several partners all the profits or all the losses, to deprive one partner of any portion of the profits or to exempt one partner from any losses.

[37] The decision-making process is flexible, by comparison with other corporate forms: a partners' meeting must be held in the following three cases: (i) for the approval of the annual accounts, (ii) when a meeting is convened at the request of a partner, and (iii) for the approval of a change in share capital in the context of a proposed safeguard or judicial reorganization plan. Unless otherwise provided for in the articles of association, all other decisions may be taken by written consultation or consent expressed by all the partners in a private written agreement (*acte sous-seing privé*) or a notarial deed drafted by a notary public (*acte authentique*). Pursuant to the French Commercial Code, the following decisions require the unanimous consent of the partners: a sale of interest-share in the SNC, the dismissal of a managing-partner when all the partners are managers or when the managing-partner being dismissed was nominated in the articles of association, the continuation of the partnership after the dismissal of a partner-manager, the continuation of the partnership despite the bankruptcy, the incapacity or the legal obstacle to the continued participation of one of its partners (such partner will not take part to the vote), the conversion of the legal form of the company into a *société par actions simplifiée* ('SAS' or 'simplified stock company') or the takeover of the company by an SAS.

For all of the other partners' decisions, majority decision-making is permitted if provided for in the articles of association.

[38] All the partners are in principle equally responsible for the company's management, including its day-to-day management. The articles of association may provide that the SNC may have one or several *gérants* (i.e., managers) who may be French or foreign, individuals or legal entities, chosen among the partners either by unanimous consent (when nominated in the articles of association) or according

to the majority rules set forth in the articles of association. A *gérant* is vested with all necessary powers to act for and to represent the company and no limitation placed on the powers of a *gérant* shall be binding *vis-à-vis* bona fide third parties. A *gérant* appointed by the partners may delegate a portion of his or her powers to employees of the SNC.

[39] When all the partners are *gérant* or when the *gérant* is a partner nominated in the articles of association, the dismissal of the *gérant* requires the unanimous consent of the other partners and usually causes the winding up of the company, provided that the articles of association do not state otherwise or the partners do not decide otherwise. When the *gérant* is a partner not nominated in the articles of association, his/her dismissal must be decided as provided in the articles of association or by unanimous consent of all the other partners. When the *gérant* is not a partner, he can be dismissed by a decision of the majority of the partners, unless provided otherwise in the articles of association.

[40] Similar to shares of *sociétés de personnes*, the shares of the SNC are not negotiable instruments and can only be transferred by a written deed of transfer (executed in as many original copies as parties, except for the case of a deed of transfer drafted by a notary public, plus an original copy to be filed with the tax authorities and two with the clerk of the Commercial court in the jurisdiction in which the SNC is registered). Notice of the transfer must be given to the company either by service of process, by acknowledgment in an official deed or by acknowledgment by the *gérant* upon receipt of an original of the deed of transfer at the registered office.

[41] All transfers of shares (including between partners) are subject to the prior approval of all of the partners. Except as otherwise provided for in the articles of association, the company automatically dissolves when a partner dies.

[42] The SNC shares can be pledged; such pledges must be recorded by the clerk of the Commercial court in the jurisdiction in which the company is registered.

[43] The main advantages of the SNC structure are its flexible organization and the limited corporate formalities during the lifetime of the company. However, since the individual relationship between the partners is essential in an SNC, this type of company implies a close cooperation between a limited number of partners. There are also tax advantages which may determine the choice of this structure, especially as a result of the fiscal transparency of an SNC (see below).

[44] The joint and several liability of the partners for all corporate debts, and the extension of bankruptcy to all the partners when the SNC declares bankrupt are the essential disadvantages of the SNC corporate form. However, the issue of a partner's unlimited liability is solved in case a partner is a legal entity with limited liability. Furthermore, when a partner refuses to authorize the sale of interest-share in the SNC, no transfer of shares can take place, and there is no legal obligation for the partners to purchase such shares or cause the shares to be purchased.

[45] The appointment of a statutory auditor is mandatory when at the close of a fiscal year two of the three following thresholds are reached: the total of the balance

sheet (assets or liabilities) is over EUR1,550,000, the turnover (excluding VAT) is over EUR3,100,000 or the average number of employees is over fifty.

Société en Commandite Simple (SCS)

[46] The main feature of the *société en commandite simple* or 'limited partnership' in English, is the existence of two categories of partners:

- one or several general partners called *commandités*, who manage the company and are indefinitely and jointly and severally liable for the corporate debts, as are the partners of an SNC (the rules of the French Commercial Code for the partners of the SNC are applicable to the general partners of the SCS);
- one or more limited partners called *commanditaires* who contribute to the share capital and whose liability is limited to their contribution in the share capital, provided they do not actively take part in the management of the company (contrary to the SNC partners, they are not merchants).

[47] As in an SNC, there is no minimum set by law on the amount of share capital; and the share capital does not need to be fully paid up.

[48] The SCS is managed by a *gérant* who may be selected from among the *commandités* or from among third parties. In theory, a *commanditaire* cannot become a *gérant* without losing his status of *commanditaire*, since he/she would then become indefinitely and jointly and severally liable for the corporate debts. The rules previously set out for the appointment, dismissal and scope of authority of the *gérant* in an SNC apply equally to the *gérant* in an SCS.

[49] A partners' meeting must be held in the following three cases: (i) for the approval of the annual accounts; (ii) when a meeting is convened at the request of a general partner or 25% of the limited partners, and (iii) for the approval of a modification of the share capital during a safeguard procedure or a judicial restructuring. The partners' decision-making process is the same as in the SNC. The unanimous consent of the general partners and the consent of the majority of the limited partners are required for any amendments to the articles of association. However, the unanimous consent of all the partners (general and limited) is required for the change of the company's nationality, the conversion of the legal form of the company into a *société par actions simplifiée* or an SNC and the takeover of the company by a *société par actions simplifiée*.

[50] Shares cannot be transferred, including between partners, without the unanimous consent of the partners. However, the articles of association can provide that (i) the shares of the limited partners can be freely transferred among the partners, and that (ii) the shares of the general or limited partners can be transferred to a third party subject to a prior consent of all the general partners and of the majority limited partners. Transfers of shares take place in the same manner as transfer of shares of an SNC.

[51] The same rules as for the SNC apply for the designation of a statutory auditor when the same thresholds are reached.

[52] The SCS is rarely used in practice, given that it has the same disadvantages as the SNC, especially with respect to the *commandités* (joint and several liability) without offering the same flexibility (the structure is complex with the *commandités* and *commanditaires* having different legal status) and without offering the same tax advantages, since the SCS, unlike the SNC, does not have complete fiscal transparency.

Société à Responsabilité Limitée (SARL)

[53] An SARL is regarded as commercial regardless of its corporate purpose. However, its shareholders do not acquire the status of merchant. Shareholders' liability is limited to their respective contributions to the share capital.

[54] An SARL may have only one shareholder (in such a case the SARL is called an *entreprise unipersonnelle à responsabilité limitée* or EURL) but cannot have more than hundred shareholders. The shareholders may be French or foreign individuals or legal entities (please note that an EURL cannot be the sole shareholder of another EURL).

[55] There is no minimum share capital required by law; however the articles of association must fix an amount for the share capital (which can be a variable amount of capital) divided into shares (*parts sociales*). Shares representing a contribution in kind must be totally paid up at the time they are issued; shares representing a contribution in cash may be partly paid up (subject to a minimum of 20% of the par value of each share) at the time they are issued, the remaining amount being paid up over the next five years as and when called by the *gérant*. A shareholder can contribute his/her expertise, knowledge, services or work ('apport en industrie'); such contribution is not taken into account in the equity capital but shares may be allocated to such contributor. Any subscription premium should be entirely paid up upon subscription. The SARL may not go public. The articles of association must indicate the allocation of the shares among the shareholders. Since 2004, Article L.223-11 of the French Commercial Code authorizes the issuance of registered bonds (*obligations nominatives*) by an SARL under specific conditions.

[56] Similar to shares of *sociétés de personnes*, the shares of the SARL are not negotiable instruments and can only be transferred by a written deed of transfer (executed in as many original copies as parties, except for the case of a deed of transfer drafted by a public notary, plus an original copy to be filed with the tax authorities and two with the clerk of the Commercial court in the jurisdiction in which the SARL is registered). Notice of the transfer must be given to the company either by service of process, by acknowledgment in an official deed or by acknowledgment by the *gérant* upon receipt of an original of the deed of transfer at the registered office.

[57] The transfer of shares to third parties is subject to the prior approval of the majority of the shareholders representing at least half of the shares, unless if the

articles of association provide for a higher majority. Please note that except as otherwise provided in the articles of association, the shares may be freely transferred between shareholders and to a shareholder's spouse, ascendants or descendants.

[58] The extraordinary shareholders' meeting has a three-month period of time from the notification of the planned transfer to consent to or refuse the transfer of shares; if it has not made its decision known within this period of three months, the consent to the transfer shall be deemed obtained. If the shareholders' meeting refuses to consent to the transfer, the shareholders are held, within a period of three months as from the notification of such refusal made by registered letter return receipt requested to acquire or to have acquired the shares at a price agreed between the parties or, in the absence of agreement between the parties, at a price determined by an expert appointed either by the parties or by the president of the Commercial court pursuant to Article 1843-4 of the French Civil Code, unless the transferor waives his or her plan to transfer shares. At the request of the *gérant* this period of time can be extended by court decision without such extension exceeding six months. The company may also, with the consent of the transferring shareholder, resolve within the same period of time to reduce its capital by the amount of the par value of the shares and to repurchase the shares at a price determined as provided above. A period of payment which may not exceed two years may, on justification, be granted to the company by court decision. The amounts due shall bear interest at the legal rates usual in commercial matters. If on expiration of the allotted time limit none of the solutions set forth above have taken place, the transferring shareholder may complete the transfer initially contemplated.

[59] Furthermore, since the 2 August 2005 Act (No. 2005-882) relating to small and medium enterprises, shares of an SARL may be rented out to individuals if permitted by the articles of association.

[60] The shares of an SARL can be pledged; such pledges are recorded by the clerk of the Commercial court within the jurisdiction in which the company is registered. If the company has consented to a plan to pledge company shares under the same conditions as for the approval of shares' transfer, such consent shall automatically constitute approval of the transferee in the case of forced sale of shares in accordance with the provisions of Articles 2346 and 2347 of the French Civil Code, unless the company chooses to immediately repurchase the shares to reduce share capital following the transfer.

[61] An SARL is managed by one or more *gérants* (general manager) who must be individuals but who need not be shareholders. The *gérants* are appointed either by the articles of association or by an ordinary shareholders' meeting deciding by a majority of more than 50% of the existing shares unless the articles of association provide for a higher majority. Their term of office may be a specific duration or for an unlimited period.

[62] An SARL *gérant* may be dismissed by the ordinary general shareholders' meeting by a majority of more than 50% of the existing shares, unless the articles of association provide for a higher majority. A dismissal may give rise to damages if not supported by equitable cause (*juste motif*).