

Company creation : SA or Sàrl ?

SA or Sàrl, which legal form to choose?

When it is time to start a business, many people ask themselves whether it is better to opt for a public limited company (SA) or a limited liability company (Sàrl). Although the two types of company are very similar, there are some differences.

What they have in common

The SA and the Sàrl have several things in common. Both are corporations with their own legal personality. In both cases, it is the company that is liable, not the members. In addition, both types of company are required to keep accounts and issue financial statements.

Differences

Mandatory capital

One of the main differences between the SA and the Sàrl is the capital requirement. While it is possible to set-up a Sàrl with a share capital of CHF 20,000 (Art. 773 OR), the share capital of the SA must be at least CHF 100,000 (Art. 621 OR).

In addition, the share capital of a SA must be fully paid up. In contrast, for the SA, it is possible to establish a company with a partial payment of 20% of the nominal value of the shares, of which at least CHF 50,000 must be paid into the capital deposit account.

Transparency

In addition, the transparency of the company's ownership is different. While the shareholders of a corporation (SA) are anonymous, the entry in the commercial register of a limited liability company (Sàrl) clearly indicates who owns how many shares. The name, domicile and place of origin of the shareholders of a Sàrl are published in the commercial register. In contrast, the shareholder of an SA is not entered in the commercial register. In the case of registered shares, a shareholder is considered to be someone who is entered in the share register (Art. 686 para. 5 OR). The share register is, however, a private register, which is kept by the board of directors and is not, in principle, open to public inspection.

Transfer of shares

The two legal forms also differ with regard to the transfer of shares. The shares of a public limited company (SA) can be transferred by means of a written transfer agreement followed by an entry in the share register. In contrast, the transfer of shares in Sàrl is more complex. The change of partners must be announced to the commercial register and then published by the commercial register. In addition to the entry, the sales contracts and the minutes of the shareholders' meeting must be submitted to the commercial register.

Management of the company

Finally, in the SA, there is a presumption that the board of directors is competent for all matters not assigned to the general meeting (Art. 716 OR). In the Sàrl, on the other hand, the principle of self-organisation applies, with all partners in principle exercising joint management (Art. 809 para. 1 OR).



SA versus Sàrl : Conclusion

In summary, it can be said that the Sàrl and the SA are very similar legal forms. The main differences are the amount of compulsory capital, the anonymity or public nature of the partners and the transfer of shares.

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