

# PRIVATE LIMITED LIABILITY COMPANY (SRL/BV) VS. PUBLIC LIMITED LIABILITY COMPANY (SA/NV)

## COMPARATIVE OUTLINE

	PRIVATE LIMITED LIABILITY COMPANY (SRL/BV)	PUBLIC LIMITED LIABILITY COMPANY (SA/BV)
<b>INCORPORATION FORMALITIES</b>		
	Notarial deed	
<b>MINIMUM NUMBER OF FOUNDERS</b>		
	1	
<b>FINANCIAL PLAN</b>		
	<ul style="list-style-type: none"> <li>Mandatory</li> <li>Mandatory requirements set by the Companies and Associations Code ("CAC")</li> </ul>	
<b>START-UP CAPITAL</b>		
	<ul style="list-style-type: none"> <li>No minimum amount required by the CAC, but equity must be sufficient to conduct the proposed activities, taking into account all financial means made available to the company (such as shareholders contributions or bank loans)</li> </ul>	<ul style="list-style-type: none"> <li>At least EUR 61,500.00 fully paid up</li> </ul>
<b>QUASI-CONTRIBUTION<sup>1</sup></b>		
	<ul style="list-style-type: none"> <li>Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>Special procedure to be complied with (report of the board of directors, auditor's report)</li> </ul>
<b>SECURITIES</b>		
▶ Shares	<ul style="list-style-type: none"> <li>The company must issue at least one share and at least one share must have voting rights</li> <li>The principle of 'one share, one voting right' is optional. Founders may opt for non-voting or multiple voting shares<sup>2</sup></li> </ul>	
	<ul style="list-style-type: none"> <li>In registered form (or dematerialized form (if the SRL is listed and provided the Articles of Association allow it)</li> <li>Share transfers are subject to the approval of the other shareholders unless otherwise provided for in the Articles of Association or by agreement</li> <li>Shares cannot have a nominal value</li> <li>Shares can be issued in exchange for a contribution in kind consisting in services (<i>inbreng in nijverheid / apport en industrie</i>)</li> </ul>	<ul style="list-style-type: none"> <li>In registered or dematerialised form</li> <li>Shares can be freely transferred unless otherwise provided for in the Articles of Association or by agreement</li> <li>Shares with or without a nominal value</li> <li>No shares can be issued in exchange for a contribution in kind consisting in services (<i>inbreng in nijverheid / apport en industrie</i>)</li> </ul>
▶ Profit participation certificates	<ul style="list-style-type: none"> <li>Not allowed<sup>3</sup></li> </ul>	<ul style="list-style-type: none"> <li>Profit participation certificates not representing the share capital can be issued; the rights attached thereto must be laid down in the Articles of Association</li> </ul>
▶ Subscription rights	<ul style="list-style-type: none"> <li>The company can issue subscription rights (warrants)</li> </ul>	
▶ Bonds	<ul style="list-style-type: none"> <li>The company can issue bonds, convertible or not into shares</li> </ul>	

<sup>1</sup> Where an asset "belonging to a person who has signed or on whose behalf the deed of incorporation has been signed, a director, a member of the executive board or the supervisory board, or a shareholder" is sold to the company within a two-year period following the incorporation of the company for a consideration at least equal to 10% of the subscribed capital.

<sup>2</sup> In a listed SA, however, this possibility is limited to the granting of a double voting right attached to shares that have been registered for an uninterrupted two year-period in the name of the same shareholder in the shares register.

<sup>3</sup> Similar securities can be created through the creation of separate types of shares.

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<b>DISTRIBUTIONS</b>		
► <b>Conditions<sup>4</sup></b>	<ul style="list-style-type: none"> <li>• Net assets test: no distribution can be made if the net assets of the company are or would become negative (or lower than the amount of the equity not available for distribution) as a result of the distribution</li> <li>• Liquidity test: no distribution can be made if this would result in the company being unable to pay its debts as they fall due over a period of at least twelve months from the date of the distribution</li> <li>• If the company has a statutory auditor, the latter must evaluate the accounting and financial data included in the report of the governance body on the liquidity test</li> </ul>	<ul style="list-style-type: none"> <li>• Net assets test: no distribution can be made if the net assets of the company are or would, as a result of the distribution, become negative or lower than the amount of the share capital, increased with any reserves not available for distribution according to the law</li> </ul>
► <b>Timing</b>	<ul style="list-style-type: none"> <li>• At the occasion of the annual general meeting or another general meeting depending on the nature and timing of the distribution</li> </ul>	
► <b>Particular case: the interim dividends</b>	<ul style="list-style-type: none"> <li>• The Articles of Association may authorise the governance body to make distributions out of the profits of the current financial year or out of the profits of the previous financial year as long as the annual accounts for that year have not been approved, reduced by carried forward losses or increased by carried forward profits (if any)</li> <li>• NB: The double test (net assets and liquidity) must be carried out and the involvement of the company's statutory auditor (if any) will be required</li> </ul>	<ul style="list-style-type: none"> <li>• The Articles of Association may authorise the board of directors to make distributions out of the profits of the current financial year or out of the profits of the previous financial year as long as the annual accounts for that year have not been approved, reduced by carried forward losses or increased by carried forward profits (if any)<sup>5</sup></li> <li>• A statement of assets and liabilities of the company (drawn up less than two months before the decision) must show that the profits are sufficient to allow for the distribution of an interim dividend</li> <li>• If the company has a statutory auditor, the latter must draw up a report with regard to this distribution</li> </ul>
<b>CREDITORS' PROTECTION</b>		
	<ul style="list-style-type: none"> <li>• Full payment of contributions (unless otherwise provided for in the Articles of Association)</li> <li>• The distribution of statutory unavailable equity requires an amendment to the Articles of Association and the successful completion of the net assets and liquidity tests</li> <li>• Alarm bell: convening of the general meeting within two months in order to decide on the winding up of the company or on measures announced in the agenda to ensure the company's continuity if the company's net assets are negative or likely to become negative or if it is no longer certain that the company, according to the developments that can reasonably be expected, will be able to pay its debts as they fall due over a period of at least twelve months</li> </ul>	<ul style="list-style-type: none"> <li>• At least 25% of the amount of the shares must be paid up (shares issued in whole or in part in exchange for contributions in kind must be fully paid up within five years)</li> <li>• Capital reductions require an amendment to the Articles of Association and compliance with of a two-month waiting period as from the publication of the decision in the Appendices to the Belgian Official Gazette</li> <li>• Alarm bell: convening of the general meeting within two months in order to decide on the winding up of the company or on measures announced in the agenda to ensure its continuity if the company's net assets have decreased to less than half or a quarter of the share capital. When the net assets have fallen below EUR 61,500.00, any interested party or the public prosecutor may request the dissolution of the company in court</li> </ul>

<sup>4</sup> Net assets to be taken into account for the net assets test: total assets less provisions, debts and, save in exceptional cases to be stated and justified in the appendix to the annual accounts, the not yet amortized part of the formation, expansion and research and development costs.

The net assets test applicable to SA's is more severe than net assets test applicable to SRL's:

- for SA's, net assets may not fall below the amount of the share capital (or, if this amount is higher, the amount of the called-up capital increased by any reserves not available for distribution according to the law or the Articles of Association);

- for SRL's, the only requirement is that net assets remain positive (if the company does not have non-distributable equity).

<sup>5</sup> Without drawing on existing reserves and taking into account reserves that must be set up according to the Articles of Association or any legal provision.

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	<ul style="list-style-type: none"> <li>Any contribution in kind must (with some exceptions) be the subject of a report drawn up by a(n) (statutory) auditor</li> <li>The company may not subscribe to its own shares</li> <li>Full and unconditional subscription of contributions</li> <li>Limitations on the acquisition and sale of own shares</li> <li>Limitations on financial assistance (i.e. the granting by the company of advances of funds, loans or security for the acquisition of its own shares by a third party)</li> </ul>	
<b>GOVERNANCE</b>	<ul style="list-style-type: none"> <li>Directors may not be bound to the company by an employment contract in their capacity as directors</li> <li>Directors may be natural or legal persons</li> <li>Directors are appointed by the general meeting</li> </ul>	
	<ul style="list-style-type: none"> <li>Term of office: limited or unlimited</li> <li>May be dismissed at any time, unless otherwise provided for in the Articles of Association or in the appointment decision</li> <li>However, directors appointed in the Articles of Association may only be dismissed by a decision of the general meeting amending the Articles of Association or for "sound reasons" (<i>gegronde redenen / justes motifs</i>)</li> <li>The shareholder's meeting can grant a notice period or severance pay upon termination of the office, unless otherwise provided for in the Articles of Association</li> <li>The Articles of Association need to specify the powers of the director(s) as regards management and representation (joint or concurrent)</li> </ul>	<ul style="list-style-type: none"> <li>Term of office: limited to six years but renewable. However, a sole director may be appointed for an indefinite term</li> <li>May be dismissed at any time</li> <li>The sole director can be appointed in the Articles of Association, but the director appointed in the Articles of Association can only be dismissed by amendment of the Articles of Association or for "sound reasons" (<i>gegronde redenen / justes motifs</i>)</li> <li>The shareholder's meeting can grant a notice period or severance pay upon termination of the office, unless otherwise provided for in the Articles of Association. The Articles of Association may make this principle mandatory (not applicable to the sole director or to the members of the executive board, see below)</li> <li>Three different governance models are available: <ul style="list-style-type: none"> <li><u>One-tier board</u> Collegial body composed of a minimum of three directors (or two if the company has less than three shareholders)</li> <li><u>Sole director</u> The Articles of Association may provide that the consent of the sole director is required for any amendment thereto, any distribution to shareholders or for the dismissal of the sole director. The Articles of Association may also provide that the sole director will be jointly and severally liable for the company's obligations</li> <li><u>Two-tier board</u> Division of powers between a supervisory board (responsible for the general policy, strategy of the company and composition of executive board) and an executive board (which exercises all managing powers not reserved to the supervisory board). The same person cannot be a member of both boards</li> </ul> </li> </ul>

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	PRIVATE LIMITED LIABILITY COMPANY (SRL/BV)	PUBLIC LIMITED LIABILITY COMPANY (SA/BV)
<b>DAILY MANAGEMENT</b>		
	<ul style="list-style-type: none"> <li>Day-to-day management powers and power to represent the company in this respect can be delegated</li> </ul>	
<b>LIABILITY</b>		
▶ Shareholders	<ul style="list-style-type: none"> <li>Limited to the amount of their contribution to the company</li> </ul>	
▶ Directors	<ul style="list-style-type: none"> <li>Liability (jointly and severally in case of a collegial governance body)               <ul style="list-style-type: none"> <li>Towards the company: contractual liability</li> <li>Towards third parties: extra-contractual liability</li> </ul> </li> <li>Exemption if the director did not take part in the breach and reported it</li> <li>Limitation in terms of amount (between EUR 125,000 and EUR 12,000,000.00 depending on turnover and balance sheet total) except:               <ul style="list-style-type: none"> <li>in the case of minor misconduct of an habitual rather than accidental nature, gross misconduct, fraudulent intent or malice</li> <li>failure to pay up contributions</li> <li>specific tax violations</li> <li>Social Security debts in case of bankruptcy</li> </ul> </li> </ul>	
<b>CONTROL</b>		
	<ul style="list-style-type: none"> <li>Mandatory appointment of a statutory auditor required if the company is part of a group that has to draw up consolidated accounts or if two of the three following criteria are exceeded:               <ul style="list-style-type: none"> <li>minimum 50 workers on average per year</li> <li>minimum annual turnover of 9 MEUR (excluding VAT)</li> <li>minimum balance sheet total of 4.5 MEUR</li> </ul> </li> </ul>	
<b>WITHDRAWAL AND EXCLUSION OF SHAREHOLDERS AT THE EXPENSE OF THE EQUITY/CAPITAL OF THE COMPANY</b>		
	<ul style="list-style-type: none"> <li>Can be provided for in the Articles of Association</li> </ul>	<ul style="list-style-type: none"> <li>Not allowed</li> </ul>
<b>APPLICATION OF BELGIAN LAW</b>		
	<ul style="list-style-type: none"> <li>If the company's registered office is in Belgium ('statutory seat' doctrine)</li> </ul>	
<b>BELGIAN CORPORATE INCOME TAX</b>		
	<ul style="list-style-type: none"> <li>If the effective management of the company is in Belgium ('real seat' doctrine)</li> </ul>	