

COMPARISON OF THE MOST COMMONLY USED FRENCH AND GERMAN CORPORATIONS

This article is a comparative chart of the most commonly used French and German corporations, i.e. the French Société Anonyme (S.A.), Société à Responsabilité Limitée (S.A.R.L.) and Société par Actions Simplifiée (S.A.S.) and the German Aktiengesellschaft (AG), Gesellschaft mit beschränkter Haftung (GmbH) and kleine Aktiengesellschaft. It deals with various practical issues, such as liability exposure, composition of the Board and shareholder assemblies, minimum amount of capital stock required, issuance and transfer of shares, management, voting rights, taxation and form requirements for corporate meetings.

This chart will help the international law practitioner involved in Franco-German corporate matters find at a glance the immediate answers to feed his thoughts as to the required corporate entity which allows him to lay out his plans.

	French Stock corporation Société Anonyme (S.A.)	German Stock corporation Aktiengesellschaft (AG)	French limited liability company Société à responsabilité limitée (S.A.R.L.)	German limited liability company Gesellschaft mit beschränkter Haftung (GmbH)	French simplified stock corporation Société par Actions Simplifiée (SAS)	German –small" stock corporation –Kleine" Aktiengesellschaft (Kleine AG)¹
Ability to call funds from the public	Yes	Yes	No	No	No	Yes

¹No proper corporate form. Refers to reduced requirements introduced in the German Stock Corporation Act (Aktiengesetz) in 1994 compared to the –classic features" of the German Stock Corporation that have been put in brackets in order to remind of their obsolescence.

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Limitation of liability The shareholders are liable for the company's losses within the limit of their respective capital contributions.	Yes	Yes	Yes	Yes	Yes	Yes
Nature of members	Individuals/legal entities	Individuals/legal entities	Individuals/legal entities	Individuals/legal entities	Individuals/legal entities	Individuals/legal entities
Number of members	Minimum of 7	(Minimum of 5)	1 to 50	Minimum of 1	Minimum of 1	Minimum of 1
Duration	99 years max.	No specific duration	99 years max.	No specific duration	99 years max.	No specific duration
Registration	Yes	Yes	Yes	Yes	Yes	Yes
Minimum amount of capital	EUR 37,000 when private; EUR 225,000 when public. Special amounts apply for	EUR 50,000	No minimum amount. To be set forth in the by-laws	EUR 25,000	EUR 37,000	EUR 50,000

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	specifically regulated activities. Cash contribution: at least half of the capital shall be paid upon incorporation of the company plus the full amount of the issuance premium if the shares are issued above par value; the balance may be paid up within a period of 5 years following incorporation.	Cash contribution: only 25% of the capital shall be paid upon subscription plus the full amount of the issuance premium if the shares are issued above par value.	Cash contribution: only 20% of the capital shall be paid upon incorporation of the company; the balance may be paid up within a period of 5 years following incorporation.	Cash contribution: only 25% of the capital (including contributions in kind shall be paid upon incorporation of the company, but at least EUR 12,500 in cash. In case of a sole shareholder not paying up the entire share capital upon incorporation, the outstanding contribution shall be secured.	Cash contribution: only half of the capital shall be paid upon incorporation of the company; the balance may be paid up within a period of 5 years following incorporation.	Cash contribution: only 25% of the capital shall be paid upon subscription plus the full amount of the issuance premium if the shares are issued above par value. In case of a sole shareholder not paying up the entire share capital upon incorporation, the outstanding contribution shall be secured.
Nature of investment	Contributions in cash or in kind	Contributions in cash or in kind	Contributions in cash or in kind	Contributions in cash or in kind	Contributions in cash or in kind	Contributions in cash or in kind
Issuance of shares	Yes	Yes	Yes	Yes	Yes	Yes

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Transfer of shares	No limitation except otherwise provided in the by-laws (board approval and/or shareholders' right of first refusal may be provided). No limitation possible to transfers between shareholders.	No limitation except otherwise provided in the by-laws (board approval and/or shareholders' right of first refusal may be provided).	Mandatory approval by the shareholders for transfers to third parties. By-laws may provide for limitations among shareholders.	Property transfer requires a notarial deed to be valid, other restrictions freely set in the by-laws, such as company's or shareholders' prior approval, pre-emption rights, etc.	Restrictions freely set in the by-laws. No limitation except as otherwise provided in the by-laws, which may provide <i>inter alia</i> that transfers are forbidden for a period of up to 10 years, a restriction on transfers to any third parties and/or shareholders, etc. The by-laws may also set up a pre-emptive right to the benefit of other shareholders.	No limitation except otherwise provided in the by-laws (board approval and/or shareholders' right of first refusal may be provided).

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Who will be liable for income tax?	The Company (corporate income tax).	The Company (corporate income tax).	The Company (corporate income tax).	The Company (corporate income tax).	The Company (corporate income tax).	The Company (corporate income tax).
Dividends may be paid if...	Existence of distributable income.	Existence of distributable income.	Existence of distributable income.	Existence of distributable income.	Existence of distributable income.	Existence of distributable income.
Corporate bodies	Choice between two types of governance: –Classic" or monist type with: Board of Directors (<i>Conseil d'Administration</i>) presided by a Chairman (<i>Président du Conseil d'Administration</i>) and a General Manager	Board of Managers (<i>Vorstand</i>) composed of one or several Managers œ <i>Vorstandsmitglied</i> er-(at least two if the share capital exceeds EUR 3 million) and Supervisory Board (<i>Aufsichtsrat</i>) with at least 3 members depending on the	One or several General Manager(s) (<i>Gérant(s)</i>)	One or several General Managers (<i>Geschäftsführer</i>) who must be individuals. (Optional if less than 500 employees: Supervisory Board or Advisory Panel œ <i>Beirat</i> -)	Chairman (<i>Président</i>) Possibility to add any other management body and in particular one or several General Managers	Board of Managers (<i>Vorstand</i>) composed of one or several Managers œ <i>Vorstandsmitglieder</i> -(at least two if the share capital exceeds EUR 3 million) and Supervisory Board (<i>Aufsichtsrat</i>) with at least 3 members depending on the size of the

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	<p>(<i>Directeur Général</i>), who is in charge of day-to-day management and representing the company towards third parties, who can be, but need not necessarily be the same person. The General Director can be assisted by one or several Assistant Managers (<i>Directeur Général Délégué</i>)</p> <p>German or dualistic type: Board of Managers (<i>Directoire</i>) and Supervisory Board (<i>Conseil de</i></p>	<p>size of the company and whether it is subject to employee co determination (more than 500 employees).</p>		<p>Supervisory Board in companies with more than 500 employees</p>	<p>(<i>Directeurs Généraux</i>).</p>	<p>company and whether it is subject to employee co determination (more than 500 employees).</p>

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	<i>Surveillance</i> Shareholders' Meeting (<i>Assemblée Générale</i>) Statutory auditor	Shareholders' Meeting (<i>Hauptversammlung</i>)	Shareholders' Meeting (<i>Assemblée Générale</i>) Statutory auditor if applicable.	Shareholders' Meeting (<i>Gesellschafterversammlung</i>)	Shareholders' Meeting (<i>Assemblée Générale</i>) Statutory auditor	Shareholders' Meeting (<i>Hauptversammlung</i>)
Nominee shares	Members of the Board of Directors (including the Chairman) and members of the Supervisory Board shall hold at least 1 share in the company; no such obligation for the General Manager(s) (if not a board member) and the members of the Board of Managers.	The Manager(s) and the members of the Supervisory Board need not be shareholder(s).	The Manager(s) does not have to be shareholder(s).	The General Manager(s) does not have to be (a) shareholder(s).	The <i>Président</i> and other members of the management need not be shareholder(s).	The Manager(s) and the members of the Supervisory Board do not have to be shareholder(s).

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Appointment of management	Members of the Board of Directors must be appointed by a decision of the shareholders. Chairman and CEO are appointed by the Board of Directors. General Manager appointed by the Board of Directors upon proposal of the Chairman and CEO. Members of the Board of Managers are appointed by the Supervisory Board. Members of the Supervisory Board are appointed by a	Members of the Board of Managers are appointed by the Supervisory Board. Members of the Supervisory Board are appointed by a decision of the shareholders.	By a decision of the shareholders.	By a decision of the shareholders.	Freely set in the by-laws.	Members of the Board of Managers are appointed by the Supervisory Board. Members of the Supervisory Board are appointed by a decision of the shareholders.

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Term of office of management	decision of the shareholders. Freely determined in the by-laws but there is, (i) a legal maximum of a 3-year period for the first members of the Board of Directors or members of the Supervisory Board, (ii) a legal 6-year period maximum.	Freely determined by the by-laws but maximum period of 5 years (except in co-determined companies).	Freely set in the by-laws.	Freely set in the by-laws, usually terms of 3 to 5 years.	Freely set in the by-laws.	Freely determined in the by-laws but maximum period of 5 years (except in co-determined companies).

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Investor's voting rights	1 share = 1 vote By-laws may provide for certain limitation of voting rights or multiple voting rights, subject to certain conditions.	In principle, 1 share = 1 vote, but possibility to issue non-voting shares, but they may not represent more than the par value of the voting shares.	1 share = 1 vote	Proportional voting is not imposed. By-laws may freely provide for limitation of voting rights, multiple voting rights, veto rights, etc. Possibility also to exclude a shareholder whose controlling ownership has changed or to suspend his/her voting rights.	Proportional voting is not imposed. By-laws may freely provide for limitation of voting rights, multiple voting rights, veto rights, etc. Possibility also to exclude a shareholder whose controlling ownership has changed or to suspend his/her voting rights.	In principle, 1 share = 1 vote, but possibility to issue non-voting shares, but they shall not represent more than the par value of the voting shares.
Legal representatives	General Manager	If composed by more than one Manager, each of them individually, by-laws may	General Manager(s), each one of them individually.	General Manager(s), either individually or jointly or jointly together with a	Chairman and if applicable, General Managers invested with	If composed of more than one Manager, each of them individually, by-laws and

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		provide for representation together with a signing clerk (<i>Prokurist</i>), which is to be registered with the Commercial Registry.		signing clerk (<i>Prokurist</i>) as provided by the by-laws and the appointment decision, which is to be registered with the Commercial Registry	such rights and registered with the Trade and Commerce Registry.	appointment decision may provide for representation together with a signing clerk (<i>Prokurist</i>), which is to be registered with the Commercial Registry.
Auditing requirements	Statutory auditor mandatory	Statutory auditor mandatory in big and mid-sized companies, i.e. when two of the following three thresholds are exceeded for at least two consecutive tax years: (1) 50 employees, (2) EUR 6,875,000 turnover and (3)	Statutory auditor mandatory when two of the following thresholds are exceeded: (1) 50 employees, (2) EUR 3,100,00 turnover and (3) total balance sheet of EUR 1,550,000.	Statutory auditor mandatory in big and mid-sized companies, i.e. when two of the following three thresholds are exceeded for at least two consecutive tax years: (1) 50 employees, (2) EUR 6,875,000	Statutory auditor mandatory.	Statutory auditor mandatory in big and mid-sized companies, i.e. when two of the following three thresholds are exceeded for at least two consecutive tax years: (1) 50 employees, (2) EUR 6,875,000 turnover and (3) total

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		total balance sheet of EUR 3,438,000.		turnover and (3) total balance sheet of EUR 3,438,000.		balance sheet of EUR 3,438,000.
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Shareholder's liability in case of bankruptcy (–piercing the corporate veil")	No liability above the amount of their share capital contribution if they have not <i>de jure</i> or <i>de facto</i> managed the company.	No liability above the amount of their share capital contribution, unless (i), the shareholder controls the company, (ii), thus influences the decisions of the company and (iii) has acted regardless of the company's proper interests to the benefit of his own activities, which has led the company into insolvency.	No liability above the amount of their share capital contribution if they have not <i>de jure</i> or <i>de facto</i> managed the company.	No liability above the amount of their share capital contribution, unless (i), the shareholder controls the company, (ii), thus influences the decisions of the company and (iii) has acted regardless of the company's proper interests to the benefit of his own activities, which has led the company into insolvency.	No liability above the amount of their share capital contribution if they have not <i>de jure</i> or <i>de facto</i> managed the company.	No liability above the amount of their share capital contribution, unless (i), the shareholder controls the company, (ii), thus influences the decisions of the company and (iii) has acted regardless of the company's proper interests to the benefit of his own activities, which has led the company into insolvency.

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Taxation in case of share transfer	1% limited to EUR 3,049 per	No stamp duties or transfer duties	4,80%	No, stamp duties or transfer duties	1% limited to EUR 3,049 per	No stamp duties or transfer duties
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	French Stock corporation Société Anonyme (S.A.)	German Stock corporation Aktiengesellschaft (AG)	French limited liability company Société à responsabilité limitée (S.A.R.L.)	German limited liability company Gesellschaft mit beschränkter Haftung (GmbH)	French simplified stock corporation Société par Actions Simplifiée (SAS)	German –small" stock corporation –Kleine" Aktiengesellschaft (Kleine AG)¹
	transaction.	unless transfer or acquisition by merger of at least 95% of the shares of a company that owns real estate.		unless transfer or acquisition by merger of at least 95% of the shares of a company that owns real estate. Notary costs.	transaction.	unless transfer or acquisition by merger of at least 95% of the shares of a company that owns real estate.
Possibility to hold board meetings by telephone conference or by a written consent of all the members	No. Videoconference is possible, except for important decisions (i.e., appointment of the Chairman, General Manager, Assistant Managers and decisions on their remuneration, preparation of the annual accounts and the management report).	Yes, if all board members agree (applies only to the Supervisory Board).	N/A	Yes, if all board members agree (applies only to the Supervisory Board, if existing).	Yes, if provided for in the by-laws.	Yes, if all board members agree (applies only to the Supervisory Board).

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Possibility to hold shareholders' meetings by mail or by a written consent of all the shareholders	No (but shareholders may cast their vote by mail). Videoconference is possible, if provided in the by-laws.	Not if the company is quoted on the stock exchange market, otherwise only if all shareholders agree.	Yes (with the exception of the meeting held to approve annual financial statements), if provided for in the by-laws.	Yes, if all shareholders agree to do so or if provided for in the by-laws. Form changes or mergers only in formal meetings. Modifications of the by-laws shall be notarised.	Yes, if provided for in the by-laws.	Not if the company is quoted on the stock exchange market, otherwise only if all shareholders agree.

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