

Appointing a statutory auditor: a legal obligation in France

WHAT LEGAL ENTITIES MUST APPOINT AN AUDITOR?

Appointing a legal auditor in France is obligatory for:

Commercial companies

- Joint-stock companies (« Sociétés Anonymes ») and partnerships limited by shares (« Société en commandite par actions »)
- Simplified joint-stock companies (« Sociétés par Actions Simplifiées ») fulfilling any of the following criteria:
 - If the simplified limited liability company controls, or is controlled by, one or more corporations (including foreign corporations), beginning with 50% voting rights.
 - **OR** If two of the following three thresholds are exceeded at the end of a financial year: Assets > 1000 K€; Turnover > 2000 K€; Number of employees > 20.

The appointment will take place during the following financial year.

- Private limited companies or private limited single member companies (« Société à Responsabilité Limitée » or « Entreprise Unipersonnelle à Responsabilité Limitée »), general partnerships (« Société en Nom Collectif ») and limited partnerships (« Société en Commandite Simple ») exceeding two of the following three thresholds at the end of a financial year: Assets > 1 550 K€ ; Turnover > 3 100 K€ ; Staff > 50 employees.

The appointment will take place on the following financial year.

Other legal entities

- European companies
Economic interest groups (« Groupements d'intérêts d'entreprise ») issuing bonds or employing at least 100 employees
- Non-profit organizations receiving annual public subsidies in excess of 153 K€

- Investment firms (If total assets > 100 million €, two independent auditors must be appointed)
- Credit institutions (If total assets > 450 million €, two independent auditors must be appointed)

Subsidiaries or branches

A subsidiary is a legal entity, with a full judicial personality, and must appoint an auditor according to its legal status and whether it fulfills the criteria listed above.

A branch is an establishment lacking any judicial personality, operated by a company:

- If the company operating the branch is foreign (not French), then the branch has no obligation in France to appoint an auditor
- If the company operating the branch is French, then the preceding criteria apply for the entirety of its operations.



IS A SECOND AUDITOR NEEDED?

Two auditors (belonging to separate legal structures) must be appointed by all of the following business entities:

- Listed companies;
- Companies presenting consolidated accounts. For the record, consolidated accounts are required when two of the following three thresholds are exceeded at the end of a financial year: assets > 15 million €, turnover > 30 million €, number of employees > 250;

- Credit establishments and investment firms exceeding certain limits;
- Mutual insurance companies that publish combined accounts.

The two auditors establish either joint or individual engagement letters. The engagement letters should indicate the distribution of work between the two auditors and the fee budget allocated to each of them:

- The split of work and fees between the auditors has to be balanced. The distribution of work should be regularly modified by the auditors, in a concerted manner, during the tenure.

APPOINTING VOLUNTARILY A LEGAL AUDITOR

Even if it has no legal obligation, a company may choose to appoint an auditor, to ensure that the accounts give a true and fair view of the company's financial position.

THE TERMS OF APPOINTMENT

For each auditor's mandate, the company must:

- Appoint a statutory auditor who will audit the company
- And an alternate auditor, who would replace the statutory auditor if he was unable to finish his tenure.

The statutory auditor has to be registered with the Institute of French Auditors ("Compagnie régionale des commissaires aux comptes").

He can be:

- An individual
- Or a legal entity (auditing firm)

Decision of the shareholders

Upon the foundation of the company, the auditor may be named in the articles of association.

At any other time, the auditor may be appointed during the Annual General Meeting (AGM) or by court order, at the request of any shareholder (subject to achieving the required percentage of votes for some types of company).

Disclosure formalities

The nomination of the auditor is subject to certain disclosure formalities, notably in the legal press and to the Registrar of the Commercial Court.

The company's certificate of incorporation must indicate the name of both the statutory and the alternate auditors.

IN THE ABSENCE OF A NOMINATED AUDITOR

If a legal representative required to appoint an auditor fails to do so, he may incur criminal penalties (a fine of 30000€ and two years of imprisonment).

Decisions taken by the General Assembly, in the absence of a designated auditor, may be considered invalid.

Place your trust in your Auditor.

Do not hesitate to contact us!

Contact details of the firm