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Factsheet concerning the European company (Societas Europaea, SE)

1. Terminology and legal nature

The European company (Societas Europaea; SE) is a supranational legal form for companies operating or wishing to operate in different member states of the European Union.

An SE is a legal entity with its own name, whose capital stipulated in advance is divided into shares and for whose liabilities only the assets of the company are liable.

It is mandatory for the SE to be entered in the Commercial Register.

Inter alia, an SE cannot be entered in the Commercial Register until an agreement on the involvement of employees has been concluded or until certain other conditions relating to employee participation laid down by law have been met.[1]

In addition to publication in the Electronic Gazette of the Principality of Liechtenstein, the registration and deletion of an SE, together with certain information required by law, are also published in the Official Journal of the European Union.[2]

2. Forming the SE

2.1. General

The forming of an SE is subject to the provisions of the European SE Regulation[3] and the Law on the Statute of the European Company ("SEG")[4] and, in addition, the provisions of the Liechtenstein Persons and Companies Act (Personen- und Gesellschaftsrecht – "PGR") concerning the formation of companies limited by shares.[5]

The founders of an SE may only be companies limited by shares, already existing SEs or, subject to certain restrictions, companies with limited liability or other companies.[6] An essential criterion for forming an SE is the cross-border element, depending on the respective forming category (for details, see Fig. 2.2. below).

[1] Art. 12 Para. 2 SE Regulation
[2] Art. 14 SE Regulation
[3] Regulation (EC) No. 2157/2001 of the Council of 8 October 2001 on the Statute for a European Company (SE)
[4] Act of 25 November 2005 on the Statute for a European Company (Gesetz vom 22. Juni 2006 über das Statut der Europäischen Gesellschaft (Societas Europaea, SE)) (SE Act; "SEG") (LGBl. 2007 No. 26)
[5] Art. 15 SE Regulation
[6] Art. 2 SE Regulation

Subject to very stringent conditions, a company with its head office outside the EEA may also take part in forming an SCR.[7]

2.2. Formation types

There are five ways of setting up an SE:

a. Merger:[8] The companies involved in the merger must come from at least two EEA member states. A merger can take place either by absorption or by forming a new company.

A merger plan must be prepared. The information pursuant to Art. 21 SE Regulation (legal form, company name, registered domicile and register of the merging companies, procedures for the exercise of the rights of creditors and of minority shareholders, future company name and future registered domicile) must be reported to the Office of Justice when the merger plan is filed and published by the latter in the Electronic Gazette pursuant to Art. 958 Para. 1 PGR.[9]

Pursuant to Art. 25 Para. 2 SE Regulation, domestic companies limited by shares that participate in the formation of an SE by way of merger require a certificate of legality that is issued by the Office of Justice, provided the legal requirements are met.

b. Conversion of a domestic company limited by shares into an SE, whereby the company limited by shares that is to be converted must have had a subsidiary in another EEA member state for at least two years (a branch office is not sufficient).[10]

The conversion plan that is to be prepared must be submitted to the Office of Justice and must be published by the latter in the Electronic Gazette.[11]

c. Forming a **Holding SE** of companies limited by shares and/or companies with limited liability with registered domiciles in at least two different EEA member states or having had a subsidiary or branch office subject to the law of another EEA member state for at least two years.[12]

The forming of a Holding SE requires a setting up plan to be submitted to the Office of Justice, which will publish this in the Electronic Gazette.[13]

d. Forming a **joint Subsidiary SE** by legal entities under private or public law, with registered domiciles in at least two different EEA member states or having had a subsidiary or branch office subject to the law of another EEA member state for at least two years.[14]

Companies without legal personality may also participate in the creation of a Subsidiary SE, provided they pursue a profit-making purpose.[15]

e. Forming a Subsidiary SE of an existing SE:[16] In this case, no cross-border element is required, as this criterion was already fulfilled at the time of the setting up of the original SE.

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[7] Art. 2 Para. 2 SE Regulation, Art. 8 SEG
[8] Art. 17 et seq. SE Regulation, Art. 9 et seq. SEG
[9] Art. 9 SEG
[10] Art. 37 SE Regulation, Art. 16 SEG
[11] Art. 16 SEG
[12] Art. 32 f. SE Regulation, Art. 13 f. SEG
[13] Art. 13 SEG
[14] Art. 35 f. SE Regulation, Art. 15 SEG
[15] Art. 15 SEG
[16] Art. 3 Para. 2 SE Regulation

3. Organisation of the SE

3.1. The general meeting of shareholders

The **supreme body** of the SE is the general meeting of shareholders.

In addition to the general meeting of shareholders, the articles of the SE may provide either for a management organ and a supervisory organ (two-tier system)[17] or a board of directors (one-tier system)[18].

3.2. Two-tier system[19]

The **management organ** (board of directors) conducts the business, while the **supervisory organ** (supervisory board) is responsible for monitoring the activities of the management organ. Its size depends on the amount of the subscribed capital.

The members of the board of directors are appointed and dismissed either by the supervisory organ or by the general meeting of shareholders, if the articles make provision for this.

An SE with subscribed capital of **more than CHF 1 million** must have a board comprising **at least two members**, insofar as it is not a company whose exclusive business activity is asset management in Liechtenstein.[20]

3.3. One-tier system[21]

Where an SE opts for the one-tier system with one management organ and where the management is entrusted to several natural persons or legal entities, they shall form the board of directors.

The **management organ (board of directors)** conducts the business of the SE. Its members are appointed by the general meeting of shareholders.

An SE with subscribed capital of **more than CHF 1 million** must have a board of directors comprising **at least three members**, insofar as it is not a company whose exclusive business activity is asset management in Liechtenstein.[22]

3.4. The audit authority

An audit authority must be appointed for an SE, and the audit authority must be recorded in the Commercial Register.[23] The audit authority is appointed by the general meeting of shareholders and must fulfil the statutory requirements.[24] Under certain conditions, a review and thus the appointment of an audit authority may be waived (for details, see Fig. 11 below).

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[17] Art. 39 et seq. SE Regulation, Art. 17 et seq. SEG
[18] Art. 43 et seq. SE Regulation, Art. 36 et seq. SEG
[19] Art. 39 et seq. SE Regulation, Art. 17 et seq. SEG
[20] Art. 19 SEG
[21] Art. 43 et seq. SE Regulation, Art. 36 et seq. SEG
[22] Art. 37 SEG
[23] Art. 350 Para. 1 PGR
[24] Art. 350 Para. 2 and Art. 191a PGR

3.5. The custodian

The board of directors of an SE that has issued bearer shares must appoint a custodian, with whom all bearer shares of the company are to be deposited.[25] The custodian must be entered in the Commercial Register, stating his function.[26]

3.6. Service address

A service address in Liechtenstein must be designated for an SE.[27]

4. Articles of the SE

The articles of the SE must contain the information and provisions required by law (for further details, see *Guidelines for the New Registration of a European Company (SE) – (Wegleitung zur Neueintragung einer Europäischen Aktiengesellschaft (SE*)).

Certain other provisions and information are only valid if they are provided for in the articles.[28] These include, for example, provisions on authorised or conditional capital, restrictions on the transferability of registered shares or restrictions on the voting and representation rights of shareholders.

5. Registered domicile of the SE

The registered domicile of the SE is located at the place where the head office of the SE is located.[29] If an SE no longer fulfils these conditions, this constitutes a material defect in the articles, which must be rectified at the request of the Office of Justice.[30]

An SE may relocate its registered domicile to another member state without dissolution and new formation.[31]

6. Purpose of the SE

An SE may pursue any commercial or non-commercial purpose, provided it is legally admissible.

The purpose of the SE must clearly state, however, whether or not it will engage in **activities of a commercial nature**.[32] The investment and management of assets or the holding of participations or other rights does not constitute an activity of a commercial nature, unless the nature and size of the enterprise requires commercial operations and orderly accounts.[33]

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[25] Art. 326b Para. 1 PGR
[26] Art. 326b Para. 4 PGR
[27] Art. 35 and Art. 39 SEG
[28] Art. 279 PGR
[29] Art. 7 SE Regulation, Art. 4 SEG
[30] Art. 45 SEG
[31] Art. 8 SE Regulation, Art. 42 et seq. SEG
[32] Art. 3 Persons and Companies Ordinance of 19 December 2000 (Verordnung vom 19. Dezember 2000 zum Personen- und Gesellschaftsrecht); (LGBl. 2000 No. 281)
[33] Art. 107 Para. 3 PGR

7. Capital of the SE

The minimum capital of the SE is denominated in Swiss francs, euros or US dollars[34] and must amount to at least EUR 120,000.[35] The minimum capital must be **fully paid up or contributed** at the time of formation.

The SE may be formed by means of cash or contributions in kind. Contributions in kind must be valued within the context of an expert opinion. The capital must be at the free disposal of the SE once this has been entered in the Commercial Register.

8. Shares of an SE

The **shares** may be **registered shares** or bearer shares. Both classes may also exist simultaneously in the ratio stipulated by the articles.

Bearer shares must be deposited with the custodian. The custodian must keep a register in which all of the details about the bearer shareholder that are required by law are recorded.[36] Vis-à-vis the company, only parties who are recorded in the register are considered to be shareholders.[37] The transfer of bearer shares must be reported to the custodian; the transfer shall take effect once the acquiring party has been recorded in the register.[38]

Unless the articles stipulate otherwise, **registered shares** are also freely transferable by way of blank endorsement and, in case of doubt, are considered to be order instruments. To transfer the registered share, it is sufficient to hand over the endorsed share certificate to the acquiring party.[39] The company must maintain a register (share register) of the owners of the registered shares (shareholders) with the information required by law. Vis-à-vis the company, shareholders shall be deemed to be only those persons who are recorded in the share register.[40]

9. Liability and responsibility

Only the SE itself is liable for the liabilities of the company with its own assets. Each shareholder shall be liable only up to the level of the capital that he has subscribed.[41]

The managing bodies of the SE are liable in accordance with the general liability provisions.[42]

10. Account rendering and disclosure obligations

All SEs are obliged to **render proper accounts**, irrespective of whether or not they engage in activities of a commercial nature.[43]

The legal representatives of SEs must submit the duly approved annual financial statements and the audit report to the **Office of Justice** before the end of the twelfth month following the balance sheet reporting date.[44]

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[34] Art. 5 SEG
[35] Art. 4 Para. 2 SE Regulation
[36] Art. 326a Para. 1; Art. 326c Para. 1 PGR
[37] Art. 326c Para. 2 PGR
[38] Art. 326h Para. 1 and 3 PGR
[39] Art. 327 PGR
[40] Art. 328 Para. 2 PGR
[41] Art. 1 Para. 2 SE Regulation
[42] Art. 2 SEG in conjunction with Art. 218 et seq. PGR
[43] Art. 1045 Para. 2 PGR
[44] Art. 1122 Para. 1 PGR

11. Audit and review obligations[45]

The annual financial statements and consolidated annual financial statements of SEs, with the exception of companies limited by shares that are classified as small or micro-companies, must be audited by an auditor or an auditing firm.[46]

In the case of SEs that are classified as small or micro-companies, the audit authority must conduct a review.[47]

SEs that engage in activities of a commercial nature and are classified as micro-companies may waive the audit review.[48] The disclosure obligation (for details, see Fig. 10 below) remains in force, however (for further details, see *Guidelines for the New Registration of a European Company (SE)*).

12. Legal principles

- *Regulation (EC) No. 2157/2001 of the Council of 08 October 2001 on the Statute for a European Company (SE)*
- *Act of 25 November 2005 on the Statute for a European Company (Gesetz vom 25. November 2005 über das Statut der Europäischen Gesellschaft (Societas Europaea, SE)) (SE Act; "SEG") (LGBl. 2007 No. 26)*
- *Act of 25 November 2005 on the Participation of Employees in the European Company (Gesetz vom 25. November 2005 über die Beteiligung der Arbeitnehmer in der Europäischen Gesellschaft (SE-Beteiligungsgesetz; "SEBG"))(LGBl. 2007 No. 27)*
- *Persons and Companies Act of 20 January 1926 (Personen- und Gesellschaftsrecht ("PGR") vom 20. Januar 1926 (LGBl. 1926 No. 4))*
- *Commercial Register Ordinance (Handelsregisterverordnung – "HRV") of 11 February 2003 (LGBl. 2003 No. 66)*

[45] Art. 1058 PGR
[46] Art. 1058 Para. 1 PGR
[47] Art. 1058 Para. 2 PGR
[48] Art. 1058a PGR