Valuation of Contributions in Kind under French Company Law

1. Introduction: Nature and importance of contributions in kind

Under French company law, shareholders or partners (associés) may make contributions in cash (apports en numéraire), in kind (apports en nature) or in industry (apports en industrie). Contributions in kind consist of assets other than money, such as real estate, machinery, vehicles, intellectual property rights, shares or a business undertaking. Contributions in industry consist of services, expertise or labour; they do not form part of share capital, although they may confer corporate rights.

An in-kind contribution must be assigned a monetary value. This ordinarily determines the capital credited to the contributor and the shares or ownership interests received in exchange. Overvaluation can inflate stated capital and mislead creditors or other shareholders; undervaluation can prejudice the contributor. French law therefore sometimes requires an independent contribution auditor (commissaire aux apports). The obligation to value an asset must be distinguished from the obligation to have its valuation independently verified.

2. Société à responsabilité limitée (SARL)

Legal basis: Commercial Code, Article L. 223-9; regulatory threshold under Article D. 223-6-1.

In an SARL, contributions in kind are valued in the articles of association, ordinarily on the basis of a report prepared by a commissaire aux apports. The future shareholders appoint the auditor unanimously or, failing agreement, through a judicial appointment.

The shareholders may unanimously dispense with an auditor if both conditions are met: (1) no individual contribution in kind exceeds €30,000; and (2) the aggregate value of contributions in kind not independently assessed does not exceed one-half of share capital. These are cumulative requirements.

Example. An SARL has €100,000 in share capital, including equipment valued at €20,000 and a vehicle valued at €15,000. Neither contribution exceeds €30,000 and the aggregate (€35,000) is below €50,000. The future shareholders may unanimously decide not to appoint an auditor.

Where no auditor is appointed, or the shareholders adopt a valuation different from the auditor’s assessment, shareholders are jointly and severally liable towards third parties for the value attributed to contributions for five years. Special rules also exist for the single-member SARL (EURL), including certain contributions of assets previously recorded in an individual entrepreneur’s accounts.

3. Société anonyme (SA)

Legal basis: Commercial Code, Articles L. 225-8, L. 225-8-1, L. 225-14 and L. 225-147.

For an SA, contributions in kind normally require examination by one or more independent commissaires aux apports. Their report assesses the contributed assets within the applicable formation

or capital-increase procedure. The regime reflects the importance of capital protection where shareholders ordinarily risk only their contributions.

Unlike an SARL, an SA has no general small-contribution exemption based on the €30,000 threshold. Nevertheless, the audit is not mandatory in every case. Article L. 225-8-1 provides specific exceptions, notably for certain financial instruments valued by reference to regulated-market trading prices and other assets recently subjected to an independent fair-value assessment. Statutory conditions apply, and material changes in value may require renewed valuation. Formation and subsequent capital increases must also be distinguished procedurally.

4. Société par actions simplifiée (SAS)

Legal basis: Commercial Code, Article L. 227-1 and Article D. 227-3.

Although many rules governing the SA apply to the SAS, the SAS has a specific formation-stage exemption. Future shareholders may unanimously dispense with a contribution auditor when no individual contribution in kind exceeds €30,000 and the aggregate value of contributions not independently assessed does not exceed half of share capital.

Where no auditor is appointed, or shareholders retain a value different from the auditor's valuation, the statutory regime imposes joint and several liability towards third parties for the attributed value for five years. The single-member SAS (SASU) is subject to particular provisions.

5. Société en nom collectif (SNC)

Legal basis: Civil Code, Articles 1832, 1843-2 and 1843-3, together with the Commercial Code provisions on SNCs.

The ordinary SNC regime does not impose a general requirement to appoint a commissaire aux apports. Partners may determine the value of contributed assets by agreement, subject to general company and contract law. All SNC partners have trader status and are jointly and severally liable without limitation for company debts, under the applicable statutory conditions. This personal liability helps explain the greater flexibility, but it does not permit fictitious or knowingly misleading valuations.

6. Société civile

Legal basis: Civil Code, Articles 1832, 1843-2, 1843-3 and 1845 et seq.

Ordinary civil companies, including many sociétés civiles immobilières (SCI) and sociétés civiles de moyens (SCM), are not generally required to appoint a contribution auditor. Partners ordinarily agree the value of assets contributed and record it in the articles of association. A contribution of real estate may nevertheless require a notarial instrument and land-registration formalities. Certain specialised civil-company regimes may impose additional rules.

7. Comparative overview

Company	General position	Principal exemption / approach
SARL	Auditor normally required	Unanimity; each contribution ≤ €30,000; aggregate exempt value ≤ 50% of capital
SA	Auditor normally required	Specific statutory exemptions for certain previously valued assets or financial instruments
SAS	Auditor normally required	Unanimity; each contribution ≤ €30,000; aggregate exempt value ≤ 50% of capital
SNC	No general audit requirement	Valuation ordinarily agreed by partners
Société civile	No general audit requirement	Valuation ordinarily agreed by partners; special regimes may apply

8. Conclusion

The law balances contractual freedom with protection of shareholders and creditors. SARLs, SAs and SASs ordinarily use independent verification, subject to different statutory exceptions. SNCs and ordinary civil companies generally leave valuation to the partners, in the context of their respective liability regimes. All contributions in kind require an appropriate value; what differs is whether independent verification is legally required.

Principal statutory references

French Commercial Code: Arts. L. 223-9, D. 223-6-1, L. 225-8, L. 225-8-1, L. 225-14, L. 225-147, L. 227-1 and D. 227-3. French Civil Code: Arts. 1832, 1843-2, 1843-3 and 1845 et seq. Consult the consolidated versions on Légifrance for precise statutory conditions.