

Key Facts

Special Limited Partnerships

In 2013, while implementing the EU's Alternative Investment Fund Managers Directive into national law, Luxembourg overhauled its partnership regime, both modernising the existing framework and also introducing an entirely new partnership vehicle called the special limited partnership ("SCSp"), which has rapidly become a popular choice for international investors since its introduction.

Luxembourg's Special Limited Partnership

Luxembourg now offers three partnership structures:

- A limited partnership with legal personality ("SCS")
 - the modernised regime being similar to the Scottish partnership
- The new SCSp limited partnership structure without legal personality - very similar to the internationally successful Anglo-Saxon partnership model
- An enhanced regime of the corporate partnership limited by shares ("SCA") - similar in many ways to a protected cell company (provided certain conditions are met)

This wide choice of partnership structures means Luxembourg offers one of the most comprehensive ranges of fund structuring options for private equity, infrastructure, real estate and hedge funds globally.

Why Use an SCSp ?

- Internationally recognised structure inspired by Anglo-Saxon Limited Partnerships
- No legal personality
- Suitable for a wide range of uses - an SCSp may be used as a regulated or unregulated vehicle, master/feeder fund, special purpose vehicle, joint venture, co-investment vehicle, carry vehicle, acquisition vehicle, etc.

- Short time to market - execution under private seal (no notary required)
- High level of confidentiality
- The assets and liabilities of the SCSp are ring-fenced from that of its partners
- The SCSp regime provides a high degree of contractual flexibility, as many provisions of the Company Law are only default rules if certain points have not been addressed in the limited partnership agreement
- If regulated, an SCSp may be structured as an umbrella vehicle with segregated compartments
 - subject to independent economic terms, but sharing a common management team
- Tax efficient: the SCSp is transparent both from a corporate and fiscal perspective

Main Features of an SCSp

- Unregulated as well as regulated vehicles may be structured in the form of an SCSp**
- Unregulated SCSp's are governed by Luxembourg's Company Law and, in cases where they fall within the scope of the AIFMD, they will also have to comply with it.
 - Regulated SCSp's are subject to the regulations applicable to the relevant regulated vehicle (i.e., SIF or SICAR).

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- Rules may therefore vary depending on the applicable regulatory regime.

Set-up

- An SCSp is set up using a Limited Partnership Agreement (“LPA”) between one or more General Partners (“GP”) and one or more Limited Partners (“LP”) (i.e., an SCSp may be set up with only two partners).
- An SCSp LPA may be concluded in the form of a notarial deed or a private agreement executed by signature.
- Excerpts of the LPA are subject to publication and the SCSp must be registered at the Luxembourg Trade Register.
- There is no minimum capital requirement.
- Limited accounting obligations, subject to the regulations applicable to the specific regulated vehicle (i.e., SIF or SICAR).

Confidentiality

- The identity of the limited partners and their contributions are not subject to publication.
- Only limited excerpts of the LPA are subject to publication.

Absence of legal personality does not entail the traditional effects of such status

- Despite its lack of legal personality, an SCSp still benefits from legal autonomy and is bound by the actions of its managers.
- An SCSp’s domicile and central administration are presumed to be located at its Luxembourg registered office; such derogation from standard principles ensures that the SCSp will be a Luxembourg-based entity.

- The SCSp benefits from other features generally attached to the legal personality such as having its own registered office and being able to sue and be sued.

Legal protection of assets

- The assets and liabilities of the SCSp are ring-fenced from that of its partners.
- The SCSp’s assets are not available to the personal creditors of the SCSp partners and the creditors of the SCSp have no direct claim against the assets of its limited partners.

Management

- The SCSp is managed by one or more managers designated in the LPA; the manager may be the GP or a designated manager (i.e., an AIFM).
- There are two types of partners in an SCSp: the LPs, whose responsibility is capped at the amount of their contribution, and the GPs who have joint, unlimited liability for the obligations of the partnership.
- A GP may also be an LP provided that there is at least one distinctive GP and one distinctive LP in the SCSp.
- Although no specific substance is required at the level of the SCSp or of its GP, adequate measures should be taken to ensure that the GP is managed from Luxembourg (e.g., adequate board composition, regular meetings in Luxembourg), since an SCSp should generally be tax resident where it is effectively managed.
- In its sole capacity as an LP of an SCSp, a LP’s activity precludes any act of external management (i.e., any act of management that relates to third parties).
- Luxembourg’s Company Law provides “non-management” safe harbour rules for active LPs by setting out a list of activities that can be undertaken by the LPs without them losing the

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benefit of their limited liability (e.g., the exercise of partner prerogatives; the provision of advice to the SCSp, to its affiliates or to their managers; the conduct of supervisory measures).

- An LP may enter into any transaction with the SCSp without his capacity as limited partner in itself affecting his rank as general or preferred creditor.

High level of contractual flexibility

- A high degree of contractual flexibility is granted to the partners as regards the organisation and the functioning of the SCSp. Most of the rules may be freely determined and the default rules provided by Luxembourg's Company Law are applicable only if the partnership agreement is silent.
- This contractual flexibility makes the SCSp very useful for fund initiators who want to retain control over the management of the partnership.
- Amongst others, the partners may freely determine matters such as:
 - the nature of the partnership interests – for example, securities (including debt securities) or partnership accounts;
 - profit/loss distribution – the possibility to exclude partners from the allocation of economic benefits;
 - the forms of contribution – cash, in kind or in services (contributions of management, advisory or general partner services are a matter to be agreed in the LPA and there is no external valuation requirement for such contributions);
 - the voting rights (none, limited or multiple);
 - general meetings (e.g., quorum, majority rules); and
 - the information to be disclosed to the partners.

Tax provisions

- An SCSp benefits from a full tax transparency for corporate income tax ("CIT") and net wealth tax ("NWT").

- The profits of an SCSp are exempt from Municipal Business Tax ("MBT"), provided that the SCSp does not carry out a commercial activity or the GP owns less than 5% of the interests in the SCSp.

- SCSp entities with SICAR or SIF status are not considered to be carrying on a commercial activity and thus benefit from an exemption of CIT, MBT and NWT.

- In principle, an SCSp may be a VAT taxable person. If the SCSp qualifies as an AIF, the management services provided by the GP may be exempt from VAT.

- Non-resident investors are not subject to income tax or net wealth tax.

- Dividends paid by an SCSp are not subject to withholding tax.

- SCSp's do not benefit from Luxembourg's double tax treaty network.

How We Can Help

Our professional multilingual team in Luxembourg is Regulated as a Professional of the Financial Sector under the supervision of the CSSF and is able to assist with all aspects of the establishment and administration of Luxembourg investment fund vehicles, including SCSp's.

The team is experienced in a wide range of investment types including hedge funds, private equity, venture capital, real estate, fund of funds and securitisation.

To discuss how we may assist you please contact:
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Comparative Table of Luxembourg Partnership Structures

	Special Limited Partnership (SCSp)	Common Limited Partnership (SCS)	Partnership Limited by Shares (SCA)
Legal Nature	Intuitu personae company	Intuitu personae company	Joint-stock company
Legal Personality	No	Yes	Yes
Tax Transparency	Yes	Yes	No
Establishment	Partnership agreement Notarial deed optional (when non-regulated)	Partnership agreement Notarial deed optional (when non-regulated)	Articles of association Notarial deed required
Domiciliation	Yes	Yes	Yes
Minimum Capital	No requirement	No requirement	EUR 30,000 (25% paid in)
Shareholding	One or more GPs + one or more LPs - no upper limit	One or more GPs + one or more LPs - no upper limit	One or more GPs + one or more LPs - no upper limit
Liability	GPs are indefinitely, jointly and severally liable LPs are liable up to the amount committed	GPs are indefinitely, jointly and severally liable LPs are liable up to the amount committed	GPs are indefinitely, jointly and severally liable LPs are liable up to the amount committed
Publication	Only limited excerpts of the LPA are subject to publication No mandatory disclosure of the limited partners	Only limited excerpts of the LPA are subject to publication No mandatory disclosure of the limited partners	The articles of incorporation have to be published No mandatory disclosure of limited shareholders
Transfer of Shares/Units	Freely determined in the partnership agreement	Freely determined in the partnership agreement	Freely determined in the articles of incorporation
Listing	Yes (but no public offering)	Yes (but no public offering)	Yes
Debt Instruments Permitted	Yes	Yes	Yes

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	Special Limited Partnership (SCSp)	Common Limited Partnership (SCS)	Partnership Limited by Shares (SCA)
Accounting Obligations	Limited accounting obligations Regulated vehicles need to follow the applicable legislation (i.e., SIF, SICAR)	Annual only if turnover exceeds EUR 100.000 Regulated vehicles need to follow the applicable legislation (i.e., SIF, SICAR)	Annual
Independent Auditor	Not required Regulated vehicles need to follow the applicable legislation (e.g., SIF, SICAR)	Required - if general partner is an SA, SARL or SCA, and - if turnover > €8.8 million and total assets > €4.4 million	Required - if turnover > €8.8 million and total assets > €4.4 million
Accounting Principles	Unregulated vehicles - no requirement Regulated vehicles - need to follow the applicable legislation (i.e., SIF, SICAR)	Unregulated vehicles - no requirement if turnover is below EUR100.000 Regulated vehicles - need to follow the applicable legislation (i.e., SIF, SICAR)	LUX GAAP or IFRS
Benefit from Double Tax Treaties	No	No	Yes
Corporate Income Tax	No	No	Yes
Municipal Business Tax	No - provided that (i) the GP holds less than 5% of the partnership interests or (ii) the SCSp does not carry out commercial activity	No - provided that (i) the GP holds less than 5% of the partnership interests or (ii) the SCS does not carry out commercial activity	Yes
Net Worth Tax	No	No	Yes
Management	By the general partner or an external manager (i.e., AIFM)	By the general partner or an external manager (i.e., AIFM)	By the general partner or an external manager (i.e., AIFM)

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	Special Limited Partnership (SCSp)	Common Limited Partnership (SCS)	Partnership Limited by Shares (SCA)
Collective Decisions	<p>LP agreement to provide the rules applicable to collective decisions</p> <p>Mandatory rules only in relation to specific matters</p> <p>Videoconference participation may be allowed in the internal rules</p>	<p>LP agreement to provide the rules applicable to collective decisions</p> <p>Mandatory rules only in relation to specific matters</p> <p>Videoconference participation may be allowed in the internal rules</p>	<p>Partners' resolutions are generally adopted by a simple majority of the votes</p> <p>Mandatory rules in relation to specific matters</p> <p>Videoconference participation may be allowed in the internal rules</p>
General Meeting	No requirement	One annual general meeting required	One annual general meeting required
Voting Rights	<p>Voting power determined in partnership agreement</p> <p>None, limited or multiple</p>	<p>Voting power determined in partnership agreement</p> <p>None, limited or multiple</p>	<p>One share, one vote principle</p> <p>Non-voting ordinary shares are permitted</p> <p>Non-voting preference shares permissible</p>
Contributions	In cash, in kind or other form of services	In cash, in kind or other form of services	In cash or in kind

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