

Luxembourg Limited Partnerships.

Toolkit for LP bill.

2014



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Origin and Scope.

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- > The implementation of the Alternative Investment Funds Managers Directive (“AIFMD”) is an opportunity to modernise the current legal framework of the Luxembourg limited partnerships
- > This modernisation creates an attractive structure to investors and responds to market expectations by making available to investors a full panel of LP type vehicles.

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- > Modernisation of the common limited partnership (CLP), long known in Luxembourg and close to the Anglo-Saxons limited partnerships
- > Creation of a new type of partnership without legal personality: the special limited partnership (SLP)
- > Amendments of the partnership limited by shares (SCA) to harmonize with general limited partnership legislation
- > Amendments to sectorial laws: SICAR and SIF

Part I: Common Limited Partnerships “CLP”

(Société en Commandite Simple)

Common Limited Partnerships.

Common Limited Partnerships (art. 16 to art. 22 of the Law of 10 August 1915 on Commercial Companies)

Definition

Definition

A common limited partnership is a partnership established by contract, for a limited or unlimited duration, between one or more general partners with unlimited and joint and several liability for all obligations of the partnership, and one or more limited partners with limited liability, who commit to contributing a certain amount, constituting partnership interests, represented or not by a security instrument, in accordance with the provisions of the limited partnership agreement.

Setting-up

Partnership agreement

- The partnership agreement (“LP agreement”) will lay down the rules applicable to the CLP
- Contractual freedom

Duration

Limited or unlimited duration

Denomination

Free. The CLP’s corporate denomination may contain the names of one or more partners of the CLP

Form of contributions

In kind, in cash or in industry

Partnership interests

Partnership interests may but do not need to take the form of securities

Common Limited Partnerships.

Common Limited Partnerships (art. 16 to art. 22 of the Law of 10 August 1915 on Commercial Companies)

Debt securities	Permissible
General Partner / Limited Partner	<ul style="list-style-type: none"> • At least one general partner (“<i>associé commandité</i>”/“GP”) and one (different) limited partner (“<i>associé commanditaire</i>”) • A general partner may hold limited partner’s interests
Publication	<ul style="list-style-type: none"> • Only limited excerpts of the LP agreement are published • No mandatory publication of the names of the limited partners
CLP register	<ul style="list-style-type: none"> • CLP shall keep a register containing: <ul style="list-style-type: none"> - the partners’ names - historic record of transfers - an up-to-date version of the Partnership agreement • Consultation of the register subject to the limitations provided for in the LP agreement
Notarial deed	Not required
Nullity	Limited cases exhaustively provided for by the law

Common Limited Partnerships.

Common Limited Partnerships (art. 16 to art. 22 of the Law of 10 August 1915 on Commercial Companies)

Management

Manager	<ul style="list-style-type: none"> • The CLP is managed by one or several managers who are vested with the broadest powers to perform all acts necessary or useful for accomplishing the Partnership's corporate object • The appointment of such manager(s) is to be laid down in the LP agreement • Managers do not need to be GP • A manager (as regards management duties) will only be liable in case of wrong management
Delegation of powers	<ul style="list-style-type: none"> • Permissible • Powers can be delegated to a person that will be liable only in relation to the execution of its mandate
Limitation of powers	Any limitations provided in the LP agreement to the powers conferred to the Managers are not valid vis-à-vis third parties, even if they are published
Ultra vires theory limited	The CLP shall be bound by any acts of the Managers even if such acts exceed the corporate object, unless it proves that the third party knew that the acts exceeded the corporate object or could not in view of the circumstances have been unaware of it

Common Limited Partnerships.

Common Limited Partnerships (art. 16 to art. 22 of the Law of 10 August 1915 on Commercial Companies)

Partners' rights

Limited partner	<ul style="list-style-type: none"> Limited partners have limited liability Limited partners cannot take part in the management of the CLP. They will be indefinitely and jointly and severally liable towards third parties for all undertakings in which they have participated in contravention of the management prohibition However, a limited partner may have internal role (i.e.: advisory and/or supervisory role) without compromising his status of limited partner A limited partner can contract with the CLP without compromising his status (non suffering from any legal subordination)
GP	General partners have unlimited liability
Profits / losses	<ul style="list-style-type: none"> Rules relating to the participation in profits/losses are to be provided in the LP agreement Clawback clause only if provided in the LP agreement
Voting rights	Limited or multiple vote as well as non voting interest are permissible

Common Limited Partnerships.

Common Limited Partnerships (art. 16 to art. 22 of the Law of 10 August 1915 on Commercial Companies)

Partners' meetings

Collective decisions

- LP agreement to provide the rules applicable to collective decisions
- Mandatory rules only in relation to specific matters
- Videoconference and written resolution permissible

Annual accounts

The following documents shall be submitted to the partners on a yearly basis:

- annual accounts
- management report
- report of the statutory approved auditor (“*réviseur d’entreprise agréé*”) if any, and
- any other information pursuant to the LP agreement

Information regime

Limited information rights provided for by the law

Transfer of partnership interests

Transfer of partnership interests

- In compliance with the LP agreement
- Law provides for a default regime in case the LP agreement is silent
- Transfer shall be notified to the CLP

Exit

In compliance with the LP agreement

Common Limited Partnerships.

Common Limited Partnerships (art. 16 to art. 22 of the Law of 10 August 1915 on Commercial Companies)

Liquidation

Liquidation

- Principle: Majority rules to be laid down in the LP agreement
- In the absence of rules in the LP agreement, the default majority rule is that a liquidation decision is to be adopted by partners representing three-quarters of the partnership interests

Tax provisions

Corporate Income Tax (“CIT”)

- The CLP will be fully tax transparent for the purposes of the CIT. Its profits are therefore directly taxed in the hands of its partners

Municipal Business Tax (“MBT”)

- If the CLP has a commercial activity, its profits are subject to MBT. Whether the CLP has a commercial activity will have to be reviewed on a case by case basis
- If the CLP has a GP which is a capital company holding at least 5% of the CLP's interest, its profits are subject to MBT
- In all other cases, the CLP would be exempt from MBT

Net Wealth Tax (“NWT”)

- The CLP will be fully tax transparent for the purposes of the NWT. Its assets could therefore be directly taxed in the hands of its partners if they are capital companies

Value Added Tax (“VAT”)

- In principle, the CLP is a VAT taxable person
- If the CLP is a qualifying AIF, the management services provided by the GP are however exempt from VAT

Part II: Special Limited Partnership “SLP”

(Société en Commandite Spéciale)

Special Limited Partnerships.

Regime similar to the CLP one : Only specific rules relating to the special limited partnership are considered in this section

Special limited Partnerships (art. 22-1 to art. 22-9 of the Law of 10 August 1915 on Commercial Companies)

Specific rules compared to the CLP regime

Form of partnership	Partnership with no legal personality
Assets registration	Asset registration and formalities to be made in the name of the SLP even if it has no legal personality
Asset segregation	A personal creditor of a partner has no direct claim against the assets of the SLP A creditor of the SLP has no direct claim against the assets of the limited partners
Annual accounts	Limited accounting obligations

Part III: Partnerships Limited by Shares

(so-called “SCA”, Société en Commandite par Actions)

Partnerships Limited by Shares.

Partnerships Limited by Shares (art. 102 to 112 of the Law of 10 August 1915 on Commercial Companies)

Definition

Definition	A Partnership limited by Shares (“SCA”) is a company established by contract between one or more general partners with unlimited and joint and several liability for the obligations of the company and one or more limited partners who only contribute a certain amount An SCA is a combination of the characteristics of a partnership and of a limited liability company
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Setting-up

Duration	Limited or unlimited duration
Form of contributions	Contributions in kind or in cash
Instruments	Equity and debt securities
General partner / Limited partner	An SCA must have at least one general partner (“associé commandité”) and one limited partner (“associé commanditaire”).
Publication	The articles of incorporation (“Articles”) shall be published
Notarial deed	Required for the incorporation and the amendment of the Articles
Nullity	Limited cases exhaustively provided for by the law

Partnerships Limited by Shares.

Partnerships Limited by Shares (art. 102 to 112 of the Law of 10 August 1915 on Commercial Companies)

Management

Manager
(amended to reflect the LP rules)

- The SCA is managed by one or several managers who are vested with the broadest powers to perform all acts necessary or useful for accomplishing the SCA's corporate object
- The appointment of such manager(s) is to be laid down in the Articles
- Managers do not need to be GP
- A Manager (as regards management duties) will only be liable in case of wrong management

Delegation of powers
(amended to reflect the LP rules)

Permissible
Powers can be delegated to a person that will be liable only in relation to the execution of its mandate

Limitation of powers
(amended to reflect the LP rules)

Restrictions to the powers conferred to the Managers are not valid vis-à-vis third parties, even if they are published

Ultra vires theory
(amended to reflect the LP rules)

The SCA is bound by any acts of the Managers even if such acts exceed the corporate object, unless it proves that the third party knew that the acts exceeded the corporate object or could not in view of the circumstances have been unaware of it

Partners' rights

GP

General partners have unlimited liability

Partnerships Limited by Shares.

Partnerships Limited by Shares (art. 102 to 112 of the Law of 10 August 1915 on Commercial Companies)

Partners' rights

Limited partner (amended to reflect the LP rules)	<ul style="list-style-type: none"> Limited partners have limited liability Limited partners cannot take part in the management of the LP. They will be indefinitely and jointly and severally liable towards third parties for all undertakings in which they have participated in contravention of the management prohibition However, a limited partner may have internal role (i.e.: advisory and/or supervisory role) without compromising his status of limited partner A limited partner can contract with the LP without compromising his status (non suffering from any legal subordination)
Profits/losses	<ul style="list-style-type: none"> Rules should be laid down in the Articles. Each year 5% of the net profits shall be allocated to a legal reserve until its aggregate amount reaches 10% of the SCA's subscribed capital
Voting rights	<ul style="list-style-type: none"> Non-voting ordinary shares are not permitted Non-voting preference shares permissible
Collective decisions	<ul style="list-style-type: none"> At least one partners' general meeting shall be held each year at the time and place set out in the Articles Partners' resolutions are generally adopted by a simple majority of the votes cast at the meeting regardless the number of shares present or represented at the meeting except in the case of amendments to the articles of incorporation where a two third majority is required

Partnerships Limited by Shares.

Partnerships Limited by Shares (art. 102 to 112 of the Law of 10 August 1915 on Commercial Companies)

Partners' meetings

Annual accounts

- Annual accounts must be drawn up in compliance with Luxembourg accounting rules and be approved by the general meeting
- The annual accounts and where applicable the management report and the opinion drawn up by the person(s) responsible for auditing the accounts, shall be deposited with the Register of Commerce and Companies within one month of approval

Supervisory of the SCA

Supervisory board

- At least three auditors shall constitute a supervisory board which has an audit function.
- In addition to the audit function, the supervisory board may give its opinion on any matters which the Manager(s) refer to it
- The supervisory board is not required if an approved statutory auditor is appointed

Transfer of shares

Transfer of shares

Shares are freely transferable, except as provided for in the Articles

Part IV: Amendments to sectorial laws in relation to the “CLP/SLP”.

Amendments to the SICAR and SIF Laws.

The SICAR Law and the SIF Law are amended so that both SICAR and SIF may adopt the form of a Special Limited Partnership

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