

## Limited Partnership Regime

### Anachronism or renaissance with the *Special Limited Partnership - SCSp*?

#### Introduction

Before the creation and introduction in 2013 of the *Special Limited Partnership (SCSp – société en commandite spéciale)* the Luxembourg arsenal of special purpose vehicles already knew for almost a century the common limited partnership (*société en commandite simple – SCS*) and the partnership limited by shares (*société en commandite par actions – SCA*)<sup>1</sup> as provided for in the Law of 1915 on commercial companies, as amended (“Company Law”).

So, why then introduce this new limited partnership form? What are the differences and / or benefits of this new partnership vehicle as opposed to the already existing?

Surprisingly enough though, this new form was introduced by the Law of July 12, 2013 implementing into local law the AIFM Directive...a new unregulated LP vehicle in an increasing regulatory environment. An anachronism?

And, if not even more surprising, Luxembourg seized this opportunity to revamp the existing limited partnership vehicles. A renaissance of the Luxembourg limited partnership regime?

No, neither an anachronism nor a renaissance but merely, and typically for Luxembourg, another straightforward and solution driven action for the benefit of the Luxembourg financial services industry in evolving and competitive times. Hence, a revisited and a new tool at the same time specifically designed to meet the needs of Private Equity and Venture Capital funds, managers and promoters for flexibility but at the same time eligible to financial regulation.

Some dare to state that the **SCSp** “is the twin of the Anglo-Saxon limited partnership”.

### Characteristics common to SCS / SCSp

/ **Contractual freedom and flexibility** - To the contrary of corporations, the limited partnership (“LP”) is not mandatorily established by way of deed before a notary public but generally by an agreement under private seal to which all partners (limited and unlimited) are each a party. This *limited partnership agreement* (“LPA”) is at the same time the constitutional document and the “articles of association” or “by-laws” of the LP. The LPA determines and governs the terms and conditions of the LP, its organization and functioning, the rules of governance, partners’ duties and rights, accounting principles and valuation of assets, etc.

Generally, the provisions of the Company Law (or other specific laws applicable to companies) only apply by default, i.e. should the LPA be silent.

/ **Confidentiality** – Only very limited details of the LPA need to be registered and officially published by virtue of law, e.g. denomination of the LP, time period, name of the unlimited (general) partner, representation powers.

In turn, the identity of the limited partners and their respective contributions into the partnership needn’t be disclosed to the public.

/ **Tax transparency** - The LP is itself not the tax subject unlike the corporation but a “look-through” vehicle to the level of its partners. The partners are taxed at their individual level and rate for the activity and business carried out by the LP.

The tax transparency is however only fully ensured provided the LP does not carry out a commercial activity.

## Specific Characteristics of the SCSp

Whereas most of the provisions applicable to the **SCS** also apply to the **SCSp** by default, the main differences between both partnership forms are:

- / **No legal personality** - The **SCSp** does **not** have an own legal personality distinct from its partners. In so far, the **SCSp** follows in fact more the Common Law regime specific to the Anglo-Saxon LP model.

Despite the lack of an own legal personality and capacity it is important to note that any and all contributions, acquisitions and sales of assets are made to and in the name of the **SCSp** vehicle and **not** to the GP **nor** to any of the individual limited partners.

Therefore and in consequence, the assets of the **SCSp** remain ring-fenced against the creditors of each of the partners. Creditors of the partners have no direct rights on the assets of the **SCSp**.

- / **No account filings** - The **SCSp** is not obliged to file and publish publically the full set of annual financial reporting as provided for in the Company Law. Nor is there an audit requirement.

A **SCSp** remains however subject to GAAP and must keep a proper bookkeeping and prepare annual financial statements.

- / **Increased powers of the GP** - The GP of a **SCSp** may approve the annual financial statements without the concurrence of the limited partners.

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## Differences to the Anglo-Saxon Regime

- / **Confidentiality** – UK rules require the full public disclosure and publishing of all details of the LP, including but not limited to the identities and contributions of the partners.
- / **GP allotment** – Under the Luxembourg LP regime, it is not mandatory to allocate a profit share to the unlimited (general) partner.
- / **Liability** – The liability veil of the limited partners is challengeable and can under circumstance be rather quickly pierced under UK law regardless of the nature and of the forum (internal or external) of the action.

Under Luxembourg rules, the limited liability of the limited partners remains fully intact as long as these do not actively carry out any management actions towards third parties for and on behalf of the LP (so-called “*non-management safe harbor*”).

- / **Claw back on returns** – Under the Luxembourg LP regime there exists no possibility of claw back on capital returns in case of a later insolvency of the LP (except in the case of fraud).

<sup>1</sup>The following does not cover the SCA nor any limited partnership regime under dedicated and special regulatory requirements in accordance with specific Luxembourg law for instance but not limited to AIFM, SIF, Part II, SICAR regulations.

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