



Luxembourg
Investment Vehicles

SLP



MILAN | ROME | LUXEMBOURG | LONDON | LUGANO | DUBLIN | SINGAPORE | DUBAI



*We are what we repeatedly do.
Excellence, then, is not an act, but a habit.
-Will Durant-*

On a preliminary basis and for the sake of clarity, the details shared, are of a general nature and shall not be intended as a fully comprehensive tax/legal advice but rather as a preliminary overview. Although we attempt to provide you with precise and timely updates, there can be no guarantee that the information shared is accurate as of the date it is received or it will continue to be accurate in the future. If you wish to have a more specific advice on the same or on different matters, LEXTRAY is at your disposal, to provide you with any advice you may require in connection with the above.



> THE LUXEMBOURG ENVIRONMENT

Luxembourg is the world's second largest investment funds domicile, and is the prime location for the pan-European and global distribution of investment funds under the UCITS brand. Initially designed as a global retail funds hub under the sole UCITS brand, Luxembourg has gradually opened up to the alternative asset classes, offering personalised structuring solutions through specialized investment vehicles.

Structuring flexibility, investor protection and tax efficiency are the crucial elements that have *inter alia* helped to convince the investors, to shift their operations and investments to Luxembourg.

In addition to such a fund-friendly environment, the constant work of the legislator to promote Luxembourg as a fully-regulated on shore location (see its stringent any money-laundering regulation) has greatly contributed to its business appeal.

Luxembourg *Investment Vehicles / SLP*



> SLP: THE VEHICLE IN A NUTSHELL

The purpose of this brochure is to provide you with a bird's eyes view of the legal framework, investments policies as well as the reporting and taxation particularities of the "Special Limited Partnership" ("*Société en Commandite Spéciale*" or "SLP").

We hope that you find it useful and that it meets your expectations.

As simple, flexible wealth management vehicle compliant with EU regulatory requirements includes the family office services - which in Luxembourg is a group of regulated activities - and must take the form of a capital company.

> LEGAL FRAMEWORK

The SLP has been introduced in Luxembourg by means of the law of 12 July 2013 (the "AIFM Law"), in order to allow greater legal flexibility as well as full tax transparency and tax neutrality.

Luxembourg *Investment Vehicles / SLP*

PROVISIONS APPLICABLE TO ALL SLP



> LEGAL FORM AND REGULATORY ASPECT

The limited partnership regime in Luxembourg has been renovated and modernised in order to become more attractive for venture capital, private equity and real estate transactions.

The SLP is defined by Luxembourg Company Law of 10 August 1915 as *“a partnership entered into, for a limited or unlimited period of time, by one or more unlimited partners with unlimited, joint and several liabilities for all obligations of the common limited partnership and one or more limited partners who only contribute a specific amount constituting partnership interests which may be but need not be represented in the partnership agreement”*.

The SLP is composed of at least one general partner (the **“GP”**) – *“associé commandité”* – and one or several limited partner(s) (the **“LP”** or **“LPs”**) – *“associé(s) commanditaire(s)”*. A partner may be a GP and a LP at the same time.

While the GP members are jointly and separately liable for any commitments of the company, the liability of the LP is limited to the extent

of their contributed participation interest.

Thus, any liability incurred by the SLP within its incorporation, operational business or its liquidation will be considered as a commitment of the SLP in this respect. If most of the provisions regarding the SLP are similar to the new provisions applicable to the LP, the main difference is that, whereas the LP has its own legal personality distinct from its partners, the SLP follows the usual common law partnership regime and does not have any legal personality distinct from its partners.

Moreover, despite the fact that the SLP has no legal personality, the registration of assets which are contributed to the SLP will be made in the name of the SLP and not in the name of a GP or LP. In addition, the assets pooled within a SLP will be at the exclusive discretion of the creditors of the SLP itself (creditors of partners have no direct right *vis-à-vis* the assets of the SLP).



> INCORPORATION

The SLP is a partnership established between one or more GP(s) and one or more LP(s), for a limited or unlimited duration, by means of the provisions of the limited partnership agreement which do not require the intervention of a notary. The partnership is effective as of the date of the signature.

There is no minimum capital requirement for the non-regulated SLP. The contribution can be made either in cash or kind (no valuation report from an independent auditor is needed).

> MANAGEMENT AND GOVERNANCE

The partnership agreement may appoint one or more managers. The same person or legal entity can act both as a manager and as GPs.

The manager needs not to be domiciled in Luxembourg.

The manager may also delegate its management powers to another party acting as the manager's proxy or agent. A manager is authorized to act in the name of the SLP and to carry out any act necessary or useful pursuant to the SLP's objects.

Managers who are not also GPs will not be liable *vis-à-vis* third parties for obligations of the SLP. Managers owe duties to the partnership itself which are similar to directors' duties in relation to a company.

LPs may also be appointed as managers or as the delegates or agents of a manager to carry out the manager's powers. Such delegation or agency may also be granted by a manager who is also a GP, to a LP. In both cases, the LP acting as manager (or as a manager's delegate or agent) does not forfeit its limited liability (as LP) to third party creditors of the partnership, provided that the representative capacity in which it is acting is clearly stated in all circumstances.

GPs may, but are not required to, provide management services to the SLP. Management services may therefore be provided by (and management fees paid to) a management company domiciled in the most appropriate jurisdiction.



> CONFIDENTIALITY

There is no legal obligation to disclose the details of LPs and partnership interests. The details of the GP(s) need to be kept up-to-date on the register.

The partnership agreement need not to be filed and published. Filing is limited to an extract of the following matters:

- (i) the GP's/(s') name(s);
- (ii) the name, corporate objects and registered office of the SLP;
- (iii) the manager's/(s') name(s) and signatory powers; and
- (iv) the formation date and duration of the SLP.

> DISTRIBUTIONS, TRANSFERS OF PARTNERSHIPS INTERESTS AND BUY-BACK

The partnership agreement regulates any required condition for distributions of profits and repayments of loan contributions (if any).

The partnership agreement provides also the rules for the admission of new LPs or sub-division of LPs interests.

> ANNUAL ACCOUNTS

The filing of annual accounts is mandatory only if the SLP manages a regulated vehicle (such as SIFs or SICARs). In any other case, the freedom of contract prevails and the information to be made available to partners is limited to what is provided for in the partnership agreement.

> REGISTER

The SLP needs to keep and maintain up-to-date a register of partners.

> TAX ASPECTS

In principle, Luxembourg LPs and SLPs are tax transparent for Luxembourg corporate income tax (“CIT”) and net wealth tax (“NWT”).

Foreign partners are taxed in Luxembourg on profits derived from the SLP only if both (i) the foreign partners derive profits from a commercial activity (as provided for by article 14 of the Luxembourg Income Tax Law (“LITL”) and (ii) that commercial activity is carried out through a permanent establishment.

The article 14 of the LITL states that, in order to qualify as “commercial” an activity must meet all the following four criteria:

- (i) permanency of the establishment;
- (ii) independence;
- (iii) intention to realize profits;
- (iv) participation in the general economic environment.

However, the profits derived from a SLP shall be subject to municipal business tax (“MBT”) in either of the following cases:

- (i) when no GP – incorporated as capital company – is holding more than 5% of the interest in the SLP but the SLP is carrying on a “commercial activity” pursuant to article 14 of the LITL; and
- (ii) when the GP – incorporated as capital company – is holding more than 5% of the interest in the SLP, the SLP activities shall be deemed as “commercial activities” and, therefore, the MBT shall be owed.

> TAX CRITERIA

On 9 January 2015, the Luxembourg Tax Authorities have issued circular L.I.R. no. 14/4 (the “Circular”) aimed at clarifying the criteria to be applied and the tax regime applicable to SLP used as specific investment vehicles. In particular, the Circular clarifies the tax treatment of a SLP in the following cases:

- (i) when a SLP qualifies as Alternative Investment Fund (“AIF”) according to the Law of 12 July 2013 on Alternative Investment Fund Managers, then its activities are deemed not to be commercial;
- (ii) when an AIF is established abroad, then it shall be exempt from CIT, MBT and NWT if it has its effective place of management or central administration in Luxembourg;
- (iii) when a SLP opts for SICAF regime (as per article 173 of Law of December 17, 2010 on Undertaking for Collective Investments, Part II – UCIs) or for Specialized Investment Fund (“SIF”) regime (as per article 66 of Law of 13 February 2007 on SIFs), then it shall be subject to subscription tax only (0,01% per annum to be calculated on the N.A.V.);
- (iv) when a SLP opts for a SICAR status (as per Law of 15 June, 2004, relating to the investment company in risk capital).

Luxembourg *Investment Vehicles / SLP*



> VAT

The management fees provided to a regulated or unregulated SLP will be exempt from Luxembourg VAT.

> WITHHOLDING TAX

Royalties payments and distributions of dividends made by the SLP to resident or non-resident partners are not subject to withholding tax in Luxembourg.

With respect to interests, these are subject to the application of the EU Council Directive 2003/48/EC on taxation of savings income in form of interest payments, as amended.

Presentation of the Firm



LEXTRAY is committed to providing the highest quality legal and tax services. Our team is at your service in 6 different languages (English, French, Italian, German, Spanish and Arabic), directly active in 7 jurisdictions (Luxembourg, Italy, Switzerland, UK, Ireland, Singapore and Dubai) and indirectly through our associates in the Netherlands, Spain, USA, Argentina and Brazil, to provide you with the finest tailor-made work products and solution.

Our widespread territorial coverage allows us to remain in constant contact with you, 24h24 and 7/7, guaranteeing a first-rate standard and rapid execution as well as a clear, practical and up-to the minute advice. Considering the fast moving and aggressive business environment we nowadays facing, we are committed to a relentless professional skill update and are outmost attentive to tuning to the clients' wishes and adapting to new laws and regulations.

EMPHASIS ON OUR INVESTMENT VEHICLES PRACTICE AREA

Our Luxembourg team has a robust expertise in all areas of Luxembourg investment vehicles law.

This includes among others:

- (i) support in finding the ideal investment vehicle to meet your requirements and your goals from a governance, regulatory and tax perspective;
- (ii) support in setting up the vehicle;
- (iii) tax structuring support;
- (iv) providing ongoing corporate support service throughout the lifetime of the vehicle;
- (v) keeping you updated on the new regulatory developments.



CONTACT

We would love to hear from you.

Don't hesitate to get in touch with one of our professionals or dedicated departments.

info@lextray.lu

Lextray Corporate and Tax S.à r.l.

2, Boulevard de la Foire | L - 1528 Luxembourg

Tel. + 352 27 85 74 1 | Fax + 352 27 85 74 70

Lextray Legal S.à r.l.

5, Rue Aldringen | L - 1118 Luxembourg

Tel. +352 26 20 2912 | Fax +352 26 20 1926

Talk to us about your concerns and find out more by visiting us at www.lextray.com