By improving the existing Luxembourg limited partnership regime and adding the Luxembourg special limited partnership to its legal arsenal of investment vehicles dedicated to the alternative investment industry (including the Private Equity industry), Luxembourg offers new solutions as a fund jurisdiction for Private Equity and Venture Capital operations and to alternative investment fund managers and promoters in general.

This publication summarises the main legal, accounting, valuation and tax rules pertaining to both regulated and unregulated Luxembourg limited partnerships and Luxembourg special limited partnerships.

The Luxembourg Limited Partnership
PwC Luxembourg (www.pwc.lu) is the largest professional services firm in Luxembourg with 2,700 people employed from 58 different countries. PwC Luxembourg provides audit, tax and advisory services including management consulting, transaction, financing and regulatory advice. The firm provides advice to a wide variety of clients from local and middle market entrepreneurs to large multinational companies operating from Luxembourg and the Greater Region. The firm helps its clients create the value they are looking for by contributing to the smooth operation of the capital markets and providing advice through an industry-focused approach.

The PwC global network is the largest provider of professional services in the audit, tax and management consultancy sectors. We’re a network of independent firms based in 157 countries and employing over 223,000 people. Talk to us about your concerns and find out more by visiting us at www.pwc.com and www.pwc.lu.
# Table of content

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Introduction</td>
</tr>
<tr>
<td>10</td>
<td>Lux LP/Lux SLP legal features</td>
</tr>
<tr>
<td>14</td>
<td>Contractual flexibility and key elements of a LPA</td>
</tr>
<tr>
<td>16</td>
<td>Regulatory aspects</td>
</tr>
<tr>
<td>20</td>
<td>Accounting and valuation aspects</td>
</tr>
<tr>
<td>26</td>
<td>Selected tax considerations</td>
</tr>
<tr>
<td>30</td>
<td>Special issues</td>
</tr>
<tr>
<td>34</td>
<td>Glossary</td>
</tr>
<tr>
<td>36</td>
<td>Our Services</td>
</tr>
<tr>
<td>38</td>
<td>Contacts</td>
</tr>
</tbody>
</table>
Introduction
Luxembourg - A prime location for doing business

The Grand Duchy’s stable environment is one of the main reasons why Luxembourg is considered as a prime location for doing business, including alternative investment funds business.

There are many factors that set Luxembourg apart:

- Strategic position at the heart of Europe
- Neutrality
- Welcoming and safe environment
- Economic stability
- Triple A credit rating
- Skilled multilingual workforce
- Excellent infrastructure
- Excellent logistic network
- Domicile of high-profile multinationals
- IT clusters
- EU founder state, OECD member
- International “onshore” location;
- One of the largest global financial centres
- Prime location for UCITs and distribution to investors
- Investment-driven laws
- Flexible and open-minded authorities, and
- High living standards

The close relationship between decision makers and businesses has resulted in the successful development of Luxembourg as a major financial centre. Indeed, it is now ranked as one of the best in the world. The financial sector has in recent decades been the main contributor to the country’s growth, and still accounts for almost a third of Luxembourg’s GDP.1

Luxembourg is the prime location for the pan-European and global distribution of investment funds under the “UCITS” brand.

More than 65% of internationally distributed UCITS are domiciled in Luxembourg.2

With 14,594 funds/units and assets under management in excess of EUR 3,767 billion at the end of January 20173, Luxembourg remains the second most important fund domicile in the world, behind the United States.

At the same time, Luxembourg has developed a strong expertise in alternative investment products and investment structures for the alternative investment industry, offering solutions notably for hedge funds, funds of hedge funds, private equity and venture capital, real estate, debt and infrastructure funds as well as securitisation funds and vehicles.

---

2 Source: ALFI Website http://www.alfi.lu/setting-luxembourg/ucits
Private Equity in Luxembourg

Thanks to its efficient and flexible tax and legal environment, Luxembourg has become the preeminent jurisdiction for structuring Private Equity (PE) and Venture Capital funds and deals.

In recent years, Luxembourg has been ranked among the most favourable jurisdictions by surveys conducted by Invest Europe (EVCA at that time). Today, we see more and more Private Equity firms coming to Luxembourg, setting up and structuring their funds or and AIFM in Luxembourg. Historically, Luxembourg’s PE expertise has been closely linked to the ‘Société de participation financière’ (SOPARFI) which served as an acquisition vehicle in PE deals. However, it was the adoption in 2004 of the law on ‘Sociétés d’Investissement en Capital à Risque’ (SICARs) that really spurred the development of Luxembourg into a major hub for PE. According to the 2015 activity report of the ‘Commission de Surveillance du Secteur Financier’ (CSSF), i.e. the Luxembourg financial regulator, the number of SICARs registered as of January 2017 stood at 283.4

The introduction of both these vehicles, combined with the fact that the country has one of the most extensive double tax treaties network, shows that Luxembourg is highly committed to this activity in both the public and private sector. We believe that this coherence is vital as the expertise of all players and service providers is needed to support the Grand Duchy as a PE hub.

Traditionally, PE firms have been reluctant to submit their funds to regulation. The majority of PE funds have been incorporated in the form of private limited partnerships in jurisdictions such as the United Kingdom, the Channel Islands, the Cayman Islands, Bermuda or the State of Delaware in the United States. Private limited partnership vehicles in these jurisdictions also provide for high contractual/corporate flexibility.

Given the evolving international context and the perceived conduct of certain offshore centres, the entry into force of the Alternative Investment Fund Manager Directive (Directive 2011/61/EC - AIFMD) in Europe, and the general trend for more regulation and investor protection in the alternative investment industry, including private equity and venture capital, Luxembourg is now regarded as one of the primary jurisdictions for re-domiciling (unregulated) offshore funds and setting up a Europe-based AIFM.

A large number of PE houses that have been using non-regulated products in the past have established a physical presence in Luxembourg over the past few years, with substantial functions pertaining to their acquisition and financing activities being performed in Luxembourg, over the past few years. Also, many of these PE houses have started to move their fund vehicles from (unregulated) offshore centres to the Grand Duchy, thereby opting either for product regulation and taking advantage of the SICAR and SIF regimes or for unregulated onshore Luxembourg funds mostly under the form of SCSp with regulated AIFM, often to the benefit of their attractiveness to investors.

The launch of Specialised Investment Funds (SIFs) in 2007 was a further step towards putting Luxembourg firmly on the map as the European jurisdiction for PE funds and structuring. CSSF figures for January 2017 counted 1,623 SIFs.5

New challenges and new opportunities

Only investment structures with sound business drivers will remain viable.

Tax authorities across the world are increasingly challenging any arrangements that they perceive as being artificial. The OECD’s “Base Erosion and Profit Shifting” Project (“BEPS”) had as one of its original aims imposing a requirement that tax treaty benefits could only be available if the intended beneficiary had “substance”. This goal is now being realised through tax treaty changes being agreed multilaterally, and likely to come into effect in 2018 or 2019.

Under a new “principal purposes test”, treaty protection will be denied whenever seeking a tax advantage is seen to be one of the main reasons for a structure or a flow of funds. While the OECD has in early 2017 given some guidance on how this rule might apply to alternative investment funds that own holding and financing “platforms”, this confirms that only “platforms” with very substantial operational activity and a strong commercial raison d’etre will continue to qualify for the low or no withholding taxes, and other reliefs, that tax treaties offer. The EU has also acted - since the start of 2016, the similar benefits that the parent/subsidiary directive offer only apply to arrangements that have valid commercial reasons which reflect economic reality.

Fund managers are already acting and adapting - there is a growing trend for functions, supervision and decision-making, as well as headcount, to move into “master” holding companies. Also the “one territory” commercial driver for co-locating fund vehicle and “master” holding company in the same country is increasingly influential in the fund design phase, and not solely as a cost control opportunity.

Moreover, the financial crisis instigated the emergence of new regulations and requirements in terms of compliance. International regulations like FATCA, AIFMD, Solvency II, MiFID and Dodd-Frank are challenges that PE professionals need to assess and monitor.

The Law of 12 July 2013 implementing the AIFMD came into force in Luxembourg on 15 July 2013, ahead of the 22 July 2013 deadline imposed by the directive. As well as implementing the AIFMD, the law includes modernisation measures for the laws governing the different Luxembourg investment vehicles as well as the creation of a new partnership form.

Prior to the Law, the so called common limited partnership with legal personality (‘société en commandite simple’ or SCS and hereafter referred to as “Lux LP”), and the partnership limited by shares (‘société en commandite par actions’ or SCA), already existed in Luxembourg. The SCA is a type of joint-stock company commonly used in Luxembourg in all industries.

In implementing the AIFMD, Luxembourg used the opportunity presented by the preparation of this law to include provisions not covered by the AIFMD. Among these provisions, the Luxembourg tax regime

6 Published in Memorial A, n°119, 15 July 2013

Luxembourg Limited Partnership
on carried interest and the SCS (the existing limited partnership with legal personality) were entranced. Importantly, the new provisions also saw the introduction of a new partnership form without legal personality (‘société en commandite special’ or **SCSp**, hereafter referred to as "Lux SLP" or special limited partnership).

The new legal framework applying to the Lux LP and the Lux SLP allows for high flexibility while providing for greater legal certainty. It also caters for an extended Luxembourg tax transparency treatment for non-regulated Lux LP and Lux SLP.

By improving the existing Lux LP regime, and adding the Lux SLP to its legal arsenal of investment vehicles dedicated to the alternative investment industry (including the PE industry), Luxembourg offers new solutions as an alternative investment fund jurisdiction for PE and Venture Capital operations and to alternative investment fund managers and promoters in general.

The Lux LP and the Lux SLP may be used as a fund vehicle (master fund or feeder fund), a joint venture, a co-investment vehicle, a carry vehicle, or an acquisition vehicle... Indeed, the only limit may be the imagination.

The main difference between these two vehicles lies in the absence of any legal personality for the Lux SLP. The Lux LP and Lux SLP each give an onshore solution having a legal flexibility comparable to the Anglo-Saxon limited partnerships model, and full tax transparency in most cases. This allows the fund and the acquisition structure to be in the same jurisdiction - hence offering a “one territory opportunity. Also, being fully within the EU, it currently grants immediate access to the passport for distribution to European investors, so long as the AIFM in charge is also located in the EU.

The Lux LP and the Lux SLP are legal forms governed by the Company Law. They may, however, be set up as either unregulated vehicles or regulated vehicles supervised by the CSSF and governed by the SIF, Part II Law or the SICAR Law. In addition, an Lux LP or Lux SLP may fall under the definition of AIF depending on the specifications set out in the AIFMD.

Some rules applicable to the Lux LP and Lux SLP will thus vary depending on the respective regulatory regime.

In 2016, Luxembourg launched also the Reserved Alternative Investment Fund (RAIF), a vehicle allowing to benefit from the characteristics and structuring flexibilities of the SIF and SICARs qualifying as AIFs and managed by an authorised AIFM, while not being subject to CSSF approval before they are launched. This permits the achievement of a significantly enhanced time-to-market for new fund launches. A RAIF may, amongst other legal forms, be set up as a Lux LP or a Lux SLP.

**Lux SLP is the twin brother of Anglo-Saxon LP**

This publication summarises the main legal, accounting, valuation and tax rules pertaining to both regulated and unregulated Lux LPs and Lux SLPs. The SCA, being a well-established and known vehicle, is not addressed in this publication. SIFs and SICARs being the type of regulated vehicles commonly used in the private equity industry, Part II regulated funds are not covered in details in this publication nor are RAIFs.
Luxembourg Limited Partnership

Legal features of the Lux LP and Lux SLP

The corporate features of the new limited partnership regime are set out by the amended law of 10 August 1915 (the Company Law).

There exist two types of partners in a Lux LP or Lux SLP: the ‘limited partners’, whose possible responsibility is capped at the amount of their investment (the LPs), and the ‘unlimited partners’, who can be liable without limitation (the GPs). The main legal feature of the Lux LP and Lux SLP is contractual freedom. Most of the rules governing the Lux LP or Lux SLP may be freely determined in the partnership agreement, as is generally the case for Anglo-Saxon LPs.

Modernisation of the Lux LP regime

Contractual freedom

The Lux LP is defined in the Company Law as “a common limited partnership entered into, for a limited or unlimited period of time, by one or more unlimited partners with unlimited, joint and several liability 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 by instruments as provided in the partnership agreement.”

The limited partnership agreement (the LPA) is the constitutional document of the common limited partnership, approved by the partners, which governs the terms and conditions of the partnership and should foresee all possible situations, all rights and obligations of the partners, governance of the partnership and specific rules agreed upon by the partners. It has to be as comprehensive as possible in order to avoid misinterpretation and application of default rules in case the LPA is silent.

A large flexibility is granted to the partners as regards the organisation and the functioning of the vehicle through the limited partnership agreement.

The following matters can be freely determined in the LPA: the quorum and majority rules, the admission of new partners, the issue of new partnership interests, the rules related to the dividend payment and reimbursement of partnership interests, the procedure and conditions of liquidation, etc.

The default rules listed in the Company Law should generally apply only in case the LPA is silent.

The main characteristics of such contractual flexibility are the following:

- The Lux LP have one particular denomination or firm name
- The partners can hold partners accounts (as preferred in PE structures) or units
- The partnership interests can be, but do not have to be, represented by securities
- The contributions to the Lux LP can be done in cash, in kind or in industry;
- The traditional principle of one share - one vote does not apply
- Voting rights as well as economic rights may be determined freely in the LPA
• The Lux LP can be managed by the GP, a manager or a board of managers
• The LPs can be part of advisory or supervisory boards without challenging their limited liability
• The commitments/commitment period of the LPs can take the form of contractual commitments or unpaid capital
• The LPs may grant loans to the Lux LP without any risk of confusion, the Lux LP can be leveraged (possibly through the issuance of debt securities and the debt securities can be convertible, listed or offered to the public)
• There is no specific requirement or rules for distribution; carried-interest and claw-back mechanisms are allowed but not required
• The transferability, stripping and pledging of the units can be freely determined by the LPA (the default rule being the acceptance by all GPs)

The above list is not limitative. More generally, all rules governing the Lux LP may be freely set in the LPA.

Confidentiality

The LPs and their respective contributions to the partnership can remain confidential. Indeed, the identity of the LPs is not required to be publicly listed in the Luxembourg Trade Register (‘Registre de Commerce et des Sociétés’). Only the denomination, the time period, a precise designation of the GP(s) and designation of the manager(s) and their signatory powers will be published.

Extension of the roles of the partners

The traditional Lux LP prohibited LPs from assuming any management tasks lest they would become jointly and separately liable towards a third party. It should be noted that the Company Law now expressly foresees a list of internal actions that can be undertaken by the LPs without constituting illicit acts of management, allowing the LPs to maintain their limited liability. Said list includes the provision of advice to the Lux LP, its affiliated entities or their managers; the control and supervision of the Lux LP business activity; and the granting of loans, guarantees or other assistance provided to the Lux LP or its affiliated entities.

An unlimited partner can also be a limited partner if there is at least one distinctive unlimited partner and one distinctive limited partner in the Lux LP.

Default provisions

In case the LPs do not effectively pay the amount of their commitments, the possible sanctions could be the following:
• suspension or cancellation of the voting rights
• suspension or limitation of the right to receive profits (penalty clause)
• forced sale (possibility of the selling price being below the market value)
• forfeiture clause (the conditions must be stated in the LPA, notably in terms of the re-determination of the price, which cannot be symbolic)

These default provisions are not imposed by law and may thus be freely determined by the LPA.

Introduction of the new special limited partnership

The Lux SLP is defined in the Company Law as “a partnership entered into, for a limited or unlimited period of time, by one or more unlimited partners with unlimited, joint and several liability 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 by instruments as provided in the partnership agreement.”

A partnership with no legal personality

If most of the provisions regarding the Lux SLP are similar to the new provisions applicable to the Lux LP, the main difference is that, whereas the Lux LP has its own legal personality distinct from its partners, the Lux SLP follows the usual common law partnership regime and does not have any legal personality distinct from its partners.

It should be furthermore noted that, despite the fact that the Lux SLP has no legal personality, the registration of assets which are contributed to the Lux SLP will be made in the name of the Lux SLP and not in the name of a GP or LP. In addition, the assets pooled within a Lux SLP will be at the exclusive discretion of the creditors of the Lux SLP itself (creditors of partners have no direct right with regard to the assets of the Lux SLP).

7 This does, however, not abolish the anti-money laundering and know-your-customers regulations in place.
The registration requirements

Like the Lux LP, the Lux SLP should be registered with the Luxembourg Trade Register.

Whereas the Law foresees the approval and public filing of annual accounts of the Lux LP under certain circumstances (i.e. when the yearly turnover of the Lux LP exceeds €100,000 or when the Lux LP is incorporated with a Luxembourg General Partner who adopted a legal form with a limited liability), the Lux SLP must only register some financial information regardless of the amount of its turnover.

It should also be noted that the GP of a Lux SLP may approve the annual accounts without approval of the LPs (this is not possible for a Lux LP).

It is worth mentioning that the SIF and SICAR regimes have been updated to enable a SIF or a SICAR to take the form of a Lux LP or Lux SLP. As such, a SICAR or SIF established under the form of an Lux LP or Lux SLP is regulated and supervised by the CSSF. Therefore, all information and documentation related to the regulated Lux LP or Lux SLP should conform to the SIF or SICAR filing and approval rules.

Main differences between Luxembourg, UK and Jersey limited partnerships

The governance and liability rules pertaining to the Lux LP and Lux SLP differ from the British regulation. In

the UK, there is no “non-management” safe harbour rules for active LPs, the GP must be a UK FSA authorised operator, and a UK LP set up as carry vehicle may, in the absence of legal personality, challenge the limited liability of the LPs (hence the common use of Scottish limited partnerships as carry vehicles of UK LPs). In a Lux LP and a Lux SLP, the law expressly foresees a list of internal actions that can be undertaken by the LPs without constituting illicit acts of management, allowing the LPs to maintain their limited liability.

The Lux LP and Lux SLP do not require a profit share to be distributed to the GP. In the UK however, all partners must assume a common role in business with a view to profit, hence requiring a profit share allocation to the GP.

In a Lux LP/Lux SLP, there is no limitation on the proportion of financing provided by equity/partners loans. The only limitation to distribution by a Lux LP/Lux SLP is the cash insolvency at the time of distribution, like in the Channel Island. However, Lux LPs and Lux SLPs are not bound by a statutory limitation on capital return. Moreover, there is no claw back in case of a subsequent insolvency except in the presence of fraud, while the Channel Islands stipulate a claw-back risk period of six months. In the UK, there must be at least 1% of equity financing and there is no limitation on the claw-back risk period on return of capital in case of a subsequent insolvency of the partnership.

Finally, with respect to public disclosure, Luxembourg law differs from the UK rules which require the publication of accounts, the full names of limited partners and their contributions (including any change thereof) as well as of transfers of LP interests. The limited publication requirement in the Lux LP and Lux SLP does, however, not equate with the right to neglect mandatory anti-money laundering and know-your-customer regulation.

Contact

Jean-Yves Lhommel
Tax Partner – Corporate Structuring Services
+352 49 48 48 3012
jean-yves.lhommel@lu.pwc.com
Key elements of the LPA
Contractual flexibility and key elements of a LPA

The main advantage of the Lux LP and Lux SLP, besides the limited liability of its limited partners and eligibility for pass-through taxation, is its contractual flexibility. The GPs and LPs define all the terms and conditions in the LPA, including the operational and organisational minutiae.

The purpose of this measure is to allow for a maximum of flexibility.

The LPA can take the form of a notarial deed or a private agreement. Only an extract of the LPA shall be filed with the Luxembourg Trade and Companies Register and subsequently published in the Memorial C. The mandatory content of the extract comprises only: the denomination, the time period, a precise designation of the GP(s) and designation of the manager(s) and their signatory powers.

Other provisions of the LPA and the identity and contributions of the LPs do not have to be published.

An LPA would typically cover at least the following aspects:

<table>
<thead>
<tr>
<th>Main sections of the LPA</th>
<th>Free determination in the LPA</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Voting rights</td>
<td>Restriction on voting, method of giving consent, conditions for admission of new partners, preemptive rights, conditions for transfers.</td>
</tr>
<tr>
<td>✓ Partners decisions</td>
<td></td>
</tr>
<tr>
<td>✓ Transfer of partnership interests</td>
<td></td>
</tr>
<tr>
<td>✓ Addition of partners and increase in capital commitment</td>
<td></td>
</tr>
<tr>
<td>✓ Capital contributions</td>
<td>Type of contribution, minimal and initial capital contributions (if any), subsequent closing dates, commitment specificities for some partners, GP call-back (or not), adjustments of capital accounts.</td>
</tr>
<tr>
<td>✓ Amount and priority of distributions</td>
<td>If the allocation of income/losses is not in accordance with the partners’ commitment in the partnership, the allocation rule will be defined in the LPA.</td>
</tr>
<tr>
<td>✓ Special allocation</td>
<td></td>
</tr>
<tr>
<td>✓ Repayment of partners loans or capital</td>
<td>All LPA matters, no claw-back imposed by law</td>
</tr>
<tr>
<td>✓ Management</td>
<td>By GP, a manager, or a board. Governance rules to be defined in the LPA</td>
</tr>
<tr>
<td>✓ Excuse and exclusion procedures</td>
<td>Any LP may be excused from participation in any investment, or excluded from contributing to any investment by the GP (without being deemed a defaulting partner). Tag-along, drag-along rights.</td>
</tr>
<tr>
<td>✓ Reports to Partners</td>
<td>Preparation of accounts, applicable accounting framework. Confidentiality rules to determine the cases in which the LPs’ names can be disclosed. Decision to submit the accounts to the audit by an independent auditor.</td>
</tr>
<tr>
<td>✓ Confidentiality</td>
<td></td>
</tr>
<tr>
<td>✓ Audit</td>
<td></td>
</tr>
<tr>
<td>✓ Rights of Partners</td>
<td>The LPA can list the LPs’ right to participate in activities of the Entity without making them liable for the debts and obligations of the Entity. No LP shall be liable to the Entity or any partner.</td>
</tr>
<tr>
<td>✓ Liability of Partners</td>
<td></td>
</tr>
<tr>
<td>✓ Dissolution</td>
<td>Definition of events warranting dissolution, distribution allocation. Confirmation of applicable laws and jurisdiction provision.</td>
</tr>
<tr>
<td>✓ Termination</td>
<td></td>
</tr>
<tr>
<td>✓ Dispute jurisdiction</td>
<td></td>
</tr>
</tbody>
</table>

As an indication, an LPA may range from ten to a few hundred pages. However, the LPA provision cannot be in contradiction with the laws in place:

<table>
<thead>
<tr>
<th>Private Equity structure</th>
<th>LUX LP/Lux SLP</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Regulated</td>
<td>SIF</td>
</tr>
<tr>
<td>✓ SIF</td>
<td>Law of 13 February 2007, as amended + law of 12 July 2013 if AIF</td>
</tr>
<tr>
<td>✓ SICAR</td>
<td>Law of 15 June 2004, as amended + law of 12 July 2013 if AIF</td>
</tr>
<tr>
<td>✓ Unregulated</td>
<td>SOPARFI</td>
</tr>
<tr>
<td>✓ SOPARFI</td>
<td>Law of 10 August 1915 + law of 12 July 2013 if AIF</td>
</tr>
</tbody>
</table>
Regulatory
## Regulatory environment aspects

The main regulatory considerations when establishing a Lux LP/Lux SLP as a SIF or a SICAR are disclosed below:

<table>
<thead>
<tr>
<th></th>
<th>SIF</th>
<th>SICAR</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Investors</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Well-informed investors as defined below. A well-informed investor shall be an institutional investor, a professional investor or any other investor who meets the following conditions:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>✓ He has confirmed in writing that he is a well-informed investor, and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>✓ He invests a minimum of EUR 125,000 in the SIF, or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>✓ He has been subject to an assessment made by either a credit institution within the scope of Directive 2006/48/EC, by an investment firm within the scope of Directive 2004/39/EC or by a management company within the scope of Directive 2001/107/EC certifying his expertise, his experience and his knowledge in adequately appraising an investment in a SIF</td>
<td></td>
</tr>
<tr>
<td>These conditions are not applicable to the directors and other persons who are involved in the management of the SIF.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Partner’s interest</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>✓ “Parts d’intérêt”</td>
<td></td>
</tr>
<tr>
<td></td>
<td>✓ Debt instruments</td>
<td></td>
</tr>
<tr>
<td><strong>The possibility of ongoing subscription and redemption of shares</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Possible at a price determined according to the offering documents and LPA (‘variable capital’ principle).</td>
<td></td>
</tr>
<tr>
<td><strong>Structuring of capital calls</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Capital calls may be organised either by way of capital commitments or through the issue of partly paid ‘parts d’intérêt’.</td>
<td></td>
</tr>
<tr>
<td><strong>Minimum capital requirements, compartments and classes of shares</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>✓ Minimum value of the amount constituting a partnership interest must be EUR 1,25m (including the share premium) to be reached within 12 months following approval of the SIF by the CSSF</td>
<td></td>
</tr>
<tr>
<td></td>
<td>✓ Multiple compartments authorised</td>
<td></td>
</tr>
<tr>
<td></td>
<td>✓ Classes of units authorised</td>
<td></td>
</tr>
<tr>
<td><strong>Authorised investments and investment restrictions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>✓ Unrestricted investments (equity, debt and hybrid instruments of unlisted companies and real estate)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>✓ Risk diversification requirements in Circular CSSF 07/309 Investments in similar securities of one issuer should represent up to 30% of the SIF’s assets. It is, however, possible to set up and hold a special purpose vehicle in its entirety. The compliance with investment restrictions will be assessed on the basis of the underlying assets, which need to be disclosed in a transparent fashion.</td>
<td></td>
</tr>
<tr>
<td>Investments must represent “risk capital” as defined in Circular 06/241 (i.e. equity, debt and hybrid instruments of unlisted companies representing capital risks and venture capital, real estate investments are only possible with “development factor”). SICARs are not subject to risk spreading requirements. i.e. only one investment is authorised.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Distribution of dividends</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Distributions to investors are not subject to restrictions other than the compliance with the minimum partnership interest value and the provisions of the articles of association and the LPA.</td>
<td></td>
</tr>
<tr>
<td><strong>Supervision by the CSSF</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yes, prior authorisation by the CSSF is required. The Promoters and asset managers require prior approval should they fall under the AIFMD.</td>
<td>Yes, prior authorisation by the CSSF is required. The Promoters and asset managers require prior approval should they fall under the AIFMD.</td>
</tr>
</tbody>
</table>
**SIF**

- Draft of the constitutional documents of the investment vehicle (including document, articles of incorporation, LPA)
- Draft of the agreements with service providers (investment management agreement, central administration agreement, depositary bank agreement, distribution agreement, if any, etc.)
- Identity of the initiator of the investment vehicle (i.e. the entity which is at the origin of the creation of the investment vehicle)
- Identity of the board of directors of the investment vehicle (copy of their identity card or passport, dated and signed CV, declaration of honour and extract of criminal records are required from each director so that the CSSF can assess their reputation and experience before approving them)
- Identity of the conducting officers (copy of their identity card or passport, dated and signed CV, declaration of honour and extract of criminal records are required from each conducting officer so that the CSSF can assess their reputation and experience before approving them)
- Identity of the Luxembourg-domiciled central administration agent and depositary bank (i.e. name, address)
- Risk management process applicable to the investment vehicle
- Conflict of interest policy applicable to the investment vehicle; Marketing strategy
- Completed CSSF questionnaire(s), depending on the investment vehicle

**Compulsory service providers in Luxembourg**

- Depositary bank
- Central administration agent
- Chapter 15 or Chapter 16 Management company (unless it is a "self-managed" SICAV/SICAF)
- External auditor

**SICAR**

- Draft of the constitutional documents of the investment vehicle (including document, articles of incorporation, LPA)
- Draft of the agreements with service providers (investment management agreement, central administration agreement, depositary bank agreement, distribution agreement, if any, etc.)
- Identity of the initiator of the investment vehicle (i.e. the entity which is at the origin of the creation of the investment vehicle)
- Identity of the board of directors of the investment vehicle (copy of their identity card or passport, dated and signed CV, declaration of honour and extract of criminal records are required from each director so that the CSSF can assess their reputation and experience before approving them)
- Identity of the conducting officers (copy of their identity card or passport, dated and signed CV, declaration of honour and extract of criminal records are required from each conducting officer so that the CSSF can assess their reputation and experience before approving them)
- Identity of the Luxembourg-domiciled central administration agent and depositary bank (i.e. name, address)
- Risk management process applicable to the investment vehicle
- Conflict of interest policy applicable to the investment vehicle; Marketing strategy
- Completed CSSF questionnaire(s), depending on the investment vehicle

**Compulsory service providers in Luxembourg**

- Depositary bank
- Central administration agent
- Chapter 15 or Chapter 16 Management Company (unless it is a “self-managed” SICAV/SICAF)
- External auditor

---

**For a SIF or SICAR which qualifies as an AIF and in case the AIFM Law requirements must be complied with, there shall be in addition:**

- an alternative investment fund manager (AIFM), unless the AIF is internally managed
- an external valuer, unless the AIFM performs the valuation function itself

---

**Contact**

_Xavier Balthazar_

Regulatory and Compliance Partner

+352 49 48 48 3299

xavier.balthazar@lu.pwc.com
Accounting and valuation
Accounting and valuation aspects

The main accounting and valuation features of the Lux LP and Lux SLP are described below.

A Lux LP whose net turnover is below EUR 100,000 excluding VAT ("Lux LP Light") will benefit from a light regime of regulations regarding accounting and filing aspects. Turnover does not include dividend income, gain realised on investment portfolio and interest income. However, Lux LP incorporated with a Luxembourg General Partner who adopted a legal form with a limited liability (SA, S.à r.l, etc.) does not benefit from this light regime.

### Unregulated vehicles

<table>
<thead>
<tr>
<th>Type of structure</th>
<th>Lux LP Light</th>
<th>Lux LP</th>
<th>Lux SLP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicable accounting framework</td>
<td>Luxembourg GAAP (historical cost); Luxembourg GAAP (fair value option); IFRS as adopted by the European Union; or any other accounting framework defined in the LPA.</td>
<td>Luxembourg GAAP; IFRS as adopted by the European Union.</td>
<td>Luxembourg GAAP (historical cost); Luxembourg GAAP (fair value option); IFRS as adopted by the European Union; or any other accounting framework defined in the LPA.</td>
</tr>
<tr>
<td>Valuation of investments</td>
<td>Cost minus durable impairment; fair value; net equity method; Lower of Cost or Market; or freely determined in the LPA.</td>
<td>Cost minus durable impairment; fair value; net equity method; Lower of Cost or Market.</td>
<td>Freely determined in the LPA.</td>
</tr>
<tr>
<td>Filing of the annual accounts</td>
<td>Not required.</td>
<td>Accounts to be filed with trade register.</td>
<td>Not required.</td>
</tr>
<tr>
<td>Use of Standard Chart of Accounts (PCN)</td>
<td>Not required.</td>
<td>Yes, required</td>
<td>Not required.</td>
</tr>
<tr>
<td>Consolidation requirement</td>
<td>It depends (see conditions below).</td>
<td>It depends (see conditions below).</td>
<td>Freely determined in the LPA.</td>
</tr>
<tr>
<td>Distribution rules</td>
<td>Freely determined in the LPA.</td>
<td>Freely determined in the LPA.</td>
<td>Freely determined in the LPA.</td>
</tr>
<tr>
<td>Legal reserve requirement</td>
<td>Not required.</td>
<td>Not required.</td>
<td>Not required.</td>
</tr>
<tr>
<td>External audit</td>
<td>It depends (see conditions below).</td>
<td>It depends (see conditions below).</td>
<td>Freely determined in the LPA.</td>
</tr>
</tbody>
</table>

### Regulated vehicles (SICARs/SIFs)

<table>
<thead>
<tr>
<th>Type of structure</th>
<th>Lux LP</th>
<th>Lux SLP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicable accounting framework</td>
<td>Luxembourg GAAP; IFRS as adopted by the European Union.</td>
<td>Luxembourg GAAP; IFRS as adopted by the European Union.</td>
</tr>
<tr>
<td>Valuation of investments</td>
<td>Fair value (for SIFs: Fair value unless otherwise stated in the articles of incorporation).</td>
<td>Fair value (for SIFs: Fair value unless otherwise stated in the articles of incorporation).</td>
</tr>
<tr>
<td>Filing of the annual accounts</td>
<td>Accounts to be filed to the CSSF and, depending on the case, to the RCS.</td>
<td>Accounts to be filed to the CSSF.</td>
</tr>
<tr>
<td>Use of Standard Chart of Accounts (PCN)</td>
<td>Not required.</td>
<td>Not required.</td>
</tr>
<tr>
<td>Consolidation requirement</td>
<td>Exemption.</td>
<td>Exemption.</td>
</tr>
<tr>
<td>Distribution rules</td>
<td>Freely determined in the LPA.</td>
<td>Freely determined in the LPA.</td>
</tr>
<tr>
<td>Legal reserve requirement</td>
<td>Not required.</td>
<td>Not required.</td>
</tr>
<tr>
<td>External audit</td>
<td>Required.</td>
<td>Required.</td>
</tr>
</tbody>
</table>
**Unregulated vehicles**

The accounting principles applying to the Lux LP and Lux SLP are set in the law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings as amended by the law of 12 July 2013 (the RCS Law).

**Main considerations for Lux LP Light and Lux SLP**

**Applicable accounting principles**

The Lux LP Light and the Lux SLP will not fall under normal principles of the RCS Law and therefore will have the flexibility to use any accounting principles retained in the LPA. These companies will thus be allowed to use, for example, Luxembourg GAAP, UK GAAP, US GAAP, or any tailored accounting principles (LP GAAP) to meet investors' wishes or the requirements of any other stakeholders (e.g. banks). Consequently, these GAAP will determine how the assets of a Lux SLP or a Lux LP Light should be valued (fair value, historical cost or based on principles defined in the LPA). However, Luxembourg GAAP or IFRS, as adopted by the European Union, will be required if the structure is considered as an Alternative Investment Fund (AIF).

**Filing**

No filing is required for the Lux SLP and the Lux LP Light. As a consequence, depending on the investors' needs, as no accounts are required by Law for the Lux SL and the Lux LP Light, if accounts are demanded by the investors, their format will most likely follow PE market practice.

**Consolidation**

The Lux LP Light could under certain circumstances be obliged to prepare consolidated accounts, although this is not required for the Lux SLP.

**Audit requirement**

The size of a Lux LP Light and Lux LP will determine if an external auditor needs to be appointed. If the Lux LP is considered as a medium or large company according to Article 47 of RCS Law as amended, an audit has to be performed by a “Réviseur d’entreprises agréé”. This provision does however not apply to the Lux SLP.

On the contrary, a Lux SLP is not required to appoint an auditor according to the provisions of the Company Law. However, for Lux LPs and Lux SLPs, a contractual audit can be requested by either the GP, the investors as defined in the LPA or any other stakeholders (e.g. banks in the context of bank covenant requirements, etc.). In such circumstances, the role of the auditor is to provide assurance that the annual accounts are prepared either in accordance with the LPA’s provisions, in accordance with Luxembourg GAAP or in accordance with IFRS as adopted by the European Union. Indeed, the LPA might require that the capital accounts sent to the LP will be subject to audit procedures to provide assurance that the capital accounts are prepared in accordance with the LPA provisions.

If considered as an AIF, the Lux LP and Lux SLP will have to appoint an external auditor (Réviseur d’entreprises agréé).

---

8 Subject to the application of the European directive EU/34/2013 and related directives (the “Accounting Directives”).
9 One should also note that for tax purposes, Luxembourg GAAP or other specific GAAP could be preferred depending on certain circumstances.
10 For PE, the usual practice is to determine the fair value based on the Invest Europe Guidelines.
11 For PE, the usual practice is to determine the fair value based on the Invest Europe Guidelines.
12 The Law (see art. 206 of Law 12 July 2013) foresees that a “Règlement Grand-Ducal” will define the financial information to be filed. However, this regulation does not yet exist.
13 For tax purposes, accounts could have to be filed with the tax return, with the tax authorities, even in case of full tax transparency.
Financial statements presentation

Specificities applicable to each partner will be defined in the LPA and the annual accounts can include a specific capital schedule for each LP. Consequently, the main accounting impact for entities under the form of a Lux SLP consists in the accounting framework to be maintained at entity level and at each partner level. The Lux SLP and the Lux LP Light will be exempt from having to use the standard chart of accounts (PCN).

Specificities of a Lux LP not falling under the light regime

Applicable accounting principles

These Lux LPs will have to follow the GAAP foreseen by the RCS Law as amended, which means Luxembourg GAAP under historical cost convention, Luxembourg GAAP with fair value option or IFRS as adopted by the European Union.

As for corporate entities in Luxembourg, other accounts under other GAAPs may be prepared in parallel.

Filing and publication

These Lux LPs like any commercial company in Luxembourg, will have to file its annual accounts with the RCS.

These annual accounts have to be approved within six months after the closing date and filed within the month following their approval unless more restrictive deadlines are defined in the LPA or in the articles of association.

Consolidation

These Lux LPs could under certain circumstances be obliged to prepare consolidated accounts.

Audit requirement

The size of a Lux LP will determine if an external auditor needs to be appointed. If the Lux LP is considered as a medium or large company according to Article 47 of RCS Law as amended, an audit has to be performed by a “Réviseur d’entreprises agréé”.

Financial statements presentation

These Lux LPs will have to publish their annual accounts.

These Lux LPs will have to follow the PCN. They will not present any accounting or valuation flexibility advantage, hence seeing their attractiveness reduced compared to the Lux SLP.
Regulated vehicles

Applicable accounting principles and filing

All legal forms of regulated vehicles (SIF/SICAR) are supervised by the CSSF. As a consequence, their accounts have to be filed with the CSSF within six months of the closing date unless more restrictive deadlines are outlined in the LPA/articles of incorporation/PPM. The accounts that are subject to filing have to be prepared under either Luxembourg GAAP or IFRS as adopted by the European Union. The use of other GAAP might be possible under certain conditions, subject to an authorisation process with the Commission des Normes Comptables.

Consolidation

According to their respective laws (SICAR Law and SIF Law), both SIFs and SICARs are exempt from preparing consolidated accounts under Luxembourg GAAP.

Audit requirement

The annual accounts of a Lux LP and Lux SLP incorporated under the form of a SIF or SICAR have to be audited by a “Réviseur d’entreprises agréé”.

Financial statements presentation

Financial statements of a Lux LP or Lux SLP incorporated under the form of a SIF or SICAR need to be prepared in compliance with the applicable SICAR or SIF law. Additional information and disclosure may be required depending on the provisions of the LPA.

Other consideration

As any other company, regulated or unregulated Lux LPs and Lux SLPs can fall under the scope of the AIFMD and consequently be considered as an AIF. In such cases, the financial statements should also comply with AIFMD-specific requirements.

These additional requirements include, amongst others, adoption of accounting principle generally accepted in Luxembourg (Luxembourg GAAP or IFRS as adopted by the European Union), as well as minimum required content of the annual report and activity report.

Contact

Johan Blaise
Assurance Partner - Regulated and Unregulated Private Equity Structures
+352 49 48 48 2289
johan.blaise@lu.pwc.com
Tax
Selected tax considerations

Lux LPs and Lux SLPs set up after 15 July 2013 are subject to the same tax treatment.

The tax treatment of the Lux LP and the Lux SLP primarily depends on the regulatory regime applicable to such Lux LP or Lux SLP.

Non-regulated Lux LP and Lux SLP

Lux LPs and Lux SLPs are transparent for Luxembourg CIT and NWT purposes. The partners of the Lux LP or Lux SLP are considered to carry out individually the activity of the Lux LP or Lux SLP. The Lux LP and Lux SLP are thus not subject to CIT or NWT on their behalf.

Prior to the implementation of this Law, although the activities of a Lux LP or Lux SLP are not per se commercial in nature, such activities were re-characterised as commercial activities when the GP was a Luxembourg joint-stock company (the “Geprägetheorie”). As a consequence, the Lux LP incorporated prior to 15 July 2013 and having a Luxembourg joint-stock company as GP is considered a commercial enterprise and is subject to Luxembourg MBT on its profits, while its non-resident partners, under certain circumstances, are considered as having a permanent establishment in Luxembourg (which then triggers liability to CIT and MBT on their respective share in the profits of the Lux LP or Lux SLP as well as NWT liability on their respective share in the assets of the Lux LP or Lux SLP).

The Law applying to a Lux LP or Lux SLP set up after 15 July 2013 provides, however, for a change in application of the Geprägetheorie as follows:

When the GP of a Lux LP (or Lux SLP) is a Luxembourg joint-stock company owning less than 5% of the interest in the Lux LP or Lux SLP, the Geprägetheorie will not apply.

The activity of a Lux LP or Lux SLP will therefore only be deemed commercial, in the absence of an actual commercial activity, if there is at least one GP being a Luxembourg joint-stock company owning an interest of 5% or more in the Lux LP or Lux SLP.

In order to achieve full tax transparency, it should, however, still be ensured that the non-regulated Lux LP or Lux SLP does not perform a commercial activity per se.

A commercial activity is defined as an independent activity, carried out on a permanent basis with the intention of earning profits and participating in the economic life.

While the management of private wealth is regarded as falling outside the definition of commercial activity, an analysis would have to be made on a case-by-case basis.

Should the Lux LP or Lux SLP carry out a commercial activity, the Lux LP will be subject to Luxembourg MBT on its profits, while the non-resident partners, under certain circumstances, could be considered as having a permanent establishment in Luxembourg.

Contact

Christine Casanova
Tax Director - Tax Consulting
+352 49 48 48 3054
christine.casanova.decorse@lu.pwc.com

Luxembourg Limited Partnership
As far as business profits are considered, foreign partners will only be liable to pay tax if they derive profits from a commercial activity and if such commercial activity is carried out via a permanent establishment (cumulative conditions). With respect to non-resident partners living in a country that has signed a Double Tax Treaty (DTT) with Luxembourg, they would be taxable in Luxembourg only to the extent of there being a permanent establishment as defined in the relevant DTT.

Non-resident partners should, as a matter of principle, thus not be subject to Luxembourg tax on income and gains arising from their interest in the Lux LP or Lux SLP set up as a non-regulated Lux LP/Lux SLP. There are two exception: (i) the non-resident partner is holding its interest in the Lux LP or Lux SLP through a Luxembourg permanent establishment or (ii) the non-resident partners are not subject to withholding tax in Luxembourg.

**Luxembourg withholding taxes**

Dividend distributions and interest or royalties payments made by a Lux LP or Lux SLP (regulated or not) to resident or non-resident partners are not subject to withholding tax in Luxembourg.

**Regulated Lux LP/Lux SLP set up as SIFs**

A Lux LP or Lux SLP set up as a SIF are subject to subscription tax. They are subject to Corporate Income Tax (CIT), Municipal Business Tax (MBT) or Net Wealth Tax (NWT).

A Lux LP or Lux SLP set up as a SIF will be subject to subscription tax. In principle, the subscription tax is 0.01% per annum, calculated on its Net Asset Value (NAV), payable and computed quarterly. Some exemptions are available.

Non-resident LPs should not be subject to Luxembourg tax on income and gain arising from their interest in the Lux LP or Lux SLP set up as a SIF.

**Regulated Lux LP and Lux SLP set up as SICARs**

As mentioned above, Lux LPs and Lux SLPs are transparent for Luxembourg CIT and NWT purposes. The partners of the Lux LP or Lux SLP are taxed as if they carried out the activity of the Lux LP or Lux SLP individually. The Lux LP and Lux SLP are thus not subject to CIT or NWT on their behalf.

Lux LPs or Lux SLPs set up as SICARs are, by law, not considered to carry out a commercial activity. An Lux LP or Lux SLP set up as a SICAR would thus never be subject to MBT and its non-resident partners will not be considered as having a permanent establishment in Luxembourg.

Non-resident partners should, as a matter of principle, not be subject to Luxembourg tax on income and gains arising from their interest in the Lux LP or Lux SLP set up as a SICAR. The two exceptions to this rule are: (i) the non-resident partner is holding its interest in the Lux LP or Lux SLP through a Luxembourg permanent establishment or (ii) the income and gains of the Lux LP/Lux SLP attributable to the non-resident partners by transparency are taxable in Luxembourg in the absence of a double tax treaty (e.g. speculative gains on shares of a Luxembourg capital company), or they are taxable in Luxembourg by application of a DTT (e.g. Luxembourg real estate; a permanent Luxembourg establishment should, however, not exist under the SICAR regime).

Partners in a Lux LP or Lux SLP set up as a SICAR who are resident in Luxembourg should be subject to Luxembourg tax on income and gain arising from their interest in the Lux LP or Lux SLP.
to income tax, and NWT when applicable, in Luxembourg by transparency of the Lux LP or Lux SLP as if they owned the assets and income of the Lux LP or Lux SLP directly.

**VAT**

From a VAT perspective, no specific rules have been implemented in relation to the Lux LP or Lux SLP. As a consequence, Lux LP or Lux SLP should follow the standard rules for the determination of its VAT status and VAT position. Lux LP or Lux SLP set up as an investment vehicle covered by Article 44.1. d) of the Luxembourg VAT law (LVL) would however benefit from specific VAT rules. Although the Lux SLP has no legal personality, the head of the Luxembourg VAT authorities confirmed in November 2016 that when a Lux SLP is subject to Luxembourg VAT obligations (i.e. registration, returns), it should comply with these obligations in its own name. This means that, contrary to contractual funds (i.e. FCPs), the GP or the manager of the Lux SLP is not responsible for declaring and reporting any transaction on behalf of the Lux SLP it manages.

If the Lux LP or Lux SLP has the legal status of an investment vehicle listed in Article 44.1. d) IVL (e.g. SIF, SICAR, AIF), the Circular 723 of the VAT Authorities should apply. As a consequence, it should qualify as a taxable person, and its activity should, in principle, be exempt from VAT without the right to recover input VAT. Thus, the Lux LP or Lux SLP will be released from VAT compliance obligations (registration and returns) unless it receives services from abroad that do not benefit from a VAT exemption or that are not connected with an immovable property. Article 44.1. d) IVL provides a VAT exemption for the investment vehicles listed in Article 44.1. d) IVL which covers notably management services/investment advice provided to the Lux LP or Lux SLP and any other service that is specific and essential for the management of the Lux LP or Lux SLP. A VAT exemption also applies on other services received by the Lux LP or Lux SLP such as distribution or intermediary services (under certain conditions), irrespective of the regulatory status of the Lux LP or Lux SLP.

If the Lux LP or Lux SLP does not have the legal status of an investment vehicle listed in Article 44.1. d) IVL, the administrative simplification proposed by the Circular 723 should not apply. As an illustration, a Lux LP or Lux SLP passively holding shares in other entities should not have the place of establishment of a Lux SLP will be deemed to be from a VAT perspective when the Lux SLP is managed by several GPs established in different countries or when the management is (partly) delegated to an AIFM.

In a nutshell, the VAT compliance obligations of the Lux LP or Lux SLP and its VAT payable/recovery position will depend on its regulatory status, its underlying investments/activities and should thus be analysed on a case by case basis.

**Benefit of double tax treaties**

As entities that are transparent for income tax purposes, Lux LPs and Lux SLPs will not benefit from Luxembourg’s network of double tax treaties.

The partners in the Lux LP or Lux SLP may, however, claim treaty benefits by transparency of the Lux LP or Lux SLP. The absence of legal personality of the Lux SLP may allow for a tax transparency treatment in certain jurisdictions. This will have to be analysed on a country-by-country basis.

Lux LPs or Lux SLPs may also structure their investments through traditional acquisition structures allowing for treaty benefits, provided that substance and beneficial ownership tests are met.

---

**Contact**

Marie-Isabelle Richardin
Tax Partner - VAT
+ 352 49 48 48 3008
marie-isabelle.richardin@lu.pwc.com
Special issues
Special considerations

AIFMD and Regulation (EU) No 345/2013 on venture capital funds.

Following the financial crisis, the financial sector now faces a wave of regulations which are likely to change it radically. The AIFMD, the Alternative Investment Fund Managers Directive, is part of this development and now constitutes a key element of the European regulatory framework. The AIFMD aims to provide a harmonised regulatory and supervisory framework within the EU as well as a single EU market for managers of AIFs. It sets rules regarding the marketing of AIFs and the substance and organisation of their managers/managing companies.

The Directive entered into force on 1 July 2011. The deadline for EU Member States to transpose the AIFMD into their national law was 22 July 2013. The Luxembourg law of 12 July 2013 implemented the AIFMD into Luxembourg law. Alternative Investment Fund Managers (AIFMs) existing in July 2013 had until July 2014 to obtain authorisation from their relevant authority.

The AIFMD regulates managers of AIFs.

As a reminder, an AIF is defined in the directive as “i) a collective investment undertaking ii) raising capital iii) from a number of investors (iv) with a view to investing it in accordance with a defined investment policy for the benefit of those investors”; and (v) is not a UCITS fund governed by Directive 2009/65/EC.

An Lux LP or Lux SLP may, subject to assessment on a case-by-case basis of the criteria listed above, fall under the definition of an AIF. Please refer to www.pwc.lu/AIFM for more information.

Regulation (EU) No 345/2013 dated 17 April 2013 on venture capital funds lays down uniform requirements and conditions for managers of collective investment undertakings that wish to use the designation “EuVECA” in relation to the marketing of qualifying venture capital funds in the European Union, thereby contributing to the smooth functioning of the internal market.

This regulation also lays down uniform rules for the marketing of qualifying venture capital funds to eligible investors across the Union, for the portfolio composition of qualifying venture capital funds, for the eligible investment instruments and techniques to be used by qualifying venture capital funds as well as for the organisation, conduct and transparency of managers that market qualifying venture capital funds across the Union.

Regulation (EU) No 345/2013 applies only to managers of those collective investment undertakings with assets under management that in total do not exceed the threshold referred to in point (b) of Article 3(2) of the AIFMD (point (a) and (b) above). If managers of collective investment undertakings do not wish to use the designation “EuVECA”, this Regulation will not apply. In these cases, existing national rules and general Union rules will continue to apply.
As flexible vehicles (similar to well-known and commonly used Anglo-Saxon LPs) with tax transparency in most cases, a Lux LP or Lux SLP with an EU AIFM may be an alternative onshore EU fund form that facilitates marketing to EU investors under the AIFMD passport or as EuVECA.

Lux LP/Lux SLP as carry vehicle

An Lux LP or Lux SLP may be used as a fund vehicle. They may, however, also be used for other purposes such as, for example, real estate acquisition vehicles or carry vehicle.

The contractual freedom and flexibility, the tax transparency and the similarities with other well-known Anglo-Saxon vehicles makes the Lux LP and the Lux SLP particularly competitive vehicles to be considered when structuring carried interest schemes.

Compartment

SIFs, SICARs and multiple compartments

Lux LPs or Lux SLPs set up as SIFs and SICARs may comprise multiple compartments, each compartment corresponding to a distinct part of the assets and liabilities of the investment vehicle. The constitutional documents of the investment vehicle must expressly provide for that possibility and must include the applicable operational rules. The offering document or prospectus must describe the specific investment policy of each compartment.

The rights and obligations of investors and creditors concerning a compartment or which have arisen in connection with the creation, operation or liquidation of a compartment are limited to the assets of that compartment, unless a clause included in the constitutional documents states otherwise. For the purpose of the relations between investors, each compartment will be considered as a separate entity, unless a clause included in the constitutional documents states otherwise.

Each compartment of a SIF or a SICAR may be separately liquidated without this separate liquidation resulting in the liquidation of another compartment. Only the liquidation of the last remaining compartment of the investment vehicle will result in the liquidation of the vehicle.

While non-regulated Lux LPs or Lux SLPs may not be divided into multiple compartments, carefully considered compartmentalisation through adequate structuring and proper drafting of the LPA may be organised, as is already the case for non-regulated Soparfis structured as investment platform companies (i.e. MasterLuxCo concept).

Contact

Marie-Elisa Roussel-Alenda
Assurance Partner - AIFMD Leader
+352 49 48 48 2050
marie-elisa.roussel-alenda@lu.pwc.com
**AIF**
Alternative Investment Fund as defined in the AIFMD

**AIFM**
Alternative Investment Fund Manager as defined in the AIFMD

**AIFMD**

**CIT**
Corporate Income Tax

**Company Law**
Luxembourg law dated 10 August 1915 as amended

**CSSF**
Commission de Surveillance du Secteur Financier (commission for the supervision of the financial sector)

**DTT**
Double Taxation Treaties

**EUSD EU**

**GAAP**
Generally Accepted Accounting Principles

**GP(s)**
General Partner(s)

**IAS**
International Accounting Standards

**IFRS**
International Financial Reporting Standards

**Invest Europe**
European Private Equity and Venture Capital Association

**Law**
Luxembourg law dated 12 July 2013 implementing the AIFMD and creating the LUX SLP

**LP(s)**
Limited partner(s)

**LPA**
Limited Partnership Agreement

**Lux LP**
SCS

**Lux LP Light**
A Lux LP whose net turnover is below EUR 100,000 excluding VAT and when the Lux LP is incorporated with a Luxembourg General Partner who adopted a legal form with a limited liability

**Lux SE**
Luxembourg Stock Exchange

**Lux SLP**
SCSp

**Luxembourg Trade Register or RCS**
“Registre de Commerce et des Sociétés”

**LVL**
Luxembourg Value Added Tax Law

**m**
Million

**M&A**
Mergers & Acquisitions

**MBT**
Municipal Business Tax

**MiFID**
Markets in Financial Instruments Directive

**NAV**
Net Asset Value

**NWT**
Net Wealth Tax

**NYSE**
New York Stock Exchange

**PCN**
“Plan Comptable Normalisé” (Standard Chart of Accounts)

**PE**
Private Equity

**PPM**
Private Placement Memorandum

**Prospectus Law**
Law of 10 July 2005 on the prospectus of securities

**RAIF**
Reserved Alternative Investment Fund

**RCS**
Registre de Commerce et des Sociétés (Trade and Companies Register)

**RCS Law**
Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings

**Regulation**
Regulation (EU) No 345/2013 dated April 17 2013 on venture capital funds

**SCA**
Standard Chart of Accounts

**S.C.A.**
Société en Commandite par Actions (partnership limited by shares)

**S.C.S.**
Société en Commandite Simple (limited partnership)

**S.C.Sp**
Société en Commandite Spécial (Special limited partnership)

**SICAR**
Société d’Investissement en Capital à Risque

**SICAR Law**
Luxembourg law dated 15 June 2004

**SIF**
Specialised Investment Fund governed by the Law of 13 February 2007

**SIF Law**
Luxembourg law dated 13 February 2007

**SME**
Small and Medium Entities

**SOPARFI**
Société de participation financière (holding company)

**UCITS**
Undertaking collective investment fund in transferable securities governed by Directive 2009/65/EC

**VAT**
Value Added Tax
Our Services
Our Services: From fund set-up to exit stage

Our experts developed in-depth knowledge in these areas to support you in making the most of all the opportunities which may arise from this environment.

Over 250 experienced multilingual specialists are ready to assist you in the provision of cross-competency PE and Merger & Acquisitions (M&A) services - regardless if you are a first-time fund or an established player. We'll provide comprehensive industry assistance: from fund structuring, including regulatory matters, M&A deal structuring, distribution support, manager compensation structuring, accounting, audit and many more (VAT, Transfer Pricing, etc.).

Find out more about our services on our website:

http://www.pwc.lu/en/private-equity/our-services.jhtml
## Further contacts

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Phone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vincent Ball</td>
<td>Assurance Private Equity Leader</td>
<td>+352 49 48 48 2254</td>
<td><a href="mailto:vincent.ball@lu.pwc.com">vincent.ball@lu.pwc.com</a></td>
</tr>
<tr>
<td>Valérie Tixier</td>
<td>Private Equity Funds Leader</td>
<td>+352 49 48 48 2107</td>
<td><a href="mailto:valerie.tixier@lu.pwc.com">valerie.tixier@lu.pwc.com</a></td>
</tr>
<tr>
<td>Philippe Duren</td>
<td>Assurance Partner, IFRS and Consolidated audit for Unregulated Private Equity Structures</td>
<td>+352 49 48 48 2006</td>
<td><a href="mailto:philippe.duren@lu.pwc.com">philippe.duren@lu.pwc.com</a></td>
</tr>
<tr>
<td>Markus Mees</td>
<td>Assurance Partner, D-A-CH Market Leader</td>
<td>+352 49 48 48 2140</td>
<td><a href="mailto:markus.mees@lu.pwc.com">markus.mees@lu.pwc.com</a></td>
</tr>
<tr>
<td>Martin Hollywood</td>
<td>Tax Partner</td>
<td>+352 49 48 48 2027</td>
<td><a href="mailto:martin.hollywood@lu.pwc.com">martin.hollywood@lu.pwc.com</a></td>
</tr>
<tr>
<td>Luc Trivaudey</td>
<td>Tax Partner, Accounting and Tax Compliance Services</td>
<td>+352 49 48 48 5055</td>
<td>luc. <a href="mailto:trivaudey@lu.pwc.com">trivaudey@lu.pwc.com</a></td>
</tr>
<tr>
<td>Géraldine Piat</td>
<td>Tax Partner, Tax Compliance Services</td>
<td>+352 49 48 48 3135</td>
<td><a href="mailto:geraldine.piat@lu.pwc.com">geraldine.piat@lu.pwc.com</a></td>
</tr>
<tr>
<td>Olivier Carré</td>
<td>Regulatory and Compliance Partner</td>
<td>+352 49 48 48 4174</td>
<td><a href="mailto:olivier.carre@lu.pwc.com">olivier.carre@lu.pwc.com</a></td>
</tr>
</tbody>
</table>