The Special Limited Partnership: when Luxembourg is a step ahead

The AIFM Directive has been transposed into law by the Luxembourg government on 12 July 2013 (the Law), and showed to be the proper occasion to modernise the current legal context of the Luxembourg investment vehicles, and in particular of the limited partnerships.

In this kind of framework, the introduction of a modern **Special Limited Partnership** (*société en commandite special* – SCSp) takes place.

This new version is supposed to provide Luxembourg with a type of limited partnership similar to the Anglo-Saxon LP. As a matter of fact, the SCSp achieves more by creating a sound appeal for a number of different players and responding to market expectations.

The limited partnerships panorama in Luxembourg

The limited partnership is an entity which can be established by contract, for a limited or unlimited duration, between one or more general partners and one or more limited partners, who commit to contributing a certain amount, constituting partnership interests, represented or not by a security instrument, pursuant to the provisions of the Limited Partnership Agreement (LPA).

Before the Law, Luxembourg legislation recognized 2 types of limited partnerships.

- Common limited partnership (*société en commandite simple* – SCS); and
- Partnership limited by shares (*société en commandite par actions* – SCA).

After the transposition of the AIFM Directive to the Luxembourg law, the modernization of the limited partnerships enters the scene, by offering the following options.

- Regulated SCSp (through SICAR and SIF regime);
- Unregulated SCSp;
- Improvement of the SCS;
- Enhancement of the SCA.

Main differences between SCS and SCSp

SCSp benefits of a similar regime as the SCS, but with no legal personality. These new modern vehicles are about to compete with the Anglo-Saxon limited partnerships especially in terms of flexibility.

Features	*Societe en commandite simple (S.C.S.)*	*Societe en commandite speciale (S.C.Sp.)*	*Limited Partnership (Anglo-Saxon)*
Legal Personality	Yes	No	No
Tax Personality	Yes, if commercial activity is detected (MBT implications)	No, If involved in wealth management activities (i.e. private equity and real estate). In fact, no commercial activity = no corporate tax	No
Minimum Number of Members	2 (i.e. 1 General Partner and 1 Limited Partner)	2 (i.e. 1 General Partner and 1 Limited Partner)	2
Accounting Obligations	Yes	No	Yes
Publication of the LPs in the Public Register	Yes	No	Yes
Return of Capital	Admitted as from the transposition of the AIFM Directive into Luxembourg domestic law.	To the extent that is foreseen in the LPA, no limits of repatriation via dividends. Thus limitless structuring planning ideas in terms of funding: either via equity or debt	Prohibited. (Pursuant to English law, parts of contribution made to the partnership by a LP cannot be drawn back. They are receivable back only upon life end of the Partnership). It is then required the funding to be performed via 99% debt so as to be able to repatriate from the LP as much as possible

Why is the new version of Luxembourg partnerships attractive?

The SCSp is **easy to implement via the LPA and low cost-intensive**; on the other hand it is rather easy to manage thanks to the light reporting obligations.

The LPA is entirely customizable by the parties' consensus.

It benefits from a full tax transparency, so that the direct tax liability is entirely at the level of the partners.

ATTENTION POINT

Nevertheless, depending on the interest commitment from the GP, the limited partnership might be deemed as conducting a commercial activity with subsequent Luxembourg municipal business tax implications

- *SCSp profit allocation can be freely provided by the LPA*
- *Decision of partners can be freely provided by the LPA*
- *Assets can be registered in the name of the partnership (even though it has no legal personality)*
- *SCSp could work as an AIF, SIF, SICAR as well as for unregulated structures*
- *Carried interest structuring: under conditions Luxembourg resident recipients taxable at a 10% max.*

Who does the new version of the Luxembourg partnerships address to?

The modernisation of the Luxembourg partnerships is going to be of interest to many players in the investment industry, either private or institutional.

Indeed thanks to the possibility to opt for unregulated or regulated limited partnerships, this vehicle offers an unprecedented flexibility.

This holds true if we consider the British Venture Capital Association is claiming for amendments to the features of the Ango-Saxon limited partnerships to shape them more similar to the new Luxembourg ones. In this respect, refer to the article published by Financial Times lately. http://www.ft.com/cms/s/0/7cad43e8-9189-11e2-b839-00144feabdc0.html#axzz2VkVwsICu

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Archon is a tax analyst specialized in integrated solutions and shall be at your disposal to evaluate the benefits you might obtain through the new developments of the limited partnerships.

To have more insight and advice, contact us:

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