



CHEVALIER & SCIALES  
LUXEMBOURG LAW FIRM

# Luxembourg special limited partnership (SCSp) and common limited partnership (SCS)

# INVESTMENT FUNDS



*'Investment funds work informs much of boutique independent law firm Chevalier & Sciales' deal flow and it is this determined focus on work in the sector which ensures that clients receive 'very client focused and pragmatic' advice to fund managers on their fund structuring, regulatory and operational requirements. Although it also handles work in the retail space, the firm has gained most traction within the alternatives space, including on debt, private equity and hedge funds.'*

*Testimonial: 'The practice is very client focused and pragmatic. But most importantly, the partners have an extensive knowledge in their respective fields.'*



*'Well-positioned to handle alternative funds, whether first-time managers or historical players, the firm advises on time-to-market vehicles with a high demand for RAIFs and SCSPs. Concerning asset classes, Chevalier & Sciales practice covers a diversity of assets, such as PE and real estate and is increasingly active in relation to crypto, hedge and debt funds.'*

# LITIGATION, ARBITRATION & DISPUTE RESOLUTION



*'The boutique combines creative strategies with a practical, business-centric approach, whether managing high-stakes disputes for private entities and financial institutions, advising on contentious matters or in alternative dispute resolutions. They successfully represented a financial institution in the enforcement of a €500 million arbitral award against a European State in the Grand-Duchy of Luxembourg.'*



*'Headed by Rémi Chevalier, the arbitration department recently handled the defense of claimants in an investment arbitration regarding the application of the \$1 billion bilateral investment treaty between Switzerland and the Czech Republic. Chevalier has been appointed counsel before the European Courts of Human Rights.'*

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# INTRODUCTION TO THE LIMITED PARTNERSHIP

Luxembourg has enhanced its existing limited partnership regime, adding the special limited partnership to its range of investment vehicles designed for the alternative investment industry, including private equity. The authorities have adopted a pragmatic and business-friendly approach to meet the most stringent requirements of alternative fund managers. We summarise below the main legal and tax rules applicable to both regulated and unregulated Luxembourg common limited partnerships and special limited partnerships.

The Luxembourg limited partnership is an entity established for a limited or unlimited period of time either as a common limited partnership (*société en commandite simple* or SCS) or a special limited partnership (*société en commandite spéciale* or SCSp), by one or more unlimited partners with joint and unlimited liability, or by one or several limited partners liable up to the value of their contributions.

Contributions to the limited partnership may be made in cash, in kind or by other means such as services under the terms and conditions of the limited partnership agreement, and may be freely determined by the partners. In contrast to other Luxembourg legal entities, contributions in the form of services do not require an external valuation report, and their value may be determined by private agreement. In addition, unlike most common corporate

structures under Luxembourg law, the limited partnership does not impose any minimum capital requirements.

Partnership interests, representing contributions to the limited partnership, may or may not be represented by securities. In a limited partnership that does not issue securities to its investors, each limited partner has a capital account, an equity account in the accounting records of the limited partnership. It typically varies according to the initial and subsequent contributions by partners, profits and losses recorded by the limited partnership and allocated to the partners under the LPA, and distributions to the partners.

The main difference between the common and special limited partnerships is that the former has a legal personality distinct from that of its partners, whereas the special limited partnership does not have legal personality, making it very similar to the limited partnership under English law.

## PRACTICAL USE OF THE LIMITED PARTNERSHIP AS AN INVESTMENT VEHICLE

The features of the limited partnership make this entity a very attractive new addition to the Luxembourg investment toolbox.

The limited partnership may be used for master-feeder structures, as an acquisition vehicle, or for joint ventures, but its most frequent use is for private equity, venture capital and real estate investments. The popularity of the limited partnership for private equity investments is down to the high level of contractual or corporate flexibility provided by its legal form, which is familiar to Anglo-Saxon investors and promoters due to its resemblance to the English limited partnership.

As a general rule, the limited partnership does not automatically fall under the definition of an alternative investment fund (AIF), but it may take the form of a collective investment undertaking with multiple compartments that raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for their benefit, and does not require authorisation under the UCITS regime.

Under these circumstances, the limited partnership qualifies as an AIF in accordance with the 2013 legislation on alternative investment fund managers and may carry out

its activity either as an entity regulated by the Financial Sector Supervisory Authority (CSSF) under the SIF or SICAR legal regime, or as an unregulated entity. Irrespective of whether it is regulated or unregulated, the AIF must appoint an alternative investment fund manager (AIFM) that may be registered or authorised depending on the value of its portfolio of AIF assets under management.

From a corporate structure perspective, if the SCS qualifies as an AIF and it is internally managed, the SCS itself will be authorised or registered as an AIFM. If, however, the SCS appoints an external AIFM, the general partner or third-party AIFM must be registered or authorised under the 2013 legislation.

The SCSp, on the other hand, may not be authorised as an internally managed AIF due to its lack of legal personality, so it must appoint an external entity (which may be its unlimited partner acting as the general partner or another company) as external AIFM.

Finally, unregulated special limited partnerships are often used to invest in private equity, venture capital and real estate assets and any other alternative assets.



## SETTING UP AN UNREGULATED LIMITED PARTNERSHIP INVESTMENT VEHICLE

The main practical steps in establishing a limited partnership as an AIF are:

1. Incorporating the general partner.
2. Executing a limited partnership agreement by means of either a private or notarial deed.
3. Engaging the required service providers, subject to the regulated or unregulated status of the limited partnership.
4. Publishing the required extract from the LPA in the Luxembourg Trade and Companies Register.
5. Establishing a register of partnership interests.
6. Requesting the registration or authorisation of the AIFM by the CSSF.

## MANAGEMENT OF THE LIMITED PARTNERSHIP

The limited partnership is managed by one or more managers who do not necessarily have to be unlimited partners. In practice, however, the unlimited partner is often the manager of the limited partnership.

Where management of the limited partnership is not entrusted to the unlimited partner, the liability of the manager is governed by the general provisions applicable to board members provided by the 1915 law on commercial companies. These stipulate that the manager of the limited partnership is responsible for the execution of the mandate and for any misconduct in the management of the limited partnership, and is jointly and severally liable toward the limited partnership and third parties for damages stemming from breach of the law or the LPA.

Subject to the provisions of the LPA, the manager of a limited partnership may delegate the management to a third party, which will be liable only for the performance of its own mandate.

Contractually agreed restrictions regarding the powers of managers cannot be applied in relation to third parties, even if published in the Luxembourg Trade and Companies Register. However, the LPA may authorise one or more managers to represent the limited partnership, either jointly or individually, and such a clause

is valid with regard to third parties, subject to publication formalities.

The acts of the managers may bind the limited partnership even if they exceed the corporate purpose mentioned in the LPA, unless it can be proven that the third party was aware that the act was outside the scope of the corporate purpose or if, in the context, the third party could not have been unaware of such circumstance.

## LEGAL REGIME REGARDING LIMITED PARTNERS

### Distributions

The limited partnership legal regime allows partners to tailor their participation in profits and losses, as well as distributions, as they deem appropriate in the LPA. If the constitutive deed of the limited partnership does not provide any rules in this respect, each limited partner shall participate proportionally to the subscription of its partnership interests.

The limited partnership may distribute profits or reimburse partnership interests, as contractually agreed in the LPA. The freedom provided by the legal provisions governing the LPA allow partners of private equity partnership agreements to structure any clawback provisions regarding the general partner or the limited partners in line with agreed commercial terms.

### Voting rights

Unless provided otherwise in the LPA, as a general rule the voting rights of each partner are proportional to their partnership interests.

### Decision-making process

The decision-making process may also be tailored by the provisions of the LPA and the agreement may list resolutions that do not require a decision by the partners. However, certain aspects must be decided upon by the partners, namely the corporate purpose, a change of nationality, conversion of legal form or liquidation of the limited partnership.

The formalities and conditions for passing resolutions should be determined in the LPA, otherwise, the rules are as follows:

- Written consultations and vote in writing - resolutions of the partners shall be adopted at general meetings by means of consultation in writing; before such consultations, each partner shall receive the precise text of the resolutions and express their vote in writing.
- Majority of votes rule – decisions shall be validly adopted by a majority of votes expressed irrespective of the portion of partnership interests represented, except for amendments regarding the corporate purpose, change of nationality, conversion of legal form or the liquidation of the limited partnership, which require the consent of partners representing three-quarters of the partnership interests and of the unlimited partner.



- Partners representing more than half of the partnership interests may convene a meeting.

### **Transfer of partnership interests**

Unless otherwise stated in the LPA, the transfer, dismemberment, or pledge of limited partnership interests is subject to the approval of the unlimited partner. If the LPA does not contain any provisions in this regard, the transfer, dismemberment, or pledge of partnership interests of the unlimited partner is subject to the consent of the limited partners, who shall deliberate according to the rules regarding amendment of the LPA. Transfers by cause of death do not require approval in either case.

## THE LIABILITY OF LIMITED PARTNERS

The unlimited partner has unlimited and joint liability for the obligations of the limited partnership, while limited partners' liability is restricted to the amount of their subscribed partnership interests.

In general, limited partners are forbidden to carry out any acts of external management – acts performed for the account of the limited partnership with third parties. However, it is not forbidden for the limited partner to perform acts of internal management that are internal to the limited partnership.

An act of external management triggers unlimited liability on the part of the limited

partner toward third parties, although not toward other members of the limited partnership. In these circumstances, the limited partner in question may become jointly and severally liable toward third parties for any obligations of the limited partnership in which it was involved through acts of management.

The scope of the joint liability of the limited partner in these circumstances depends on its involvement in the management of the limited partnership. An isolated rather than regular act of external management will result in liability only for the commitments or obligations of the limited partnership in which it has taken part. A limited partner that has regularly performed acts of management involving third parties may be liable to those third parties even for commitments or obligations in which it did not take part.

Luxembourg's 1915 law on commercial companies provides a non-exhaustive list of actions that do not constitute acts of external management triggering a limited partner's liability towards third parties: exercising partner prerogatives; providing advice to affiliated entities, managers of the limited partnership or to the limited partnership itself; oversight or control functions; granting loans, guarantees or securities, or any other type of financial assistance; and approving acts outside the duties of the managers.

Limited partners may as a rule carry out any acts of internal management and in general, any acts that would not mislead a reasonable third party regarding the scope of the involvement of the

limited partner, including voting on any issues subject to their consent under the LPA such as amendments to the agreement, extension of the partnership's duration, winding up of the partnership or removal of a manager, or acting or being represented on any internal body of the limited partnership, such as an investment committee or advisory board, even if the body has a power of decision over actions taken by the partnership.

The commercial companies legislation also states that a limited partner will not lose its limited liability by acting as director or agent of a manager of the limited partnership, even if the manager is an unlimited partner, or may execute documents on behalf of a manager, in its capacity as a representative of the limited partnership. However, this safe harbour provision requires the capacity in which the limited partner is acting to be clearly indicated.

The 1915 law also authorises a limited partner to conduct transactions with the limited partnership without its rank as privileged or general creditor being affected by its capacity as a limited partner. For example, a limited partner lending money to the partnership will have the same ranking as a creditor of the limited partnership as external entities.

## THE TAX REGIME FOR UNREGULATED LIMITED PARTNERSHIPS

### Direct taxation

Unregulated SCS and SCSp are tax-transparent entities for corporate income tax and net worth tax purposes. The partnership should not be subject to corporate income tax, subject to the analysis of the application of the reverse hybrid rule. As from 1 January 2022, the scope of Luxembourg anti-hybrid rules has been extended to entities that are transparent for Luxembourg tax purposes, such as the special limited partnership. The 2023 Luxembourg budget law provides the following clarification, applicable as from the tax year 2022: the anti-hybrid rules shall not apply when the investors are tax-exempt due to a subjective exemption or because they are either residents or registered in a no-tax jurisdiction.

Municipal business tax of 6.75% (rate of Luxembourg-city) may become applicable in the event that the limited partnership carries out any commercial activity or is deemed to be doing so. The limited partnership is deemed to be carrying out a commercial activity if its general partner is a Luxembourg public or private limited liability company holding at least 5% of the partnership interests. However, proper structuring of the general partner partnership interest should ensure the limited partnership will not be deemed to be carrying out a commercial activity.

The Luxembourg direct taxation authority has clarified in the circular of January 9, 2015, that unregulated SCS or SCSp qualifying as an AIF within the meaning of the law of 2013 on alternative investment fund managers are deemed not to be performing a commercial activity. Therefore, an unregulated SCS or SCSp that is an AIF will be completely tax-neutral, provided that no general partner is a Luxembourg company holding 5% or more of the partnership interests.

Finally, as tax-transparent entities, neither SCS nor SCSp benefit from Luxembourg's double taxation avoidance treaties, nor from the EU's Parent-Subsidiary Directive (2011/96/EU).

It should also be noted that the Luxembourg direct tax authority issued a circular in June 2023 clarifying the tax status of reverse hybrid entities in Luxembourg.

## **VAT**

Management services provided to an SCS or SCSp that qualifies as an AIF are exempt from value-added tax.

## **Luxembourg withholding tax on dividends**

Dividend distributions made by an SCS or SCSp to resident or non-resident partners are not subject to withholding tax in Luxembourg.

# THE MAIN BENEFITS OF THE LUXEMBOURG LIMITED PARTNERSHIP AS AN UNREGULATED INVESTMENT VEHICLE

## **Contractual flexibility**

One of the main advantages offered by the limited partnership is the contractual freedom of the parties. Apart from a limited number of statutory provisions, there is great flexibility in determining the rules governing the functioning of the limited partnership.

## **Short time to market**

The ability to incorporate the limited partnership under private deed and the absence of cumbersome registration formalities allows the investment vehicle to be brought to market in less than a month.

## **No minimum capital requirement, no minimum investment**

The incorporation of the limited partnership does not impose any legal minimum capital, in contrast to Luxembourg private and public limited liability companies, making the limited partnership an attractive vehicle for venture capital investment. Furthermore, the LPA may permit subscriptions from all types of investors without minimum investment requirements.

## Low launch costs

One of the main advantages offered by the limited partnership is the contractual freedom of the parties. Apart from a limited number of statutory provisions, there is great flexibility in determining the rules governing the functioning of the limited partnership.

## Confidentiality

The information to be published in the Luxembourg Trade and Companies Register is limited to the name of the limited partnership, its duration, the unlimited partner and the managers, including their signatory powers. The identity of the limited partners does not have to be disclosed.

For an overall picture of the main provisions governing the LPA, please refer to the below table.

Issue	Unregulated common limited partnership (SCS)	Unregulated special limited partnership (SCSp)
<b>Type of entity</b>	A common limited partnership is an entity with legal personality.	A special limited partnership is an entity without legal personality.
<b>Deed</b>	Private or notarial deed, depending on whether the entity is regulated or not.	Private or notarial deed, depending on whether the entity is regulated or not.
<b>Voting rights</b>	Voting arrangements are determined in the LPA.	Voting arrangements are determined in the LPA.
<b>Redemption</b>	Partnership interests may be redeemed under the terms and conditions provided in the LPA.	Partnership interests may be redeemed under the terms and conditions provided in the LPA.
<b>Repayment of capital contributions</b>	No prohibition on returning capital to limited partners if provided for in the LPA.	No prohibition on returning capital to limited partners if provided for in the LPA.

Issue	Unregulated common limited partnership (SCS)	Unregulated special limited partnership (SCSp)
<b>Maximum/minimum partners</b>	At least one general partner with unlimited personal liability and one limited partner whose liability is limited to their contribution.	At least one general partner with unlimited personal liability and one limited partner whose liability is limited to their contribution.
<b>Minimum capital</b>	No minimum capital requirements.	No minimum capital requirements.
<b>Allocation of reserves</b>	There is no legal obligation to constitute reserves.	There is no legal obligation to constitute reserves.
<b>Transferability</b>	Transferability may be freely determined in the LPA. If the LPA is silent, transfer is subject to the partners' consent (except for mortis causa transfer).	Transferability may be freely determined in the LPA. If the LPA is silent, transfer is subject to the partners' consent (except for mortis causa transfer).
<b>Publication/ confidentiality</b>	Only an extract of the LPA to be published. Disclosure of limited partners not compulsory.	Only an extract of the LPA to be published. Disclosure of limited partners not compulsory.
<b>Annual general meeting</b>	To be held annually.	Not required.
<b>Annual accounts</b>	Compulsory.	Not compulsory, only subject to general accounting rules.
<b>Applicable accounting principles</b>	Luxembourg GAAP or IFRS.	Any accounting principles as defined in the LPA (e.g. Luxembourg GAAP, IFRS, US GAAP).
<b>Distribution</b>	May be freely established in the LPA, apart from leonine clauses.	May be freely established in the LPA, apart from leonine clauses.



Issue	Unregulated common limited partnership (SCS)	Unregulated special limited partnership (SCSp)
<b>Main tax considerations</b>	The common limited partnership is a tax-transparent entity for corporate income and wealth tax purposes. No corporate income tax, subject to the application of the reverse hybrid rule.	The special limited partnership is a tax-transparent entity for corporate income and wealth tax purposes. No corporate income tax, subject to the application of the reverse hybrid rule.





# COMPARISON TABLE OF LUXEMBOURG ALTERNATIVE INVESTMENT FUNDS (AIF)

	Regulated Investment Vehicles			Unregulated Investment Vehicles	
	Part II UCI	SIF	SICAR	RAIF	Unregulated SCS / SCSp
<b>Applicable legislation</b>	Law of 17 December 2010 - Part II ("UCI Law")	Law of 13 February 2007 ("SIF Law")	Law of 15 June 2004 ("SICAR Law")	Law of 23 July 2016 ("RAIF Law")	Law of 10 August 1915 ("Company Law")
<b>Authorisation and supervision by the CSSF</b>	Yes.	Yes.	Yes.	No.	No.
<b>Qualification as an AIF</b>	Always an AIF.	Yes, unless exempt. It is exempt if it does not raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors.	Yes, unless exempt. It is exempt if it does not raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors.	Always an AIF.	Non-AIF, unless activities fall within the scope of article 1 (39) of the AIFM Law.
<b>Exemption from AIFMD full regime under lighter regime (AIFMD registration regime)</b>	Possible.	Possible.	Possible.	No.	Possible.
<b>External authorised AIFM requirement</b>	Required in case the entity is an AIF that is not self-managed and above the AIFMD threshold.	Required in case the entity is an AIF that is not self-managed and above the AIFMD threshold.	Required in case the entity is an AIF that is not self-managed and above the AIFMD threshold.	Always required.	Required in case the entity is an AIF that is not self-managed and above the AIFMD threshold.
<b>Eligible investors</b>	Unrestricted.	Well-informed investors.	Well-informed investors.	Well-informed investors.	Unrestricted.
<b>Eligible assets</b>	Unrestricted. The investment objective and strategy of the fund is subject to the prior approval of the CSSF.	Unrestricted.	<p>Restricted to investments in securities representing risk capital.</p> <p>According to the CSSF Circular 06/241, investment in risk capital is to be understood as the direct or indirect contribution of assets to entities in view of their launch, their development or their listing on a stock exchange.</p> <p>The SICAR is not allowed to invest directly in real estate (except for its own use or through its participations).</p>	Unrestricted, unless it invests in a portfolio of risk capital (such as a Sicar).	Unrestricted.

	Regulated Investment Vehicles			Unregulated Investment Vehicles	
	Part II UCI	SIF	SICAR	RAIF	Unregulated SCS / SCSp
<b>Risk diversification requirements</b>	Risk diversification requirements are defined by IML Circular 91/75 (as amended by CSSF Circular n° 05/177). Such requirements are less stringent than the ones applicable to UCITS. In particular, a UCI is not allowed to invest more than 20% of its net assets in securities issued by any one issuer. Specific restrictions concerning funds adopting an alternative investment strategy are contained in CSSF Circular n° 02/80.	Risk diversification requirements are defined by CSSF Circular n° 07/309. Such requirements are less stringent than the ones applicable to UCITS and UCI. In particular, a SIF is not allowed to invest more than 30% of its net assets in securities of the same type issued by the same issuer.	No risk diversification requirements.	Risk diversification requirements are aligned with those applicable to SIFs, unless the RAIF chooses to invest in risk capital only and such choice is mentioned in its constitutive documents.	No risk diversification requirements.
<b>Legal Form</b>	<ul style="list-style-type: none"> <li>• FCP</li> <li>• SICAV (SA)</li> <li>• SICAF (SA, Sàrl, SCA, SCS, SCSp)</li> </ul> <p>The entities may be open-ended or closed-ended.</p>	<ul style="list-style-type: none"> <li>• FCP</li> <li>• SICAV (SA, Sàrl, SCA, SCoSA, SCS, SCSp)</li> <li>• SICAF (SA, Sàrl, SCA, SCoSA, SCS, SCSp)</li> </ul> <p>The entities may be open-ended or closed-ended.</p>	<ul style="list-style-type: none"> <li>• SA</li> <li>• Sàrl</li> <li>• SCA</li> <li>• SCS</li> <li>• SCSp</li> <li>• SCoSA</li> </ul> <p>The entities may be open-ended or closed-ended.</p>	<ul style="list-style-type: none"> <li>• FCP</li> <li>• SICAV (SA, Sàrl, SCA, SCoSA, SCS, SCSp)</li> <li>• SICAF (SA, Sàrl, SCA, SCoSA, SCS, SCSp)</li> </ul> <p>The entities may be open-ended or closed-ended.</p>	<ul style="list-style-type: none"> <li>• SCS</li> <li>• SCSp</li> </ul>
<b>Umbrella structure</b>	Yes.	Yes.	Yes.	Yes.	No.
<b>Capital requirements</b>	<ul style="list-style-type: none"> <li>• FCP: EUR 1,250,000 to be reached no later than 6 months following the authorisation by the CSSF.</li> <li>• Self managed SICAV / SICAF: EUR 300,000 at the date of authorisation and EUR 1,250,000 within 6 months following its authorisation.</li> </ul>	EUR 1,250,000 to be reached no later than 12 months following the authorisation by the CSSF.	EUR 1,000,000 to be reached no later than 12 months following the authorisation by the CSSF.	<ul style="list-style-type: none"> <li>• FCP: EUR 1,250,000 to be reached within 12 months from the entry into force of the management regulations.</li> <li>• SICAV: EUR 1,250,000 to be reached within 12 months from the incorporation of the SICAV.</li> </ul>	No minimum capital requirement.

	Regulated Investment Vehicles			Unregulated Investment Vehicles	
	Part II UCI	SIF	SICAR	RAIF	Unregulated SCS / SCSp
<b>Required service providers</b>	<ul style="list-style-type: none"> <li>Management company in case of an FCP.</li> <li>Depository institution.</li> <li>Administrative agent.</li> <li>Registrar and Transfer Agent.</li> <li>Approved statutory auditor.</li> </ul>	<ul style="list-style-type: none"> <li>Management company in case of an FCP.</li> <li>Depository bank or professional of the financial sector providing depository services, subject to conditions.</li> <li>Administrative agent.</li> <li>Registrar and Transfer Agent.</li> <li>Approved statutory auditor.</li> </ul>	<ul style="list-style-type: none"> <li>Depository bank or professional of the financial sector providing depository services, subject to conditions.</li> <li>Administrative agent.</li> <li>Registrar and Transfer Agent.</li> <li>Approved statutory auditor.</li> </ul>	<ul style="list-style-type: none"> <li>Management company in case of an FCP.</li> <li>Depository bank or professional of the financial sector providing depository services, subject to conditions.</li> <li>Administrative agent.</li> <li>Registrar and Transfer Agent.</li> <li>Approved statutory auditor.</li> </ul>	<p>For SCS:</p> <ul style="list-style-type: none"> <li>Alternative Investment Fund Manager (if the SCS qualifies as an AIF).</li> <li>No requirement to appoint a depository (except if the SCS qualifies as an AIF and is managed by a duly authorised AIFM).</li> </ul> <p>For SCSp:</p> <ul style="list-style-type: none"> <li>Alternative Investment Fund Manager (if the SCSp qualifies as an AIF).</li> <li>No requirement to appoint a depository (except if the SCSp qualifies as an AIF and is managed by a duly authorised AIFM).</li> </ul>
<b>Possibility of listing</b>	Yes.	Yes.	Yes, but difficult in practice.	Yes.	In principle, no. The SCS/ SCSp may however issue debt securities that are eligible to be listed on the stock exchange.
<b>European passport</b>	No, unless it falls under the scope of the full AIFMD regime.	No, unless it falls under the scope of the full AIFMD regime.	No, unless it falls under the scope of the full AIFMD regime.	Yes.	No, unless it falls under the scope of the full AIFMD regime.
<b>Net asset value (NAV) calculation and redemption frequency</b>	The UCIs must make public the issue, sale and repurchase price of their units each time they issue, sell and repurchase their units, and at least once a month.	At least once a year for reporting purposes.	Not required.	At least once a year for reporting purposes.	Not required.
<b>Overall income tax (corporate income tax and municipal business tax)</b>	No income tax.	No income tax.	<ul style="list-style-type: none"> <li>General aggregate rate: 24.94%.</li> </ul> <p>In certain cases, reduced corporate income tax rates may apply. Income derived from transferable securities (e.g. dividends received and capital gains realised on the sale of shares) is exempt. Income on cash held for the purpose of a future investment is also exempt (for one year).</p>	No income tax, unless investing only in risk capital, then SICAR tax regime applicable.	<p>No corporate income tax applicable.</p> <p>Municipal business tax of 6.75% applicable in very limited circumstances, namely in case the SCS/SCSp (i) carries out a commercial activity or (ii) is deemed to carry out a commercial activity. A SCS/ SCSp is deemed to carry out a commercial activity if its general partner is a Luxembourg public or private limited liability company holding at least 5% of the partnership interests.</p> <p>With a proper structuring of the GPs partnership interest it should be possible to avoid the deemed commercial characterisation of the SCS/SCSp.</p>

	Regulated Investment Vehicles			Unregulated Investment Vehicles	
	Part II UCI	SIF	SICAR	RAIF	Unregulated SCS / SCSp
<b>Subscription tax (NAV: net asset value)</b>	<ul style="list-style-type: none"> <li>Rate: 0.05% of the NAV annually.</li> <li>Reduction: 0.01% of the NAV annually in certain specific cases.</li> <li>Tax exemptions: special institutional money market cash funds, special pension funds (including pension pooling vehicles) and funds investing in other funds which are already subject to subscription tax.</li> </ul>	<ul style="list-style-type: none"> <li>Rate: 0.01% of the NAV annually.</li> <li>Tax exemptions: certain money market and pension funds or SIFs investing in other funds which are already subject to subscription tax.</li> </ul>	No subscription tax.	<ul style="list-style-type: none"> <li>Rate: 0.01% of the NAV annually.</li> <li>Exemptions apply.</li> </ul>	No subscription tax.
<b>Wealth tax</b>	No wealth tax.	No wealth tax.	No wealth tax.	No wealth tax.	No wealth tax.
<b>Withholding tax on dividends</b>	Not subject to withholding tax.	Not subject to withholding tax.	Not subject to withholding tax.	Not subject to withholding tax.	Not subject to withholding tax.
<b>Benefit from Double Tax Treaty network</b>	<ul style="list-style-type: none"> <li>SICAV/SICAF: Limited to certain double tax treaties (see circular L.G. -A n°61 of the tax administration of 8 December 2017).</li> <li>FCP: see circular L.G.-A n°61 of the tax administration of 8 December 2017.</li> </ul>	<ul style="list-style-type: none"> <li>SICAV/SICAF: Limited to certain double tax treaties (see circular L.G. -A n°61 of the tax administration of 8 December 2017).</li> <li>FCP: see circular L.G.-A n°61 of the tax administration of 8 December 2017.</li> </ul>	Yes in case the SICAR is set-up as a corporate entity (except if set-up under the form of a SCS/SCSp).	<ul style="list-style-type: none"> <li>RAIFs investing in a portfolio of risk capital (such as a SICAR). Access if set-up as a corporate entity (except if set-up under the form of a SCS/SCSp).</li> <li>RAIFs not investing in a portfolio of risk capital (such as a SICAR), but set-up as: SICAV / SICAF: Limited to certain double tax treaties (see circular L.G. -A n°61 of the tax administration of 8 December 2017). FCP: see circular L.G.-A n°61 of the tax administration of 8 December 2017.</li> </ul>	No.
<b>Benefit from the EU Parent Subsidiary Directive</b>	No.	No.	In principle yes, but certain jurisdictions where the target companies are located may challenge the application of the directive.	No, unless RAIF that invests in a portfolio of risk capital (such as a SICAR).	No.
<b>Thin capitalization rules (debt-to-equity ratio)</b>	Borrowings of up to 25% of net assets without any restrictions are allowed.	No debt-to-equity ratio.	No debt-to-equity ratio.	No debt-to-equity ratio.	No debt-to-equity ratio.
<b>Practical use</b>	Investment funds which could be used for investment strategies that do not meet the criteria set by the UCITS directives.	Hedge funds, private equity funds, venture capital funds, real estate funds, crypto funds, infrastructure funds, distressed debt funds, Islamic finance funds, microfinance funds, socially responsible investment funds, tangible assets funds and any other type of alternative funds.	Private equity and venture capital transactions.	Hedge funds, private equity funds, venture capital funds, real estate funds, crypto funds, infrastructure funds, distressed debt funds, Islamic finance funds, microfinance funds, socially responsible investment funds, tangible assets funds and any other type of alternative funds.	Private equity, venture capital and real estate investments and any other alternative investments.

## GLOSSARY OF TERMS

**AIF:** Alternative Investment Fund as defined by article 1 (39) of the AIFM Law, namely collective investment undertakings, including investment compartments thereof, which (a) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (b) do not require authorization pursuant to article 5 of Directive 2009/65/EC (i.e. UCITS).

**AIFMD:** Directive 2011/61/EU on alternative investment fund managers.

**AIFMD registration regime:** An AIFM that wishes to make use of the registration regime must have assets under management of less than EUR 100 million, or EUR 500 million if it manages only funds closed for at least 5 years not using leverage.

**AIFM:** A legal person whose regular business is managing one or more AIFs.

**AIFM Law:** Luxembourg law of 12 July 2013 on alternative investment fund managers (transposing the AIFM directive into Luxembourg law).

**AIFM Law threshold:** the thresholds provided for in article 3 (2) of the AIFM Law.

**CSSF:** The Luxembourg Supervisory Authority of the Financial Sector (*Commission de Surveillance du Secteur Financier*).

**Company Law:** The Luxembourg law of 10<sup>th</sup> August 1915 on commercial companies, as amended from time to time.

**FCP:** Common fund (*fonds commun de placement*).

**Part II UCI:** Undertaking for collective investment established under Part II of the Luxembourg law of 17 December 2010.

**RAIF:** Reserved alternative investment fund (*fonds d'investissement alternatif réservé*).

**S.A.:** Public limited liability company (*société anonyme*).

**S.à r.l.:** Private limited liability company (*société à responsabilité limitée*).

**SAS:** Simplified stock company (*société par actions simplifiée*).

**S.C.A.:** Corporate partnership limited by shares (*société en commandite par actions*).

**SCoSA:** Cooperative company organised as a public limited company (*société cooperative organisée comme une société anonyme*).

**SCS:** Common limited partnership (*société en commandite simple*).

**SCSp :** Special limited partnership (*société en commandite spéciale*).

**SICAF:** Investment company with fixed capital (*société d'investissement à capital fixe*).

**SICAR:** Investment company in risk capital (*société d'investissement en capital à risqué*).

**SICAV:** Investment company with variable capital (*société d'investissement à capital variable*).

**SIF:** Specialised investment fund (*fonds d'investissement spécialisé*).

**Well-informed investors:** A well-informed investor is an institutional investor, a professional investor or any other investor who has stated in writing that s/he adheres to the status of well-informed investor and invests a minimum of 125,000 Euro in the SIF/SICAR/RAIF, as applicable, or has been subject of an assessment made by a credit institution, by an investment firm or by a management company certifying his/her expertise, his/her experience and his/her knowledge to adequately appraise an investment in the SIF/SICAR/RAIF, as applicable.

## HOW CAN WE ASSIST YOU?

Our team:

- Supports you in finding the suitable vehicle to meet your requirements and your goals from a marketing, regulatory, legal and tax perspective;
- Introduces you to the suitable service providers, including custodian banks, authorised AIFMs, fund administrators, registrar and transfer agents and auditors, to meet your requirements;
- Provides assistance with the establishment of the (master) vehicle (i.e. drafting of the LPA, drafting and deposit of the extract of the LPA with the Luxembourg Trade and Companies Register, etc.), carried interest SCSp, co-investment SCSp and SPVs;
- Provides corporate support services throughout the lifetime of your vehicle, including amendment of fund documents and restructurings;
- Assists with the regulatory filing with the CSSF relating to the registration of the GP as external AIFM;
- Review of side letters;
- Provides advice on AIFMD-related issues;
- Provides advice to sponsors on local private placement rules for marketing their vehicle in Luxembourg;
- Keeps you up to date on new legal and regulatory developments.



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LUXEMBOURG LAW FIRM

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