



# Luxembourg Limited Partnerships

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With the improved Luxembourg limited partnership regime and the Luxembourg special limited partnership in its legal arsenal of investment vehicles dedicated to the alternative investment industry, Luxembourg offers state of the art solutions as a fund jurisdiction for alternative investment funds operations, 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.

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# 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.

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;
- 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 cross-border distribution of UCITS and alternative investments funds in EU;
- Investment-driven laws;
- Flexible and open-minded authorities; and
- High standard of living.

More than 61% of internationally distributed UCITS are domiciled in Luxembourg.<sup>2</sup>

With 14,808 funds/units and assets under management in excess of EUR 4,718 billion at the end of December 2019<sup>3</sup>, 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 vehicles.

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 accounts for more than a quarter of Luxembourg's GDP.<sup>1</sup>

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

1. Source: Statec - publication "Luxembourg in figures - 2020" - <https://statistiques.public.lu/catalogue-publications/luxembourg-en-chiffres/2020/luxembourg-figures.pdf>

2. Source: <https://www.alfi.lu/getattachment/9d40499c-fa3c-43d2-95f3-69cc2ba262d1/alfi-global-distribution-poster-2019-web-final.pdf>

3. ALFI website - <https://www.alfi.lu/en-GB/Annual-Report/2019-2020/The-year-in-figures/Industry-statistics>

# Alternative investments in Luxembourg

Thanks to its efficient and flexible tax and legal environment, Luxembourg has become the preeminent jurisdiction for structuring Alternative Investments Funds (AIF), private market deals as well as for Alternative Investment Funds Managers (AIFM). All strategies are represented in the country: Private Equity (PE), Private Debt (PD), Real Estate (RE), Venture Capital (VC) or infrastructure.

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 market investment firms coming to Luxembourg, setting up and structuring their funds and/or AIFM in the country. Historically, Luxembourg's AIF expertise has been closely linked to the 'Société de participation financière' (**SOPARFI**) which served as an acquisition vehicle in private market deals. However, the adoption in 2004 of the law on "Sociétés d'Investissement en Capital à Risque" (**SICARs**) really spurred the development of Luxembourg into a major hub for risk capital investments. According to the Luxembourg Private Equity Association ("LPEA") and PwC research, the number of SICARs registered in 2019 stood at 402.

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 AIF and structuring. LPEA and PwC figures for 2019 counted 1,517 SIFs.<sup>4</sup>

More recently, the law of 23 July 2016 introduced the Reserved Alternative Investment Funds (RAIF) in Luxembourg. This AIFMD compliant product, non-supervised by CSSF, features a much faster time to market than its predecessors. With the ability to opt for two different tax regimes, SIF-like or SICAR-like, it illustrates the continuous commitment of the country toward the innovation in market-oriented investment products.

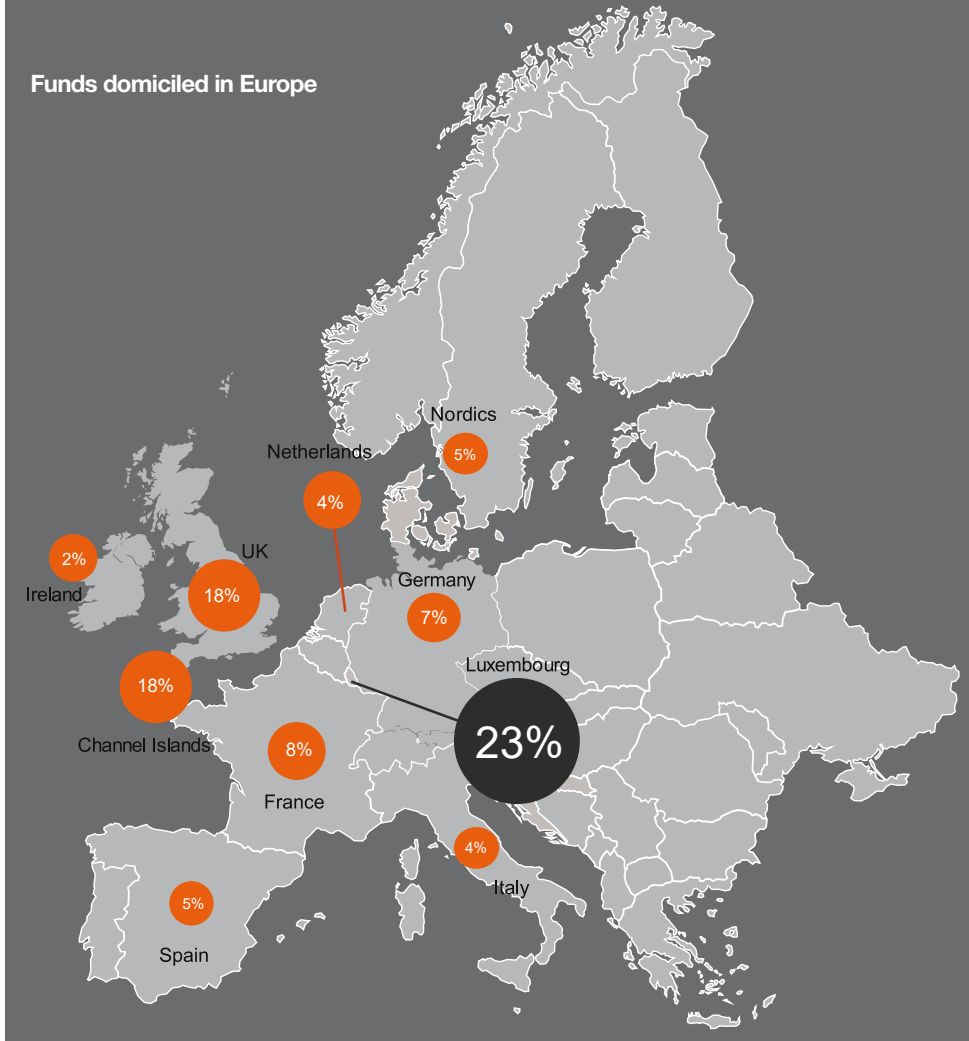
The introduction of these regulations shows that Luxembourg is highly committed to this activity in both the public and private sector. We believe that this coherence is vital as the expertise of all players and service providers is needed to support the Grand Duchy as an AIF hub.

Traditionally, alternative investments firms have been reluctant to submit their funds to regulation. The majority of AIF 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 a high contractual/corporate flexibility.

4. Source: LPEA and PwC - <https://www.lpea.lu/facts-and-figures/>

### Funds domiciled in Europe

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 investments industry, Luxembourg is now regarded as one of the primary jurisdictions for re-domiciling (unregulated) offshore funds and setting up a Europe-based AIFM.



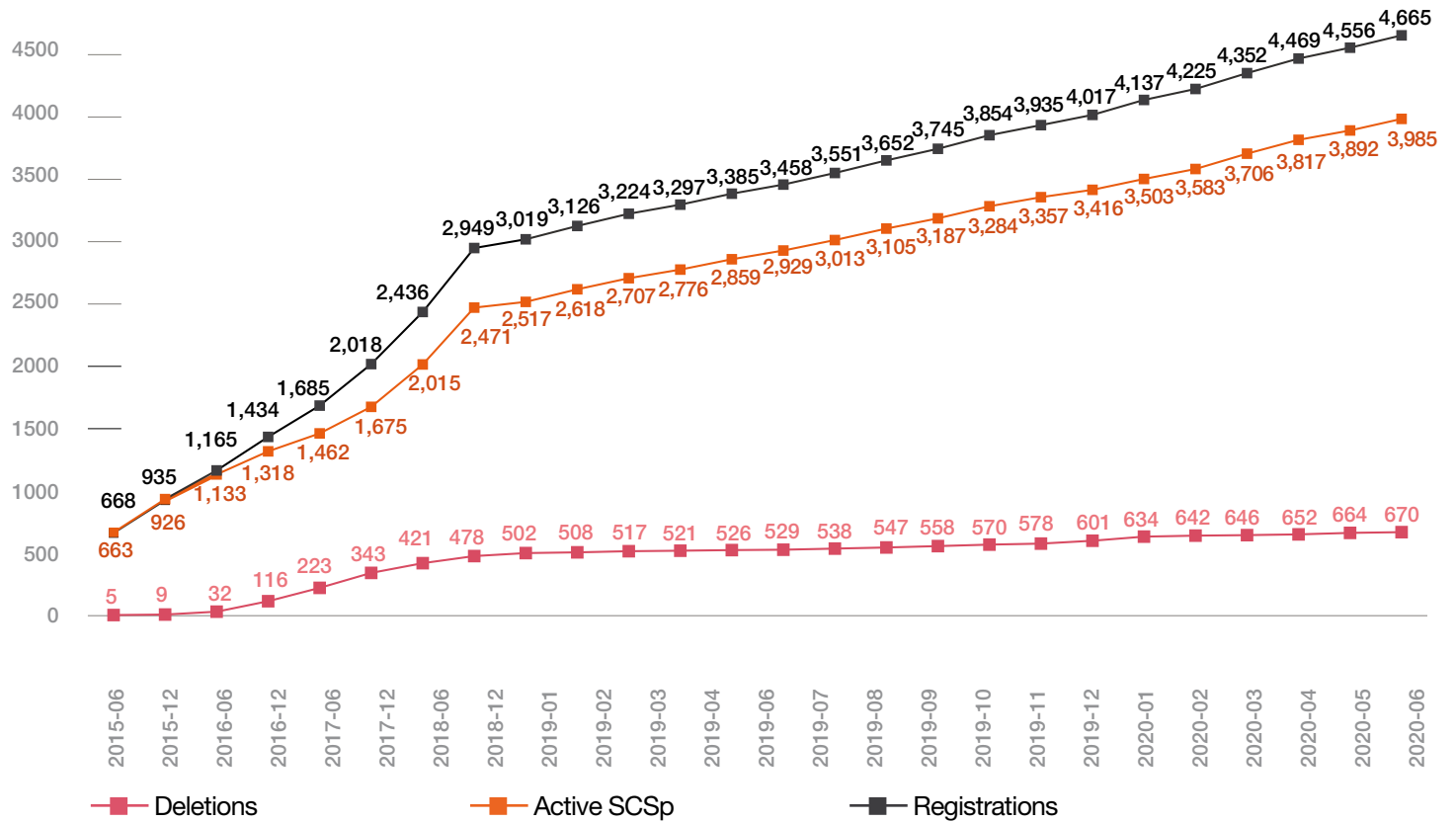
Source: Preqin data, based on domiciles for PE, RE, Infra and Debt funds – 20 May 2020

A large number of alternative investments 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. Also, many of these alternative investments 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/SIF regimes, or for unregulated onshore Luxembourg

funds mostly under the form of SCSp, including under the RAIF regime, with regulated AIFM, often to the benefit of their attractiveness to investors.

Evolution SCSp market in Luxembourg



Source: RCSL - Statistiques de dépôt, PwC analysis



# 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 imposed a requirement that tax treaty benefits could only be available if the intended beneficiary had "substance". This goal is now being achieved through tax treaty changes progressively entering into force between signatories of the OECD-sponsored Multilateral Convention to implement tax treaty related measures to prevent BEPS ("MLI").

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'être" will continue to qualify for the low or no withholding taxes, and other reliefs, that tax treaties offer. Effective as of January 1<sup>st</sup> 2016, the EU parent/subsidiary directive benefits only apply to arrangements that have valid commercial reasons which reflect economic reality.

Fund managers already acted and adapted — and there is still 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 2008 financial crisis instigated the emergence of new regulations and requirements in terms of compliance. International regulations like FATCA, AIFMD, Solvency II, MiFID and the Dodd-Frank act, are challenges that AI 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 2013 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 2013 Law, the common limited partnership with legal personality ('société en commandite simple' or **SCS** and hereafter referred to as "**Lux LP**" or "Lux SCS"), 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 of the SCS was enhanced. Importantly, the new provisions also saw the introduction of a new partnership form without legal personality ('société en commandite speciale' or **SCSp**, hereafter referred to as "**Lux SLP**" or special limited partnership).

The 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.

With its improved Lux LP regime, and the addition of the Lux SLP to its legal arsenal of investment vehicles dedicated to the alternative investment industry, Luxembourg offers solutions as a jurisdiction for AIFs, private market deals 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, as long as the AIFM

in charge is authorised and also located in the EU.

The Lux LP and the Lux SLP are legal forms governed by the Company Law. They may be, supervised by the CSSF and governed by the SIF, Part II or the SICAR laws. A Lux LP or Lux SLP may also be set up as non-supervised product falling under the definition of AIF depending on the specifications set out in the AIFMD or as a RAIF.

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

In 2015, the OECD published its final report on BEPS Action 2 on Neutralising the Effects of Hybrid Mismatch Arrangements (BEPS Action 2 Report). In Europe the OECD recommendations of BEPS Action 2 Report have been implemented through Council Directive (EU) 2016/1164 of 12 July 2016 ("ATAD 1") and Council Directive (EU) 2017/952 of 29 May 2017 ("ATAD 2").

“ Lux SLP is the twin brother of Anglo-Saxon LP.

ATAD 2 had to be transposed by Member States in their domestic laws by 31 December 2019. Anti-hybrid rules targeting hybrid mismatched between EU Member states but also with third countries are thus in effect in most EU Member States since 1 January 2020. Luxembourg LP and SLP may not as such be in scope of ATAD 2 anti-hybrid rules before tax year 2022. Partnerships transparent for direct tax purposes in their country of establishment (such as the Lux LP and the Lux SLP in Luxembourg but also any partnership in any other jurisdiction even outside the EU), may however raise hybrid mismatch questions in the investment structure and in the investment countries, depending on who the partners in the partnership are and whether the tax rules of the country of residence of such partners consider the partnership as transparent or opaque.

Effective as from the tax year 2022, Lux LP and Lux SLP, like other partnerships in other Member States, may become liable to corporate income tax under specific circumstances also primarily dependant on how investors consider the partnership for tax purposes under the laws of their residence jurisdiction.

In light of the complexity of these new rules and potential impact, there may be a renewed interest of fund promoters and managers as well as investors for corporate forms of funds such as the Luxembourg SCA set up as a SIF, a SICAR or as RAIF.

**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, RAIFs and SICARs being the type of regulated vehicles commonly used in the private investment industry, Part II regulated funds are not covered in details in this publication.**

# 2



## The Lux SLP, a multi-purpose vehicle

The SLP is a legal form that aims at extending the range of legal solutions available in Luxembourg for structuring both alternative investment funds, and dedicated vehicles to the alternatives industry.

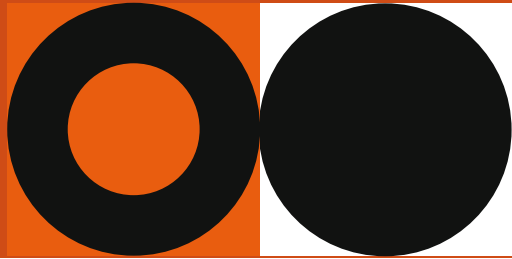




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# Legal features



# Legal features of the Lux LP and Lux SLP

The corporate features of the 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 commitment (the LPs), and the 'unlimited partners', who can be liable without limitation for the debts of the partnership that cannot be met out of the assets of the partnership (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 constitutive 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.

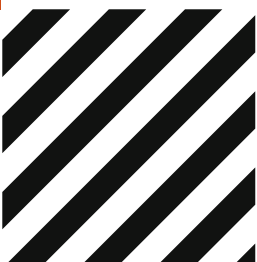
A large flexibility is granted to the partners as regards the organisation and the functioning of the vehicle through the LPA.

The following matters can be freely determined in the LPA: the quorum and majority rules, the conditions upon which the general partner can be removed, the admission of new partners, the issue of and form of 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);
- 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 principle of one share - one vote does not necessarily apply;
- Voting rights as well as economic rights may be determined freely in the LPA;
- The Lux LP has to be managed by the GP, which can delegate some of its powers to a third party (e.g. an AIFM);
- The LPs can be part of advisory or supervisory boards without normally challenging their limited liability;
- 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 under certain conditions);
- There is no specific requirement or rules for distribution; carried- interest and claw-back mechanisms are allowed but not mandatory;
- The transferability, stripping and pledging of the units can be freely determined by the LPA (the default rule being the acceptance by the GP).

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 and companies register ('Registre de Commerce et des Sociétés'). Only the denomination, the duration, a precise designation of the GP(s) and designation of the manager(s) and their signatory powers will be published.<sup>5</sup>

## Extension of the roles of the partners

The traditional Lux LP prohibited LPs from assuming any management tasks unless 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. This list is non-exhaustive and allows for a tailor-made governance provided that the LPs do not represent the Lux LP toward third parties.

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;
- Payment of penalty interests;
- Forced sale or redemption (possibility of having the selling or redemption 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 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.”

5. This does, however, not abolish the anti-money laundering and know-your-customers regulations in place.



## 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). Provided that the regulatory regime of the Lux SLP allows to do so (e.g. SIF, SICAR or RAIF), the Lux SLP can have compartments, where the assets of each compartment will only be available to the creditors and partners of the relevant compartment. The same possibility to have compartments applies to Lux LP.

## 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 a 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.

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# Key elements of a 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:

Main sections of the LPA	Free determination in the LPA
<ul style="list-style-type: none"> <li>✓ Voting rights</li> <li>✓ Partners decisions</li> <li>✓ Transfer of partnership interests</li> <li>✓ Addition of partners and increase in capital commitment</li> </ul>	Restriction on voting, method of giving consent, conditions for admission of new partners, pre-emptive rights, conditions for transfers.
<ul style="list-style-type: none"> <li>✓ Capital contributions</li> <li>✓ Amount and priority of distributions</li> <li>✓ Special allocation</li> </ul>	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. 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.
<ul style="list-style-type: none"> <li>✓ Repayment of partners loans or capital</li> <li>✓ Management</li> </ul>	All LPA matters, no claw-back imposed by law. By GP, a manager, or a board. Governance rules to be defined in the LPA.
<ul style="list-style-type: none"> <li>✓ Excuse and exclusion procedures</li> </ul>	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.
<ul style="list-style-type: none"> <li>✓ Reports to Partners</li> <li>✓ Confidentiality</li> <li>✓ Audit</li> </ul>	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.
<ul style="list-style-type: none"> <li>✓ Rights of Partners</li> <li>✓ Liability of Partners</li> </ul>	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.
<ul style="list-style-type: none"> <li>✓ Dissolution</li> <li>✓ Termination</li> <li>✓ Dispute jurisdiction</li> </ul>	Definition of events warranting dissolution, distribution allocation. Confirmation of applicable laws and jurisdiction provision.

As an indication, an LPA may range from ten to a few hundred pages.

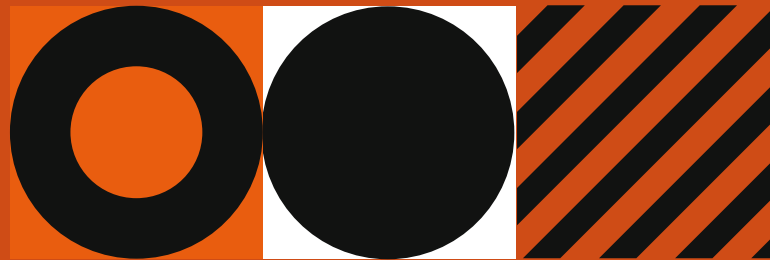
**However, the LPA provision cannot be in contradiction with the laws in place:**

Alternative investment structure	LUX LP/Lux SLP
<ul style="list-style-type: none"> <li>✓ Regulated</li> </ul>	<ul style="list-style-type: none"> <li>✓ SIF</li> </ul> Law of 13 February 2007, as amended + law of 12 July 2013 if AIF
	<ul style="list-style-type: none"> <li>✓ SICAR</li> </ul> Law of 15 June 2004, as amended + law of 12 July 2013 if AIF
	<ul style="list-style-type: none"> <li>✓ RAIF</li> </ul> Law of 23 July 2016 + law of 12 July 2013
<ul style="list-style-type: none"> <li>✓ Unregulated</li> </ul>	<ul style="list-style-type: none"> <li>✓ SOPARFI</li> </ul> Law of 10 August 1915 + law of 12 July 2013 if AIF

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# Accounting and valuation



# Accounting and valuation aspects

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

Unregulated vehicles		
Type of structure	Lux LP*	Lux SLP
Applicable accounting framework	Luxembourg GAAP; IFRS as adopted by the European Union.	Any accounting framework as defined in the LPA.
Valuation of investments	Cost minus durable impairment; fair value; net equity method; Lower of Cost or Market.	Freely determined in the LPA.
Filing of the annual accounts	Accounts to be filed with RCS depending on the case.	Not required.
Use of Standard Chart of Accounts (PCN)	Yes, required	Not required.
Consolidation requirement	It depends (see conditions below).	Freely determined in the LPA.
Distribution rules	Freely determined in the LPA.	Freely determined in the LPA.
Legal reserve requirement	Not required.	Not required.
External audit	It depends (see conditions below).	Freely determined in the LPA.

Supervised Vehicles (SICARs/SIFs)		
Type of structure	Lux LP*	Lux SLP
Applicable accounting framework	Luxembourg GAAP; IFRS as adopted by the European Union.	Luxembourg GAAP; IFRS as adopted by the European Union.
Valuation of investments	Fair value (for SIFs: Fair value unless otherwise stated in the articles of incorporation).	Fair value (for SIFs: Fair value unless otherwise stated in the articles of incorporation).
Filing of the annual accounts	Accounts to be filed with the CSSF and with the RCS.	Accounts to be filed with the CSSF.
Use of Standard Chart of Accounts (PCN)	Not required.	Not required.
Consolidation requirement	Exemption.	Exemption.
Distribution rules	Freely determined in the LPA.	Freely determined in the LPA.
Legal reserve requirement	Not required.	Not required.
External audit	Required.	Required.

\* 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, similar to those of a SLP. 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.

Regulated Vehicles (RAIF)		
Type of structure	Lux LP*	Lux SLP
Accounting Framework	Luxembourg GAAP; IFRS as adopted by the European Union.	Any accounting framework as defined in the LPA **
Valuation of Investments	Fair value unless otherwise stated in the articles of incorporation.	Fair value unless otherwise stated in the articles of incorporation.
Filing of the annual accounts	Filed with the regulator of the AIFM and the RCS.	Filed with the regulator of the AIFM.
Use of PCN	Required.	Not required.
Consolidation requirement	Exemption.	Exemption.
Distribution Rules	Freely determined in the LPA.	Freely determined in the LPA.
Legal Reserve Requirement	Not required.	Not required.
External audit	Required.	Required.

\*\* In accordance with AIFMD, all information provided in the annual report, including the information specified in this section, shall be presented in a manner that provides materially relevant, reliable, comparable and clear information. The annual report shall contain the information investors need in relation to particular AIF structures.

## 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 2013 Law.

## Main considerations for Lux SLP

### Applicable accounting principles

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)<sup>6</sup>. Consequently, these GAAP will determine how the assets of a Lux SLP should be valued (fair value, historical cost or based on principles defined in the LPA).

### Filing

No filing is required for the Lux SLP. As a consequence, if accounts are demanded by the investors, their format will most likely follow alternative investment industry market practice<sup>7</sup>.

### Audit requirement

A Lux SLP is not required to appoint an auditor according to the provisions of the Company Law. However, for 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.). 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 SLP will have to appoint an external auditor (Réviseur d'entreprises agréé).

### 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 SLPs consists in the accounting framework to be maintained at entity level and at each partner level. The Lux SLPs are exempted from having to use the standard chart of accounts (PCN).

As any other company, Lux LPs and Lux SLPs qualifying as an AIF comply with AIFMD-specific requirements. These additional requirements include, amongst others, minimum content of the annual report and activity report.

6. Subject to the application of the European directive EU/34/2013 and related directives (the "Accounting Directives").
7. For tax purposes, Lux GAAP accounts could have to be filed along with the tax return, with the tax authorities, even in case of full tax transparency.

## AIFMD Impacts

Elements impacted	Impacts
Financial statements	Additional disclosure in accordance with Art. 22 of the directive 2011/61/EU
Audit	Required
Filing of the annual account	Filed with the regulator of the AIFM

## Specificities of a Lux LP

### 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, 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 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.

These Lux LPs will have to publish their annual accounts.

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

## Supervised and Regulated vehicles

### Applicable accounting principles and filing

SIF and 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.

RAIF are not supervised by the CSSF (their AIFM is). Their accounts are to be made available by their AIFM upon investors or regulator’s request.

### Consolidation

According to their respective laws (SICAR Law, RAIF Law or SIF Law), SICARs, RAIFs or SIFs 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 SICAR, RAIF or SIF have to be audited by a “Réviseur d’entreprises agréé” within 6 months of the closing date.

### Financial statements presentation

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

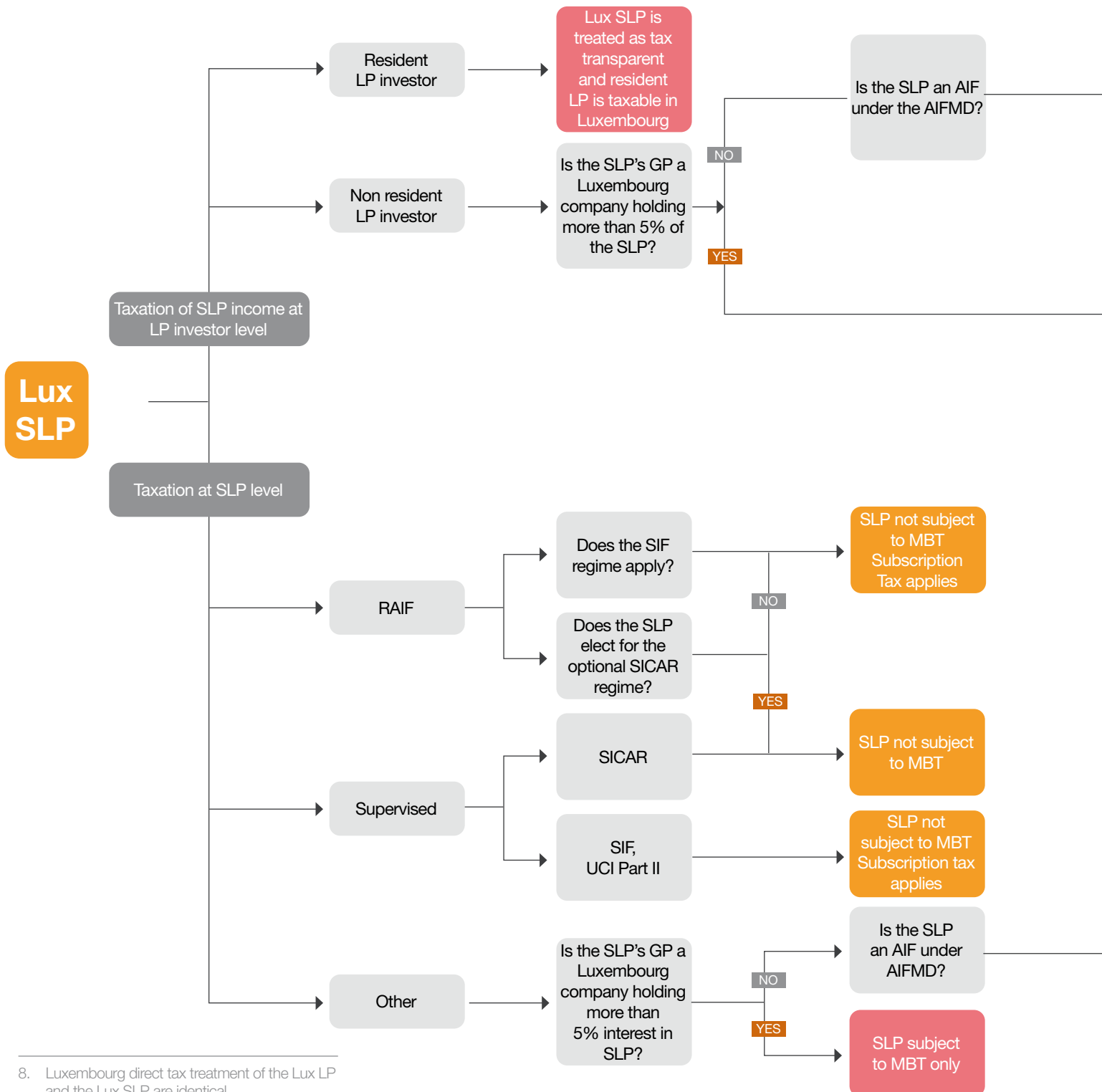
As any other company, Lux LPs and Lux SLPs qualifying as an AIF comply with AIFMD-specific requirements. These additional requirements include, amongst others, minimum content of the annual report and activity report.

# 6



# Taxation aspects

## Direct Taxation aspects<sup>8</sup>



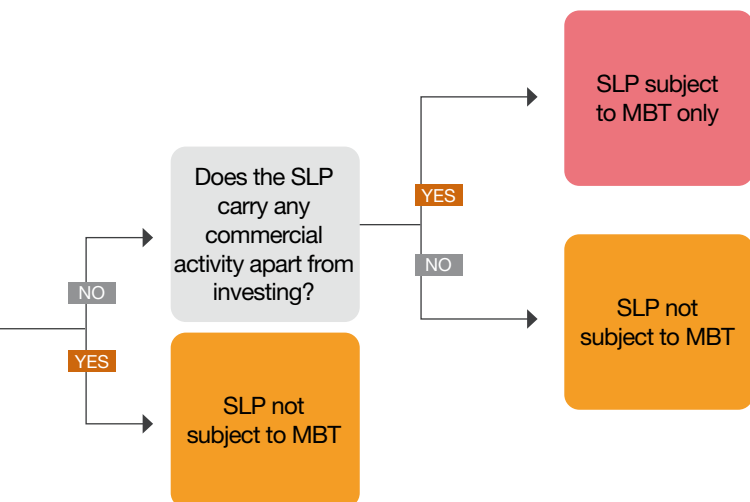
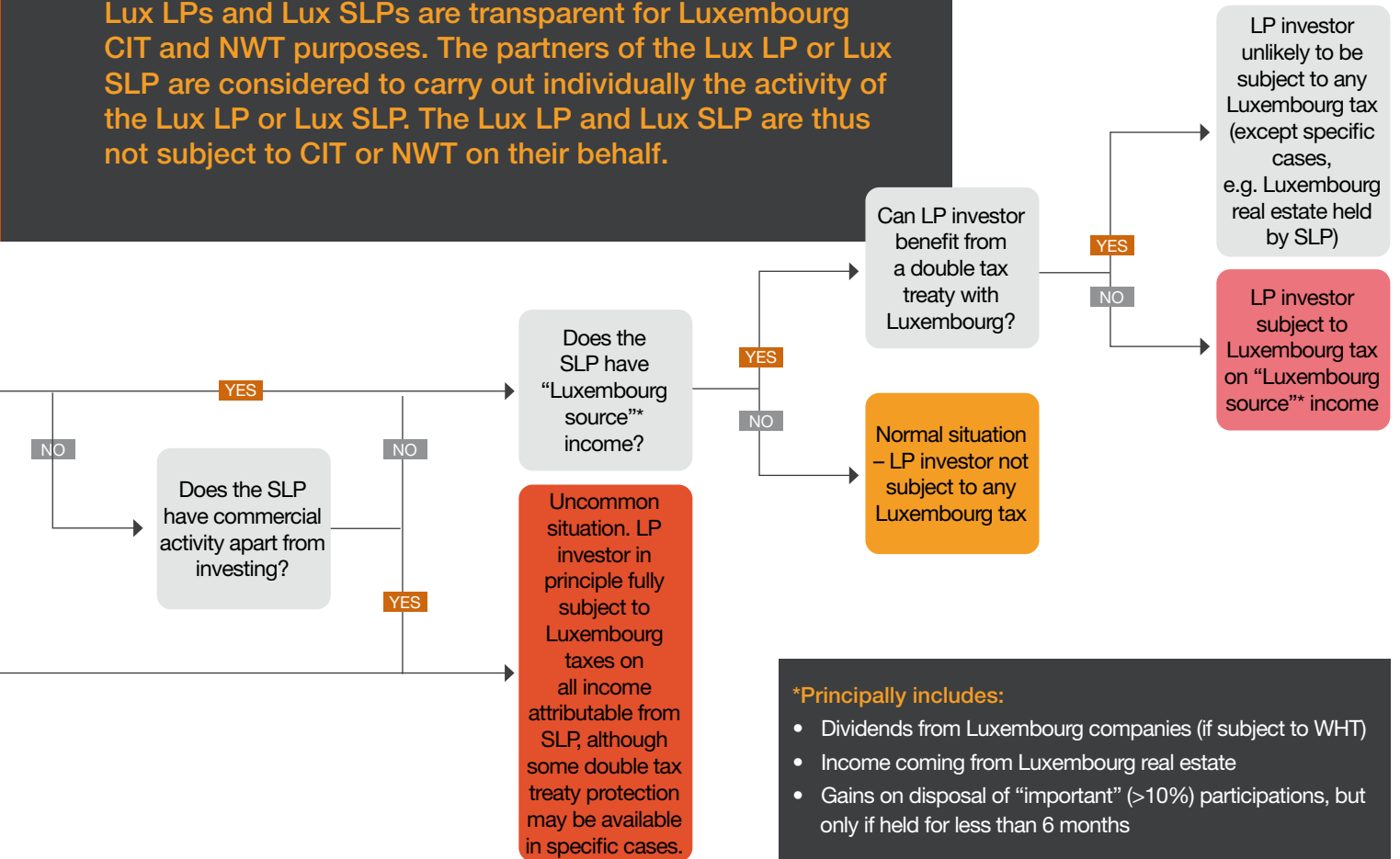
8. Luxembourg direct tax treatment of the Lux LP and the Lux SLP are identical.



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

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



A Luxembourg SCSp should be considered as a VAT taxable person in its own right (despite the absence of legal personality), distinct from its GP, to the extent that the SCSp's activities qualify as economic activities conferring the status of VAT taxable person. Luxembourg LPs and Luxembourg SLPs are subject to the same VAT treatment.





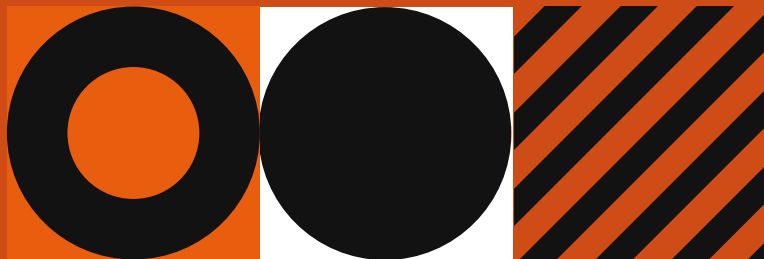
# Glossary

<b>AI</b>	Alternative Investments
<b>AIF</b>	Alternative Investment Fund as defined in the AIFMD
<b>AIFM</b>	Alternative Investment Fund Manager as defined in the AIFMD
<b>AIFMD</b>	Alternative Investment Fund Manager Directive, Directive 2011/61/EC
<b>CIT</b>	Corporate Income Tax
<b>Company Law</b>	Luxembourg law dated 10 August 1915 as amended
<b>CSSF</b>	Commission de Surveillance du Secteur Financier (commission for the supervision of the financial sector - Luxembourg financial regulator)
<b>DTT</b>	Double Taxation Treaties
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>GP(s)</b>	General Partner(s)
<b>IFRS</b>	International Financial Reporting Standards
<b>Invest Europe</b>	European Private Equity and Venture Capital Association
<b>2013 Law</b>	Luxembourg law dated 12 July 2013 implementing the AIFMD and creating the LUX SLP
<b>LP(s)</b>	Limited partner(s)
<b>LPA</b>	Limited Partnership Agreement
<b>Lux LP</b>	Société en Commandite Simple (SCS) or Limited Partnership (LP)
<b>Lux LP Light</b>	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
<b>Lux SLP</b>	Société en Commandite Spéciale (SCSp) or Special Limited Partnership (SLP)
<b>m</b>	Million
<b>M&amp;A</b>	Mergers & Acquisitions
<b>MBT</b>	Municipal Business Tax
<b>MiFID</b>	Markets in Financial Instruments Directive
<b>MIP</b>	Management Incentive Plan
<b>NWT</b>	Net Wealth Tax
<b>PCN</b>	“Plan Comptable Normalisé” (Standard Chart of Accounts)
<b>PE</b>	Private Equity
<b>PPM</b>	Private Placement Memorandum
<b>RAIF</b>	Reserved Alternative Investment Fund
<b>RCS</b>	Registre de Commerce et des Sociétés (Trade and Companies Register)
<b>RCS Law</b>	Law of 19 December 2002 on the register of commerce and companies and the accounting and annual
<b>SCA</b>	Société en Commandite par Actions (partnership limited by shares)
<b>SCS</b>	Société en Commandite Simple (limited partnership)
<b>SCSp</b>	Société en Commandite Spécial (Special limited partnership)
<b>SICAR</b>	Société d’Investissement en Capital à Risque
<b>SICAR Law</b>	Luxembourg law dated 15 June 2004
<b>SIF</b>	Specialised Investment Fund governed by the Law of 13 February 2007
<b>SIF Law</b>	Luxembourg law dated 13 February 2007
<b>SOPARFI</b>	Société de participation financière (holding company)
<b>UCITS</b>	Undertaking collective investment fund in transferable securities governed by Directive 2009/65/EC
<b>UCI</b>	Undertaking for Collective Investment, governed by the Law of 17 December 2010
<b>VAT</b>	Value Added Tax

# 8



# 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 700 experienced multilingual specialists are ready to assist you in the provision of cross-competency Alternatives 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:



<https://www.pwc.lu/alternatives>

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