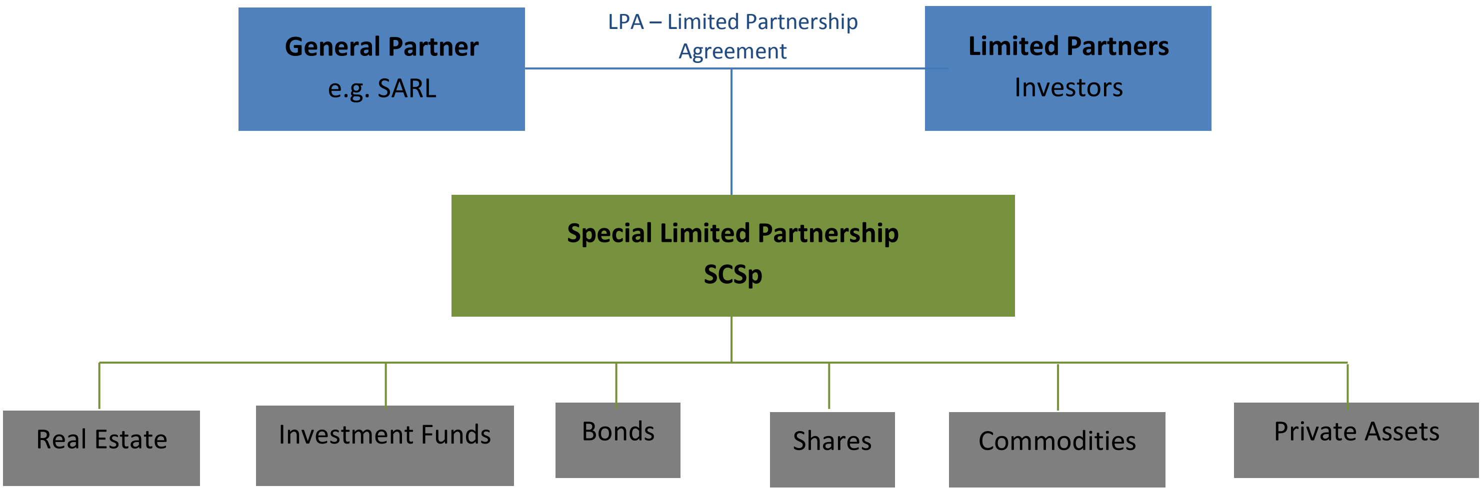
Special Limited Partnership - SCSp

Société en commandite spéciale

Special Limited Partnership - société en commandite speciale (SCSp)

The recent EU Directive on Alternative Investment Fund Managers ('AIFMD') transposed to the Luxembourgish law expanded the corporate legal framework by introducing a new form of limited partnership - a special limited partnership (société en commandite special or a SCSp).

The new SCSp is similar to the Anglo-Saxon Limited Partnerships, which are characterized by the corporate flexibility and tax transparency. Therefore, the new SCSp's shall be particularly attractive to investors, in in the fields of real estate and private equity sector. The main specificity of the SCSp is that it is not vested with legal personality, although the assets can be registered in the name of the partnership.



In regard to application of income tax the Luxembourg Tax Law (LTL) considers that such SCSp's are deemed as tax transparent. The Bill states that, if the General Partner has the form of Luxembourg company and holds less than 5% of interest in the Spiecial Limited Partnership (SCSp), the income of the SCSp will not be deemed to be a business income. Consequently if the activity of the SCSp is restricted to the management of the private wealth (typical for Real Estate and Private Equity funds) the income of SCSp should not be classified as business income.

Main Characteristics:

No legal personality – Contractual freedom – Lack of minimal capital, as well as no subscription minimum – No legal reserve required - No need for auditing contributions in kind – Legal ownership of assets – Possibility of issuance of debt securities – Represented by the GP, which is the only published partner – Multiple voting rights – Not mandatory annual accounts – Bookkeeping required – Publication of the annual accounts not required (statistical report only)

Construction of the Special Limited Partnership

- The partnership needs to have at least one limited and one unlimited partner. The roles of the limited and unlimited partners can be performed by the same person, nevertheless partners have to be a legally separated entities (e.g. same beneficial owner of two different companies).

- The partnership is created from the moment of signing the limited partnership agreement (LPA). The LPA may be concluded under the form of a private deed, and as such does not require the intervention of a notary.

- Only an extract of the LPA is published which means that names of the limited partners are not publicly available

- The partnership can be set for a limited or unlimited duration

- The partnership needs to maintain the register with shareholders

- The Bill states that assets or property of the Special Limited Partnership are to be registered directly in the name of the SCSp.

- The assets of the SCSp will only guarantee the debts and liabilities of the partnership itself and not those of its partners.

Contractual Prerogatives

- The voting and distribution rights do not need to be proportional to the contributions of partners and can be freely determined by the partnership agreement

- Rights to information can be restricted in the partnership agreement, as well as the access of the partners to the shareholder registry

- Partnership interests can take the form of cash, contribution in kind

- Partnership interests can be represented by securities, which can be issued freely including for new partners as per the limited partnership agreement

- The partnership can issue debt securities

For more details, please contact us directly

25A Boulevard Royal, L-2449 Luxembourg

Tel : (+352) 20 21 29 Fax : (+352) 20 21 29 99

info@finexis.lu

INDEPENDENCE
INNOVATION
CREATIVITY

Stay in Touch

25A Boulevard Royal
L-2449 Luxembourg
Tel : (+352) 20 21 29
Fax : (+352) 20 21 29 99
email: christian.denizon@finexis.lu
email: tom.bernardy@finexis.lu
www.finexis.lu