



 **Special Limited
Partnership (SCSp)**

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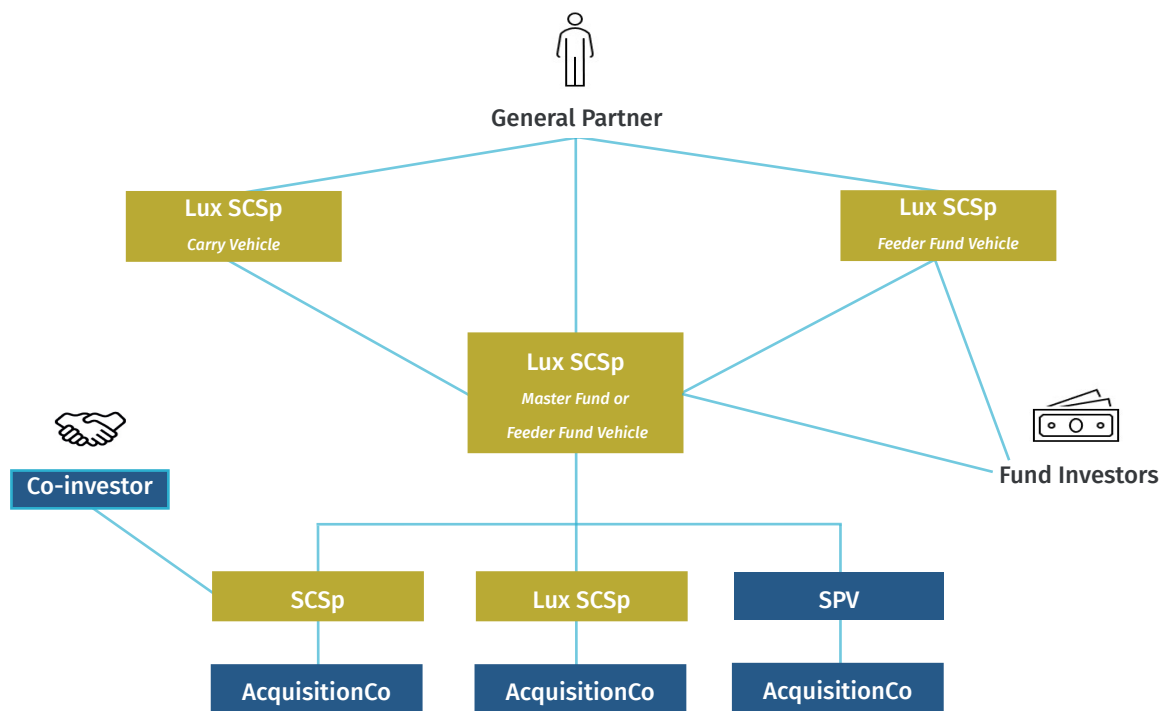
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Special Limited Partnership



The introduction of the Luxembourg special limited partnership or *Société en Commandite Spéciale (SCSp)* in 2013 filled a notable gap in the alternative investments market and expanded the solutions available for structuring funds and real estate transactions in Luxembourg.

The SCSp is a limited partnership which is predominantly used as a fund vehicle, originated in Luxembourg in 2013 as a by-product of the transposition of the Alternative Investment Fund Manager Directive (AIFMD) into Luxembourg Law. The Law of 12 July 2013 (the AIFM Law) created a product for Fund Managers in Luxembourg that was flexible and mirrored the form of an English Limited Partnership, which was recognised in Europe as the industry standard. A Luxembourg SCSp has no legal personality and therefore requires a General Partner (GP) to be appointed to ensure governance and compliance with the Limited Partnership Agreement (LPA).



Due to the flexible nature of the SCSp, it permits investments from individual investors, institutional investors and other limited partnerships and fund vehicles. Fund structures can take many forms, as demonstrated above. The flexibility of structuring a fund in Luxembourg using SCSPs mean that the SCSp can be used as a master fund, a feeder fund, a parallel fund, a carry vehicle and a special purpose vehicle. The SCSp also give flexibility to fund investors that have specific requirements.

Establishment



An SCSp is established through a LPA between one or more GPs and one or more Limited Partners (LP). It may be set up with as few as two partners, so long as there is one general partner and one limited partner that are different legal persons.

The LPA may be concluded in the form of a notarial deed or a private agreement executed by signature extracts of which are submitted to the Luxembourg trade and companies register, Registre de Commerce et des Sociétés (RCS), within one month of the establishment of the Partnership.

It is possible to use an SCSp structure to establish an unregulated Partnership, provided the Partnership is not in-scope of any legislation deeming it to be a regulated entity, for example, the AIFM Law which provides for the regulation of AIFMs that manage, in aggregate, closed-ended AIFs in excess of EUR 500m. There is no minimum share capital required for an SCSp and it can take any available name. This can be checked on the RCS prior to establishment of the vehicle.

	Special Limited Partnership (SCSp)	Common Limited Partnership (SCS)	Partnership Limited by Shares (SCA)
Establishment	Partnership Agreement		
Notarial Deed Required	Optional		Yes
Legal Personality	No	Yes	
Domiciliation	Yes		
Minimum Capital	No		€30,000 (25% paid in)
Shareholding	One or more GPs and one or more LPs. No upper limit.		
Liability	GPs are indefinitely jointly and severally liable. LPs are liable up to the amount committed.		
Publication	Only limited excerpts of the LPA are subject to publication. No mandatory disclosures of the limited partners.	Articles of Association are published. No mandatory disclosures of limited shareholders	

Tax Treatment



One key advantage of SCSp structures, is that these vehicles benefit from full tax transparency in terms of both corporate income tax (CIT) and net wealth tax (NWT).

Non-resident investors are not subject to CIT or NWT in Luxembourg, making it a very attractive vehicle for foreign investment. Any distributions paid via the Partnership are also not subject to a withholding tax.

Due to its tax transparent status, SCSs and SCSps cannot utilise Luxembourg's extensive double taxation treaty network in the same way as an SCA.

An unregulated SCSp may in certain cases be subject to municipal business tax wherein it is deemed to be a business enterprise. Such instances include whereby a GP holds more than a 5% interest in the SCSp and if the SCSp carries on any commercial activity other than investing.

An SCSp may qualify as a VAT taxable person, however, if the SCSp also qualifies as an AIF, any management services provided by the general partner may be VAT exempt. If the Partnership receives services from another jurisdiction it will be required to register for VAT and provide a simplified, annual return.

	Special Limited Partnership (SCSp)	Common Limited Partnership (SCS)	Partnership Limited by Shares (SCA)
Tax Transparency	✓	✓	✗
Benefit from Double Tax Treaties	✗	✗	✓
Corporate Income Tax	✗	✗	✓
Net Worth Tax	✗	✗	✓
Municipal Business Tax	✗ *	✗ *	✓

* provided that the general partner holds less than 5% of the partnership interests

Management and Administration



An SCSp cannot be established on its own, due to its lack of legal personality. In this instance, it is essential for a GP to be incorporated prior to the establishment of an SCSp. Thereafter, the GP can establish the SCSp under private seal.

The GP of an SCSp is responsible for the performance of its mandate as an agent of the limited partnership and for any misconduct in the management of the partnership's affairs. An SCSp requires both a GP and a Limited Partner to be established and so the GP will also be jointly and severally liable towards the partnership and any third parties for damages resulting from violations of Luxembourg Law on commercial companies, or the terms of the partnership agreement.

The entitlements and voting rights of partners can be freely organised under the partnership agreement. If entitlements are not covered in the agreement, each partner participates in the profits and losses in proportion to its partnership interests. In most situations, the choice of SCSp is driven by investors' considerations. Contractual flexibility in terms of framing the relationship between the promoter and the investors makes the SCSp attractive from a fund management structuring perspective.

It may also be considered as a suitable form for a feeder fund or carry vehicle set up by a fund's promoter to accommodate investment into the fund by one or more investors who have particular needs or obligations that are not shared by all of the target investors for the fund. The contractual flexibility of the SCSp regime also favours the use of an SCSp as a co-investment vehicle, a vehicle typically formed to accommodate investments by one or more investors on a deal-by-deal basis into assets such as real estate projects where the lead participant is a real estate fund.

	Special Limited Partnership (SCSp)	Common Limited Partnership (SCS)	Partnership Limited by Shares (SCA)
Transfer of Shares/Units	Freely determined in the partnership agreement		Freely determined in the Articles of Incorporation
Management	By the GP or an external manager		
Collective Decisions	LP agreement to provide the rules applicable to collective decisions. Mandatory rules only in relation to specific matters.		Partners' resolutions are generally adopted by a simple majority of the votes. Mandatory rules in relation to specific matters.
Video conferencing	May be allowed in internal rules.		
General Meeting	No requirement	One AGM required	One AGM required
Voting Rights	Voting power determined in partnership agreement. None, limited or multiple is permissible.		One share, one vote principle. Non-voting ordinary shares are permitted. Non-voting preference shares permissible.
Contributions	In case, in kind or other form of services		In case or in kind only

Regulations and Reporting Obligations



In terms of regulatory reporting obligations, SCSp's are not always subject to a specific regulatory status.

As such there are limited reporting obligations, in particular for SCSp's that are considered AIFs and are "sub-threshold AIFs" i.e. where an AIF is open-ended and its AIFM manages less than EUR 100m or where an AIF is closed-ended and its AIFM manages less than EUR 500m."

If a fund vehicle is set up as an unregulated SCSp, it is governed principally by the provisions of the main legislation on Luxembourg company law. AIFMD legislation may also apply, where an SCSp is considered an AIF.

It is the responsibility of the GP or any appointed third-party to maintain a register of its Limited Partners containing:

- (i) a full and up-to-date copy of the partnership agreement, including any side letters or subscription agreements; and
- (ii) a list of all partners including their first and last names, occupations and private or professional addresses or, for legal entities; their corporate denomination or name, legal form, address, registration number, the partnership interests held by each partner a record of transfers of partnership interest and the date of service or acceptance thereof.

	Special Limited Partnership (SCSp)	Common Limited Partnership (SCS)	Partnership Limited by Shares (SCA)
Listing	Yes, (but no public offering).		Yes
Debt Instruments Permitted	Yes		
Accounting Obligations	Limited accounting obligations *	Annual only if turnover exceeds €100,000 *	Annual
Independent Auditor	Not required *	Required if the partners are an SA, SARL or SCA, or 2/3 of the following criteria are met: >50 employees, annual turnover is >€8.8 million and total assets >€4.4 million.	Required if 2/3 of the following criteria are met: >50 employees, annual turnover is >€8.8 million and total assets >€4.4 million.
Accounting Principles	Unregulated vehicles have no requirement *	Unregulated vehicles have no requirement if turnover is below €100,000 *	LUX GAAP or IFRS

How we can help

Our team in Luxembourg can assist with the incorporation of the General Partner, establishment of fund partnership vehicles and any holding entities within the structure. The Cafico International team, which seeks to act as an extension of your business, will work closely with lawyers, notaries, banks and other intermediaries to ensure the smooth process of the incorporation of your Luxembourg structure.

We will take ownership of all filings, accounting, financial statements preparation and tax compliance of each vehicle alongside any statistical and regulatory reporting (where required), working alongside you as a client, keeping you informed every step of the way.



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