

ELVINGER HOSS

LUXEMBOURG LAW

Luxembourg Partnerships
in the asset management industry



TABLE OF CONTENTS

INTRODUCTION.....	3
CHAPTER I: PARTNERSHIPS IN THE LUXEMBOURG TOOLBOX.....	4
1. Types of partnerships.....	4
2. Regulatory options available.....	5
CHAPTER II: MARKETING AND LISTING.....	7
1. Marketing to professional investors.....	7
2. Marketing to non-professional investors.....	7
3. Listing.....	7
CHAPTER III: MAIN LEGAL FEATURES OF THE SCS AND SCSP.....	8
1. Contractual freedom.....	8
2. Formation and partners.....	8
3. Capital.....	8
4. Legal personality and asset ownership.....	8
5. Withdrawals and distributions.....	8
6. Management.....	8
7. Liability.....	9
8. Voting rights.....	9
9. Decision-making process.....	9
10. Register and annual accounts.....	9
11. Nullity.....	9
12. Voluntary liquidation	9
CHAPTER IV: PARTICULAR CHARACTERISTICS OF LUXEMBOURG PARTNERSHIPS VIS-À-VIS OTHER PARTNERSHIPS.....	10
1. Legal regime.....	10
2. Central administration.....	10
3. Annual accounts.....	10
4. Depositary.....	10
5. Alternative investment vehicles.....	10
6. Series partnerships.....	11
7. Other matters.....	11
CHAPTER V: TAXATION	12
1. Non-product law.....	12
2. Product law.....	12
3. ATAD 2 considerations.....	13

Disclaimer: The purpose of this Memorandum is to provide general information on Luxembourg partnerships. It must not be considered as an exhaustive presentation and no action should be taken or omitted on the basis of this Memorandum. In all instances, proper legal or other advice should first be taken. Elvinger Hoss Prussen shall not incur any liability in relation to the information provided herein or in relation to any actions taken or omitted on the basis of this Memorandum.

INTRODUCTION

Partnerships are vehicles of choice for the asset management industry, especially in the field of private equity, real estate, debt and other 'illiquid' strategies.

Luxembourg law has known partnerships since the implementation of the Law of 10 August 1915 on commercial companies ("**Luxembourg Company Law**"), and to some extent since the enactment of the first Commercial Code in 1807.

In 2013, Luxembourg seized the opportunity of the implementation of Directive 2011/61/EU on alternative investment fund managers ("**AIFMD**") to increase its attractiveness as a leading investment fund centre and to boost the attractiveness of its partnerships.

Luxembourg lawmakers thoroughly amended and modernised the limited partnership regime and sought to align the regime of local partnerships with those of competing jurisdictions, thus expanding the structuring possibilities of investment vehicles electing for the partnership regime, mainly to respond to the needs of the asset management industry.

The new Luxembourg partnership, whilst sticking to its original principles, embraces the flexible nature of Anglo-Saxon types of partnerships, with only a few variations. This new approach has allowed asset managers to set up private funds benefiting from the AIFMD marketing passport in a format that they are more familiar with and which allows full interaction with other vehicles of their product range (e.g. Delaware feeder of parallel funds for the US market).

The Luxembourg Laws of 25 February 2022 (securitisation) and of 21 July 2023 (fund toolbox) have moreover broadened the scope of regulatory options available for managers allowing them to form certain retail alternative investment funds and securitisation vehicles as partnerships.

Managers looking to set up their fund in Luxembourg can choose between three types of partnerships: two are based on the Anglo Saxon models, the common limited partnership ("**SCS**" or *société en commandite simple*) and the special limited partnership ("**SCSp**" or *société en commandite spéciale*), and one is based on the more continental type of partnership, the partnership limited by shares ("**SCA**" or *société en commandite par actions*).

The purpose of this Memorandum is to describe the principal features of the different Luxembourg partnerships (while focusing mainly on the SCS and the SCSp), and the regulatory options under which they may be set up. Unless provided otherwise, reference to "**Partnership(s)**" in this Memorandum should be understood as an indistinct reference to the SCA, SCS and SCSp.

CHAPTER I: PARTNERSHIPS IN THE LUXEMBOURG TOOLBOX

1. TYPES OF PARTNERSHIPS

Although the SCS, SCSp and SCA are all “partnerships”, the SCS and the SCSp are comparable to Anglo-Saxon types of partnerships, whereas the SCA is similar to a public limited liability company (*société anonyme* or “SA”).

Therefore, although it is still subject to some flexibility,

the SCA remains a more continental type of partnership subject to several corporate requirements.

Managers who are contemplating launching a vehicle in the form of an SCS should also carefully consider the few key differences between the SCS and the SCSp.

The following table offers a comparison of the main distinctive factors between Partnerships:

	SCA	SCS	SCSp
Legal personality distinct from its partners	Yes		No
Constitutional documents	Articles of incorporation (“Articles”) Notarial deed	Limited partnership agreement (“LPA”) Private or notarial deed (execution by one limited partner (“LP”) and one general partner (“GP”) is sufficient to form the SCS or SCSp)	
Duration	Limited or Unlimited		
Number of partners	At least one GP with unlimited liability and at least one LP with limited liability		
General meeting	Annual		N/A
Decision-making	The Luxembourg Company Law provides for decisions to be taken by shareholders	Subject to the LPA, with minimal decisions requiring partners consent	
Voting rights	One Share = one vote principle (with a few exceptions)	Voting rights are defined in the LPA	
Capital	≥ EUR 30,000	No minimum (unless required by a Product Law ¹)	
Contributions	In cash or in kind	In cash, kind or in industry	
Distributions	Decision by shareholders resolutions ²	Subject to the LPA	
Redemptions	Conditions upon redemption ³	Subject to the LPA	
Transfers	Free transfers	Subject to the LPA	
Confidentiality of constitutional documents	The Articles are published in full	A few provisions of the LPA are published by extract	
Application of Lux GAAP ⁴ or IFRS ⁵ to annual accounts	Compulsory	Compulsory (with few exceptions)	Not compulsory ⁶
Tax	Not Transparent ⁷	Transparent ⁸	

1 “Product Laws” refer collectively to Part II of the Law of 17 December 2010 on UCIs, the Law of 15 June 2004 on SICARs, the Law of 13 February 2007 on SIFs and the Law of 23 July 2016 on RAIFs

2 Flexibility available if set up under a Product Law. Interim dividends can be paid on decision of the GP.

3 Flexibility available if set up under a Product Law.

4 “Lux GAAP” refers to the Generally Accepted Accounting Principles applicable in the Grand Duchy of Luxembourg.

5 “IFRS” refers to International Financial Reporting Standard.

6 “US GAAP” refers to the Generally Accepted Accounting Principles applicable in the United States and is generally available for an SCSp but some limitations on other GAAP will apply in case the SCSp qualifies as an AIF and has appointed an authorised AIFM.

7 Possibility to check the box for US tax purposes.

8 Certain jurisdictions might not recognise the transparency of the SCS/SCSp. This might result in hybrid mismatches under ATAD 2.

2. REGULATORY OPTIONS AVAILABLE

Luxembourg offers several regulatory options under which partnerships may be set up. In a nutshell, a partnership may take the form of a vehicle that is:

- supervised by the Luxembourg financial regulator (*Commission de Surveillance du Secteur Financier* or “**CSSF**”) i.e. a Part II undertaking for collective investment (“**Part II UCI(s)**”), a specialised investment fund (“**SIF(s)**”) or an investment company in risk capital (“**SICAR(s)**”) (with the possibility of falling within the scope of the AIFMD – in which case it will be eligible for the AIFMD marketing passport – or not);
- not directly supervised by the CSSF but may benefit from the AIFMD marketing passport provided that it qualifies as an alternative investment fund under the AIFMD (“**AIF(s)**”) and appoints an alternative investment fund manager (“**AIFM(s)**”) authorised in

the European Union (“**EU**”)⁹, i.e. a reserved alternative investment fund (“**RAIF(s)**”) or a “simple” AIF (i.e. not under a Product Law);

- neither supervised by the CSSF nor in scope of the AIFMD, e.g. a “simple” Partnership such as a non-AIF (a holding vehicle or a fund of one), an AIF managed by a non-EU AIFM or an AIF managed by a “small” AIFM¹⁰;
- a securitisation vehicle, which will not be supervised by the CSSF (unless it issues financial instruments to the public on a continuous basis) and may benefit from the AIFMD marketing passport if it qualifies as an AIF and appoints an authorised AIFM.

The next table summarises the different regulatory options under which a Partnership may be set up and the key differences between them:

	Part II UCI	SICAR	SIF	RAIF	Partnership (SCS/SCSp)	Securitisation
Main governing law	Part II of the Law of 17 December 2010 on UCIs	Law of 15 June 2004 on SICARs	Law of 13 February 2007 on SIFs	Law of 23 July 2016 on RAIFs	Company Law	Law of 22 March 2004 on securitisation
Subject to AIFMD and access to marketing passport ¹¹	Depending mainly on AIF qualification and appointment of an authorised AIFM			Compulsory	Depending mainly on AIF qualification and appointment of an authorised EU AIFM	
Direct supervision by the CSSF	Yes			No		No ¹²
Umbrella structure	Possible				No	Possible
Class of shares/ interests	Yes					
Investors	Unrestricted	Sophisticated investors			Unrestricted	
Assets	Unrestricted	Only in risk capital	Unrestricted	Unrestricted or only in risk capital ¹³	Unrestricted	
Diversification requirements	20% ¹⁴	None	30% ¹⁵	30% or none if investment in risk capital	None	

continued on next page ...

9 For the purposes of this Memorandum, the terms “European Union”, “EU” and “Member States” also refer to and include the European Economic Area (“**EEA**”) and the States that are contracting parties to EEA agreement other than the Member States of the European Union, within the limits set forth by this agreement and related acts.

10 “**Small AIFM**” refers to an AIFM who manages AIFs whose total assets under management, including any assets acquired through use of leverage, do not exceed EUR 100 million, or whose total assets under management do not exceed EUR 500 million and whose portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.

11 The AIFMD passport will allow the marketing of the Partnership to professional investors in the EU.

12 Unless it issues on a continuous basis financial instruments offered to the public.

13 Depending on the tax regime elected for.

14 A Part II UCI may not, in principle, invest more than 20% of its net assets in one single issuer although this limit may change depending on the asset class (e.g. for infrastructure assets). The CSSF may also grant derogations on a case-by-case basis upon adequate justification and/or accept a “start-up period” during which Part II UCIs may depart from the applicable risk diversification rules.

15 For SIFs, the risk diversification limit is, in principle, 30% but may change depending on the asset class (e.g. infrastructure assets). It is also possible to obtain derogations from the CSSF and/or to benefit from a “start-up period” during which SIFs may depart from the applicable risk diversification rules.

... continued from previous page.

	Part II UCI	SICAR	SIF	RAIF	Partnership (SCS/SCSp)	Securitisation
Minimum capital requirements	EUR 1,250,000 (to be reached within 12 months from approval by the CSSF)	EUR 1,000,000 (to be reached within 24 months from approval by the CSSF)	EUR 1,250,000 (to be reached within 24 months from launch/approval by the CSSF)		None	
Redemption rights	Subject to the LPA/Articles					
Distributions	Subject to the LPA/Articles					
Annual accounts and audit	Mandatory				Depending on circumstances	Mandatory
Income tax	Exempt	Corporate: exempt from income and municipal business tax on income from transferable securities qualifying as risk capital Limited Partnership: no income tax	Exempt	Exempt As regard RAIFs investing in transferable securities qualifying as risk capital, the SICAR tax treatment is applicable	Transparent for corporate income tax purposes ¹⁶ and exempt from municipal business tax as long as the unlimited partners holds less than 5% of the partnership interests and the partnership either qualifies as an AIF or has no commercial activity	Corporate: subject to corporate income tax and to municipal business tax but any payment obligations assumed towards investors (including dividend distributions) or any other creditors are fully tax deductible ¹⁷ Limited partnership: see tax treatment applicable to the Limited Partnership
Subscription tax	0.05% of the net assets, with multiple exemptions (0.01% for money market funds (MMF(s)), 0% for European long-term investment funds (ELTIF(s)), short term MMFs, ...)	None	0.01% of net assets, with multiple exemptions (0% for certain short-term MMFs, ELTIFs...)	0.01% of net assets, with multiple exemptions (0% for certain short-term MMFs, ELTIFs...)	None	None
Net wealth tax	None	None ¹⁸	None	None ¹⁹	None	None ²⁰
Withholding tax on dividends	None					

¹⁶ Anti-hybrid mismatch rules need however to be monitored (see Chapter V, section 3 of this Memorandum).

¹⁷ Interest deduction limitation rule to be monitored unless the securitization vehicle qualifies as AIF.

¹⁸ A minimum net wealth tax is, however, applicable.

¹⁹ A minimum net wealth tax is, however, applicable for RAIF investing in transferable securities qualifying as risk capital.

²⁰ A minimum net wealth tax is, however, applicable.

CHAPTER II: MARKETING AND LISTING

1. MARKETING TO PROFESSIONAL INVESTORS²¹

Luxembourg Partnerships are the gateway to EU (professional) investors for managers that manage illiquid strategies. Access by Luxembourg Partnerships to the AIFMD marketing passport for distribution to professional investors in the EU, however, is conditional upon the Partnership qualifying as an AIF, appointing an AIFM and being subject to the full scope of the AIFMD.

This passport, which is granted to the AIFM (which needs to be established in the EU for now and authorised) and not to the Partnership itself, will allow the Partnership to be marketed to professional investors in the EU.

2. MARKETING TO NON-PROFESSIONAL INVESTORS

Marketing of Luxembourg Partnerships in the EU to investors other than professionals is not covered by the AIFMD marketing passport.

Except in the case where the Partnership qualifies as ELTIF under the ELTIF Regulation²², non-professional investors in the EU may only be approached without a passport if permitted by the Member State in which

the Partnership is to be marketed and subject to applicable requirements of that Member State.

The Luxembourg toolbox contains many vehicles that may, at least passively, accept non-professional investors. In this area, Part II UCIs are the vehicle of choice since they are (i) Luxembourg's domestic AIFs designed for retail investors, and (ii) regulated by the CSSF, which offers a layer of comfort to investors, distributors and foreign regulators. When they are authorised as ELTIF funds, Part II UCIs may also be marketed to retail investors under certain conditions throughout the EU with the ELTIF passport²³.

A closed-ended Partnership issuing securities to the public might be required to issue a prospectus pursuant to the Prospectus Regulation²⁴.

3. LISTING

Partnerships may apply for the listing of their securities on a stock exchange (if securities are issued), subject to the rules governing the relevant market. To the extent that a Partnership is subject to a Product Law (other than a Part II UCI), managers shall ensure that secondary trading does not result in non-eligible investors holding securities of the Partnership.

It is under debate whether or not a Partnership (other than an SCA) may directly be the subject of a public offer.

²¹ The concept of "professional investors" under the AIFMD refers to any investor that is considered as, or may be treated as, a professional client under Annex II of MiFID.

²² "ELTIF Regulation" refers to Regulation (EU) 2015/760 on European long-term investment fund, as amended. For further detail on the ELTIF, please check our dedicated brochure available on our website www.elvingerhoss.lu.

²³ For more information on Part II UCIs, please check our dedicated brochure available on our website www.elvingerhoss.lu.

²⁴ "Prospectus Regulation" refers to Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, as amended.

CHAPTER III: MAIN LEGAL FEATURES OF THE SCS AND SCSP

In this Chapter, references to **Partnerships** shall only refer to the SCS and SCSp. Additional requirements may apply in the case where a Partnership is set up under a Product Law.

1. CONTRACTUAL FREEDOM

Partnerships are formed by a LPA approved and signed by all GPs and LPs.

The LPA governs all rights and duties of all partners and may be signed under private seal or before a notary.

With the exception of a few limited compulsory provisions (see Chapter IV, section 1 of this Memorandum), the drafting of the LPA is governed by contractual freedom and is thus highly flexible.

The Luxembourg Company Law also applies by default in the absence of certain provisions in the LPA.

2. FORMATION AND PARTNERS

Partnerships are formed by (i) one or more GPs with unlimited and joint and several liability for all the obligations of the Partnership and (ii) one or more LPs who only contribute a specific amount to the Partnership.

Partnerships exist as soon as their LPA is signed by the initial GP(s) and the initial LP(s). The existence of a Partnership is therefore not subject to prior registration or filing requirements (although these formalities will need to be handled subsequently).

3. CAPITAL

Partnerships are not subject to minimum capital requirements (unless they are formed under certain Product Laws). Contributions to Partnerships may be in cash, in kind or other means (e.g. industry), and may be freely determined by the partners in the LPA.

The contributions of the partners to the Partnership are represented by partnership interests that may (but need not) take the form of securities as provided for in the LPA. Partnerships may set up capital accounts and freely determine in the LPA the allocation rights between partners, provided that no partner is entirely excluded from participating in the profits or losses.

Partners may tailor the terms governing the transfer and pledge of partnership interests. In the absence of any rules in the LPA, the transfer of a limited partnership interest is subject to the approval of the

unlimited general partner(s), whereas the transfer of an unlimited partnership interest is subject to the approval of the majority of partners. Transfers resulting from death do not require any approval.

4. LEGAL PERSONALITY AND ASSET OWNERSHIP

The SCS has a legal personality that is distinct from that of its partners, whereas the SCSp does not. However, the SCSp still benefits from the main attributes generally attached to the legal personality, including but not limited to, holding assets in its own name, having its own registered office, its own creditors, etc.

For example, the assets/rights of an SCSp shall be registered in the name of the SCSp and shall exclusively satisfy the rights of creditors which arose from the constitution, operation or liquidation of the SCSp.

5. WITHDRAWALS AND DISTRIBUTIONS

Partners are free to determine in the LPA whether or not the Partnership shall accept withdrawal requests from partners, thus allowing managers to use Partnerships to set up both open- and closed- ended funds.

Likewise, partners are free to determine in the LPA the order and proportion of distributions amongst partners thus allowing managers to freely design their distribution waterfall and carried interest allocations. No partner, however, may be entirely excluded from participating to profits.

Moreover, Luxembourg law recognises the right of GPs to recall distributions and withdrawals paid out to partners (clawbacks), subject to the terms of the LPA.

6. MANAGEMENT

The management of a Partnership is entrusted to one or more managers, who may be, but are not necessarily, the GP. Accordingly, the GP has the right to manage the Partnership, but is not obliged to do so. There are no residency requirements applicable to managers of the Partnership or of the GP under Luxembourg law²⁵.

LPs are prohibited from carrying out any act of management of the Partnership *vis-à-vis* third parties. If they do so, they will be held jointly and severally liable *vis-à-vis* third parties for the obligations of the Partnership.

²⁵ See also, however, Chapter IV, section 2 of this Memorandum.

However, LPs are authorised to carry out internal acts of management, such as providing the Partnership, its affiliates or their managers (including e.g. participating to an LP Advisory Committee) with advice or opinions.

7. LIABILITY

Each GP of a Partnership (whether or not it acts as a manager thereof) is indefinitely and jointly and severally liable for all the obligations of the Partnership.

The liability of an LP is limited to the amount that the LP invests in or commits to invest in the Partnership, provided that the LP does not carry out any act of management of the Partnership *vis-à-vis* third parties, as mentioned above.

LPs shall not, however, lose their limited liability by acting on behalf of the manager of the Partnership or of the GP, for example by executing documents on the basis of a mandate given by the Partnership or the GP, as applicable, provided that it is clearly stated that the act is conducted on behalf of the Partnership or on behalf of the GP.

8. VOTING RIGHTS

Partners may tailor their voting rights as they deem appropriate in the LPA. However, as a general rule, if there are no such provisions in the agreement the voting rights are proportional to their partnership interests. Therefore, the principle "one share, one vote" does not apply if the LPA provides otherwise.

9. DECISION-MAKING PROCESS

Partners may tailor their decision-making process, including the respective conditions and formalities, as they deem appropriate in the LPA.

However, the Luxembourg Company Law requires some matters to be decided upon by the partners, specifically:

- amendments to the corporate object,
- change of nationality,
- conversion into another legal form,
- liquidation, and
- (in the case of the SCS only), approval of the annual accounts.

10. REGISTER AND ANNUAL ACCOUNTS

Partnerships are required to maintain a register of partners. The Luxembourg Company Law provides that the register should be accessible to any partner unless the LPA provides otherwise. The register shall include (i) a complete and up-to-date copy of the LPA, (ii) information on the partners, and (iii) a record of any transfer of partnership interests as well as their date of notification and acceptance.

The SCS is required to draw up annual accounts unless it benefits from an exemption. The accounts need to be approved by the partners (including LPs). The accounts must, in principle, be drawn up in accordance with Lux GAAP or IFRS.

Conversely, an SCSp is not required by the Luxembourg Company Law to draw up annual accounts but is required to keep books and records.

Product Laws and the AIFMD will, however, require that annual financial statements of SCS and SCSp are drawn up and audited.

11. NULLITY

The Luxembourg Company Law provides for a limited number of cases in which an SCS or an SCSp may be declared void, i.e. if:

- the LPA does not include the denomination and the corporate object of the SCS/SCSp, and, in addition but only for an SCS, its registered office and the description of the contributions of its partners;
- the corporate object of the SCS/SCSp is unlawful or contrary to public order;
- the SCS/SCSp is not composed of at least one GP and one distinct LP who are validly committed; or
- it is debated whether the execution of the LPA of the SCS/SCSp in less than 2 originals would be a cause of nullity.

12. VOLUNTARY LIQUIDATION

Apart from the cases of compulsory dissolution and liquidation set forth by applicable laws (including the Product Laws) and independent from the expiry of its term, an SCS and SCSp may be put into voluntary liquidation where a collective decision of the partners decide on such a liquidation. For an SCS, the liquidation process is driven by the Luxembourg Company Law and, for an SCSp, the liquidation process is driven by the provisions of the LPA.

Product Laws (if applicable) contain additional rules relating to liquidation.

CHAPTER IV: PARTICULAR CHARACTERISTICS OF LUXEMBOURG PARTNERSHIPS *VIS-À-VIS* OTHER PARTNERSHIPS

1. LEGAL REGIME

Partnerships are governed by the Luxembourg Company Law²⁶ and are also subject to Luxembourg general commercial and civil rules (including the Luxembourg civil Code and the Luxembourg *Code of commerce*). As the Luxembourg legal system is based on civil law, certain common-law concepts may not directly translate into Luxembourg legal concepts (e.g. concepts of equity or fiduciary either do not exist or they bear different meanings).

For the SCS/SCSp, it is advisable that the LPA be executed in at least 2 originals as a doubt exists as to the sanction of such a formality (i.e. it is debated whether there is a penalty of nullity).

Depending on how the Partnership is structured and depending on the characteristics of a Partnership, the AIFMD and Product Laws may also apply.

2. CENTRAL ADMINISTRATION

Luxembourg applies the "real seat" theory to determine whether or not a company is governed by Luxembourg law.

The Company Law provides that a company (including a Partnership) is governed by Luxembourg law if its central administration is in the Grand Duchy of Luxembourg. Under Luxembourg Company Law, the central administration refers to the head office of a company/partnership, i.e. its effective place of management.

Although portfolio management is usually delegated outside of Luxembourg, managers should be cautious and ensure that enough tasks and decisions are performed and taken in Luxembourg to ensure that the Partnership is deemed to have its head office in Luxembourg, especially where certain administrative tasks are carried out outside of Luxembourg, and/or where non-Luxembourg GPs are appointed with management rights.

The Product Laws also require that the central administration of a Partnership set up as a Part II UCI, SIF, SICAR or RAIF is located in Luxembourg.

3. ANNUAL ACCOUNTS

Although an SCSp is not required by the Luxembourg Company Law to draw up annual accounts it will be required to do so if it falls within the scope of the AIFMD and/or is subject to a Product Law.

An SCSp is not, in principle, subject to Lux GAAP and should be able to draw up its financial statements in any (reasonable) GAAP. If the SCSp is an AIF managed by an authorised AIFM, it will be required to draw up its financial statements according to accounting standards considered as equivalent by the amended Commission Decision of 12 December 2008 on the use by third countries' issuers of securities of certain third countries' national accounting standards and International Financial Reporting Standards to prepare their consolidated financial statements, which includes a limited number of foreign GAAP (including US GAAP, but excluding e.g. UK GAAP).

Specific requirements are also applicable to an SCS (as provided for in Chapter III, section 10 of this Memorandum).

4. DEPOSITARY

The AIFMD and the Product Laws require the appointment of a Luxembourg depositary that will supervise and possibly hold the assets of the Partnership. The services that the depositary will be required to provide will depend mainly on whether or not the Partnership (i) is subject to the full scope of the AIFMD (which will be the case if the Partnership is to benefit from the AIFMD marketing passport), and/or (ii) is marketed to retail investors.

A Part II UCI that is marketed to retail investors in Luxembourg, or an ELTIF that is marketed to retail investors, are required to comply with the depositary regime of the UCITS Directive²⁷.

5. ALTERNATIVE INVESTMENT VEHICLES

The contractual flexibility granted by the Luxembourg Company Law permits the LPA to allow for the use of alternative investment vehicles ("**AIV(s)**"). However, if a Partnership falls within the scope of the AIFMD, and

²⁶ However, as indicated in Chapter III, section 1 of this Memorandum only a few limited provisions of the Company Law are compulsory for SCS/SCSp.

²⁷ "**UCITS Directive**" refers to Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, as amended.

because assets were raised in reliance on the AIFMD passport, managers should consider launching AIVs as AIFMD-compliant vehicles.

In order to mitigate audit costs, managers may be permitted, subject to certain conditions, to issue a single annual report for Partnerships and their AIV and to subject the financial information therein to a combined audit report.

6. SERIES PARTNERSHIPS

Managers wishing to form a Partnership as an **"Umbrella AIF(s)"** (i.e. an AIF composed of several ring-fenced compartments or series) must form the Partnership under one of the Product Laws. In such a case, certain requirements (such as diversification) will apply at each sub-fund (or series) individually.

7. OTHER MATTERS

Managers should consult with counsel on other material differences between Luxembourg and non-Luxembourg Partnership systems.

Key topics requiring attention include:

- protection of the personal data of natural persons ;
- know-your customer/anti-money laundering;
- governance and outsourcing;
- sustainability disclosures.

CHAPTER V: TAXATION

1. NON-PRODUCT LAW

1.1. SCA

The SCA is a fully taxable ordinary commercial company and is liable to (i) corporate income tax on which a solidarity surcharge is added ("CIT") and (ii) municipal business tax ("MBT").

The SCA is liable to an annual 0.5% net wealth tax in Luxembourg ("NWT") on its unitary value as at 1 January of each year. A reduced tax rate of 0.05% applies on the portion of net wealth exceeding EUR 500 million.

The SCA's investments in participations qualifying for the parent-subsidiary regime may benefit from a full exemption of CIT, MBT and NWT.

Dividends distributions are in principle subject to 15% withholding tax unless a reduced rate or an exemption is available under a double tax treaty or the domestic law.

An SCA acting as a pure holding company will not be regarded as a taxable person for VAT purposes.

Management services provided to an SCA qualifying as an AIF are exempt from Luxembourg VAT.

1.2. SCS/SCSp

An SCS/SCSp is a tax transparent entity for CIT and NWT purposes. No taxation in this respect will thus be levied in Luxembourg²⁸ although it may arise at the level of the partners in their country of residence in proportion to their participation in the profit of the SCS/SCSp.

The tax transparency does not apply for the purposes of the MBT. Hence, an SCS/SCSp remains subject to MBT on its profits if (i) it carries out a business activity or (ii) its unlimited partner incorporated in the form of a corporation, holds directly or indirectly interest (*parts d'intérêt*) in the SCS/SCSp of at least 5%.

An SCS/SCSp which qualifies as an AIF will never be subject to MBT, unless its general partner holds 5% or more of the interests in the SCS/SCSp.

An SCS/SCSp being fully tax transparent for Luxembourg tax purposes enables investors to claim the benefits of tax treaties concluded between their home country and the countries of the investments.

2. PRODUCT LAW

2.1. Part II UCI

A Part II UCI is only subject to a subscription tax (*taxe d'abonnement*) of 0.05% of the net assets (or less if a certain portion of the net assets qualify as sustainable

activities). The subscription tax is 0.01% with respect to (i) Part II UCIs that are authorised as money market funds, (ii) individual compartments of Part II UCIs (as well as individual classes of securities within a Part II UCIs or its compartments) provided that the securities of such compartments or classes are reserved to one or more institutional investors. An exemption from the subscription tax is available in some cases, such as for a Part II UCIs qualifying as ELTIF.

Management services provided to a Part II UCI are exempt from Luxembourg VAT.

A Part II UCI established as an SCA may benefit from a certain number of double tax treaties concluded with Luxembourg. As a Part II UCI SCS/SCSp is transparent for Luxembourg tax purposes, the investors in that Part II UCI SCS/SCSp may claim the benefits of tax treaties concluded between their home country and the countries of the investments.

2.2. SICAR

A SICAR organised as an SCA is subject to CIT and MBT. However, any income derived from securities that represent risk capital held by a SICAR, as well as any income from the sale, contribution or liquidation thereof, are fully tax exempt.

A SICAR is also exempt from net wealth tax (a minimum amount is however due).

No Luxembourg withholding tax applies on dividend distributions made by a SICAR.

A SICAR organised as an SCA, generally benefits from the double tax treaties entered into by Luxembourg.

A SICAR organised as an SCS or SCSp is transparent for CIT and NWT purposes. No taxation in this respect will be levied in Luxembourg²⁹ although it may arise at the level of the partners in their home jurisdiction in proportion to their participation in the profit of the SCS/SCSp.

Given that a SICAR SCS/SCSp is not considered as a business undertaking (regardless of the status of its investors), it is never subject to MBT.

A SICAR established as an SCS or SCSp being fully tax transparent for Luxembourg tax purposes enables investors to claim the benefits of tax treaties concluded between their home country and the countries of the investments.

Management services provided to a SICAR (SCA or SCS/SCSp) are exempt from Luxembourg VAT.

2.3. SIF

SIFs (whether established as an SCS/SCSp or SCA) are only subject to an annual subscription tax (*taxe d'abonnement*) levied at an annual rate of 0.01% based

²⁸Anti-hybrid mismatch rules need to be monitored (see Chapter V, section 3 of this Memorandum).

²⁹Anti-hybrid mismatch rules need to be monitored (see Chapter V, section 3 of this Memorandum).

on the total net assets of the SIF³⁰. An exemption from the subscription tax is available in some cases.

Distributions to investors as well as any payment of proceeds made upon the redemption of SIF shares/partnership interests are not subject to Luxembourg withholding tax.

Management services provided to a SIF are exempt from Luxembourg VAT.

A SIF established as an SCA may benefit from a certain number of double tax treaties concluded with Luxembourg. As a SIF SCS/SCSp is transparent for Luxembourg tax purposes, the investors in that SIF SCS/SCSp may claim the benefits of tax treaties concluded between their home country and the countries of the investments.

2.4. RAIF

The RAIF tax regime is the same as that currently applicable to a SIF (under the main regime) or to a SICAR (under the optional regime).

3. ATAD 2 CONSIDERATIONS

The Luxembourg law implementing the Directive (EU) 2016/1164 ("ATAD 2"), provides for anti-hybrid mismatch rules that tackle arrangements exploiting the differences in the tax treatment of an instrument or entity. One of those rules applies in situations involving reverse hybrid entities, i.e. entities treated as tax transparent in Luxembourg and as tax opaque in the jurisdiction of their investors. Under certain circumstances, the reverse hybrid entity shall be regarded as a resident of Luxembourg and shall be subject to Luxembourg corporate income tax on all or part of its income.

Given that both the SCS and the SCSp are transparent for Luxembourg tax purposes, any ATAD 2 implications should be duly assessed.

³⁰Anti-hybrid mismatch rules need to be monitored for a SIF established as a SCS/SCSp (see Chapter V, section 3 of this Memorandum).

For further details on the various types of Luxembourg collective investment vehicles, you may consult the following memoranda and legal texts which are available on our website:

www.elvingerhoss.lu/publications

UCITS AND PART II FUND

Memorandum: Part II Funds: Luxembourg regime for alternative investment funds accessible to non-professional investors

Legal text: The amended Law of 17 December 2010 on Undertakings for Collective Investment (UCI)

SIF

Memorandum: Specialised Investment Funds: Luxembourg regime for investment funds dedicated to sophisticated investors

Legal text: The amended Law of 13 February 2007 on Specialised Investment Funds (SIF)

SICAR

Memorandum: SICAR: Luxembourg regime for investment funds investing in risk capital and dedicated to sophisticated investors

Legal text: The amended Law of 15 June 2004 on the Investment Company in Risk Capital (SICAR)

AIFMD

Legal texts:

- The Alternative Investment Fund Managers Directive and its implementation in Luxembourg
- The amended Law of 12 July 2013 on Alternative Investment Fund Managers (AIFM)

ELTIF

Memorandum: European Long-Term Investment Funds (ELTIFs) in a nutshell

Legal text: The European Long-Term Investment Funds Regulation

RAIF

Memorandum: Reserved Alternative Investment Funds: Luxembourg regime for investment funds not supervised by the Luxembourg regulator and dedicated to sophisticated investors

Legal text: The amended Law of 23 July 2016 on Reserved Alternative Investment Funds (RAIFs)

COLLECTIVE INVESTMENT VEHICLES

Memorandum: Luxembourg Collective Investment Vehicles. Legal regime and features in a nutshell

Legal text: The amended Law of 10 August 1915 on commercial companies

OUR TEAM

For further information, please liaise with any of the partners listed below:



JACQUES ELVINGER
Partner
jacqueselvinger@elvingerhoss.lu
T. +352 446644-5411



PATRICK REUTER
Partner
patrickreuter@elvingerhoss.lu
T. +352 446644-5213



GAST JUNCKER
Partner
gastjuncker@elvingerhoss.lu
T. +352 446644-2332



JÉRÔME WIGNY
Partner
jeromewigny@elvingerhoss.lu
T. +352 446644-5233



SOPHIE LAGUESSE
Partner
sophielaguesse@elvingerhoss.lu
T. +352 446644-5365



THIBAUT PARTSCH
Partner
thibautpartsch@elvingerhoss.lu
T. +352 446644-5450



FRÉDÉRIQUE LIFRANGE
Partner
frederiquelifrange@elvingerhoss.lu
T. +352 446644-5330



SOPHIE DUPIN
Partner
sophiedupin@elvingerhoss.lu
T. +352 446644-5446



OLIVIA MOESSNER
Partner
oliviamoessner@elvingerhoss.lu
T. +352 446644-5212



JOACHIM COUR
Partner
joachimcour@elvingerhoss.lu
T. +352 446644-5474



YVES ELVINGER
Partner
yveselvinger@elvingerhoss.lu
T. +352 446644-5271



BENJAMIN ROSSIGNON
Partner
benjaminrossignon@elvingerhoss.lu
T. +352 446644-5231



JEFFREY KOLBET
Partner
jeffreokolbet@elvingerhoss.lu
T. +352 446644-5292



THOMAS GÖRICKE
Partner
thomasgoericke@elvingerhoss.lu
T. +352 446644-5462



MICHEL MARQUES PEREIRA
Partner
michelmarquespereira@elvingerhoss.lu
T. +352 446644-5372



XAVIER LE SOURNÉ
Resident Partner Paris
xavierlesourne@elvingerhoss.lu
T. +33 153762270



CHARLOTTE CHEN
Resident Partner Hong Kong
charlottechen_hk@elvingerhoss.lu
T. +852 2287 1900



NICOLAS FERMAUD
Partner ELVINGER SARL PLLC
nicolasfermaud@elvingerhoss.lu
T. +1 332 228 0351



JEAN-THOMAS PRADILLON
Partner ELVINGER SARL PLLC
jeanthomaspradillon@elvinger.us
T. +1 332 228 0353



Contact us to discuss how we can support your business with Luxembourg legal matters.

LUXEMBOURG | HONG KONG | PARIS

Elvinger Hoss Prussen
www.elvingerhoss.lu

NEW YORK

Elvinger SARL PLLC
www.elvinger.us

