INTRODUCTION


GUIDE TO GOING GLOBAL SERIES

To compete and be successful today, companies need to develop and scale their businesses globally. Each country presents its own set of unique laws, rules and regulations and business practices that companies must understand to be successful. In order to help clients meet the opportunities and challenges of expanding internationally, we have created a handy set of global guides that cover the basics companies need to know when going into and doing business in new countries. The Guide to Going Global series reviews business-relevant corporate, employment, intellectual property and technology, executive compensation, and tax laws in key jurisdictions around the world.

CORPORATE

The Guide to Going Global – Corporate has been created based on our research, our experience and feedback we have received from clients in both established and emerging businesses that have expanded internationally. We hope it will be a helpful resource for you.

The Guide to Going Global – Corporate covers corporate basics in 54 key jurisdictions across the Americas, Asia Pacific, Europe and the Middle East. We touch on a wide range of corporate issues for companies expanding internationally, including establishing a corporate presence and choice of entity, liability considerations, tax presence and tax filings, capital requirements, the formation process, director, officer and shareholder requirements, registration processes, office lease processes and possible exit strategies.

With more than 600 lawyers, DLA Piper’s global Corporate group is one of the largest in the world, with one of the widest geographical footprints of any global law firm and experience across the legal areas companies need as they expand internationally. With both global experience and local knowledge, we partner with our clients wherever they do business to find solutions and manage their risk in relation to their challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to seek advice regarding the specific matters that concern you. If you wish to speak to any of our contributors, you may find their contact details at the end of the guide.

We hope you find this guide valuable, and we welcome your feedback.
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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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LUXEMBOURG

FORM OF ENTITY

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Separate and distinct legal personality. Managed by a manager or a board of managers (college de gérance) – who may or may not be shareholders - responsible for making major business decisions and overseeing the general affairs of the company. Managers are elected by the shareholders for a limited or unlimited term and may represent the company acting alone, or as set out in the articles of association, if more than one is appointed.

Public limited liability company (Société anonyme or S.A.)

Separate and distinct legal personality. An S.A. can be organized as a one-tier company (ie, managed by a sole director or a board of directors composed of at least 3 directors) or two-tier company (ie, an executive board (directoire) and a supervisory board (conseil de surveillance). Directors are elected by the shareholders and may represent the company acting alone, or as set out in the articles of association, if more than one is appointed.

Special limited partnership (Société en commandite spéciale or SCSp)

Largely inspired by the Anglo-Saxon limited partnership regimes, the special limited partnership (SLP) has been designed to bolster Luxembourg’s position as the main alternative investment fund structuring hub in the EU at a time when the manager regulation is seen as a potential substitute for product regulation. With no legal personality, the SCSp is formed by written agreement for a limited or unlimited duration, between one or more general partner(s) (associés commandités) jointly and severally liable for the partnership’s commitments, and one or more limited partner(s) (associés commanditaires) whose liability does not extend beyond their commitment. High level of contractual freedom and structuring flexibility characterize the SCSp as most of the relevant provisions applicable to the SCSp can be contractually set forth in the limited partnership agreement.

ENTITY SET UP

On July 13, 2016 the Luxembourg Parliament adopted a major company law reform, which is:

- Modernizing the Luxembourg corporate law
• Granting legal certainty for certain practices that were previously subject to legal practices

• Introducing the simplified company limited by shares (société par actions simplifiée or S.A.S.), and

• Introducing added flexibility in the mostly used form of companies

The two underlying principles to this reform are enhancement of the contractual freedom and the promotion of a business friendly environment. This reform adapts the legal framework to the economic realities and improves the consistency of Luxembourg corporate law and the competitiveness of the Grand Duchy of Luxembourg.

The forms of entities that are most commonly used in Luxembourg are the private limited liability company (société à responsabilité limitée or S.à r.l.), the public limited liability company (société anonyme or S.A.) and the special limited partnership (société en commandite spéciale or SCSp).

Other forms of entities commonly used in Luxembourg include the common limited partnership (société en commandite simple or SCS) and the corporate partnership limited by shares (société en commandite par actions or SCA).

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

• From one to 100 shareholders

• Share capital can be divided into several classes of shares

• Generally no personal liability of the shareholders

• Typical incorporation documents include: notarial incorporation deed including articles of association and share register

• Managed by a sole manager or a board of managers

• Annual accounts have to be filed with the Luxembourg Register of Commerce and Companies

• For US tax purposes, an S.à r.l. qualifies as a check the box company

Public limited liability company (Société anonyme or S.A.)

• At least 1 shareholder, no maximum number

• Share capital can be divided into several classes of shares

• Generally no personal liability of the shareholders

• Company can be organized as a one-tier company (ie managed by a sole director or a board of directors composed of at least 3 directors) or two-tier company (ie an executive board (directoire) and a supervisory board (conseil de surveillance))

• Typical incorporation documents include: notarial incorporation deed including articles of association and
share register

- If organized as a one-tier company (which is the most common), managed by a sole director (only if a sole shareholder) or a board of directors composed of at least three directors
- Annual accounts have to be filed with the Luxembourg Register of Commerce and Companies
- For US tax purposes, an S.A. does not qualify as a check the box company

Special limited partnership (Société en commandite spéciale or SCSp).

- Inspired by the Anglo-Saxon limited partnership
- At least one general partner (associé commandité) and one limited partner (associé commanditaire)
- No legal personality and tax transparent
- No minimum capital requirement, partnership units may be issued
- Generally no liability for the limited partners
- The general partner(s) jointly and severally liable for the partnership's commitments
- The partnership may be managed by its general partner(s) or by a board of managers
- Typical formation documents include: limited partnership agreement and a register of partnership interests
- High level of contractual freedom and structuring flexibility, and
- Annual accounts, if any, must be filed with the Luxembourg Register of Commerce and Companies for statistical purposes, but they are not published.

MINIMUM CAPITAL REQUIREMENT

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

€12,000, fully paid-up upon incorporation.

Public limited liability company (Société anonyme or S.A.)

€30,000, fully subscribed and at least ¼ of each share must be paid up.

Special limited partnership (Société en commandite spéciale or SCSp)

No minimum capital requirement.

LEGAL LIABILITY
Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Shareholders of the company generally not liable for the debts of the company, aside from their financial contribution to the capital of the company.

Public limited liability company (Société anonyme or S.A.)

Shareholders of the company generally not liable for the debts of the company, aside from their financial contribution to the capital of the company.

Special limited partnership (Société en commandite spéciale or SCSp)

General partner(s) (associés commandités) are jointly and severally liable for the partnership’s commitments, and the limited partner(s) (associés commanditaires) are normally not liable beyond their commitment.

TAX PRESENCE

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

The company pays a corporate tax on its corporate income (currently at the rate of 24.94%) and a withholding tax may apply when dividends are paid to its shareholders (at the rate of 15%, subject to reduction under applicable tax treaties). Exemptions are available under certain conditions.

Public limited liability company (Société anonyme or S.A.)

The company pays a corporate tax on its corporate income (currently at the rate of 24.94%) and a withholding tax may apply when dividends are paid to its shareholders (at the rate of 15%, subject to reduction under applicable tax treaties). Exemptions are available under certain conditions.

Special limited partnership (Société en commandite spéciale or SCSp)

The SCSp is in principle tax transparent.

INCORPORATION PROCESS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Prior to the incorporation meeting, the share capital amount (ie, at least €12,000) will have to be deposited on the Luxembourg bank account of the company. The bank will block the share capital amount and issue a blocking certificate to the attention of the Luxembourg notary. The incorporation meeting will have to be held in the presence of a Luxembourg notary public (to which the shareholders can be present or represented on the basis of proxies) at the occasion of which it will be decided to incorporate the S.à r.l. and adopt its articles of association. The share capital amount will be released after incorporation. The incorporation deed including the articles of association will have to be filed with the Luxembourg Register of Commerce and Companies within one month and will be published in full to the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

An S.à r.l. can also be incorporated by means of a contribution in kind (or a mix of cash and kind), the value of
such contribution having to be certified by the contributing shareholder to the Luxembourg notary. No external audit report is required.

An S.à r.l. exists as from the date of its incorporation meeting.

Public limited liability company (Société anonyme or S.A.)

Prior to the incorporation meeting, the share capital amount (ie, at least €30,000) will have to be deposited on the Luxembourg bank account of the company. The bank will block the share capital amount and issue a blocking certificate to the attention of the Luxembourg notary. The incorporation meeting will have to be held in the presence of a Luxembourg notary public (to which the shareholders can be present or represented on the basis of proxies) at the occasion of which it will be decided to incorporate the S.A. and adopt its articles of association. The share capital amount will be released after incorporation. The incorporation deed including the articles of association will have to be filed with the Luxembourg Register of Commerce and Companies within one month and will be published in full to the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

An S.A. can also be incorporated by means of a contribution in kind (or a mix of cash and kind), the value of such contribution having to be certified by an external auditor (réviseur d’entreprise agréé) to the Luxembourg notary.

However, no report of an external auditor will be required if at least 90% of the share capital to be issued is paid by contribution(s) in kind, under to the following conditions:

- The founders must agree to waive the issuance of the report;
- A record of the waiver must be annexed to the deed of incorporation;
- The contributing companies must have financial reserves and these reserves must be at least equal to the nominal value or the nominal value of the shares (issued as consideration for the contribution(s) in kind);
- The contributing companies must guarantee the debts of the receiving company up to an amount equal to the nominal value or the par value of the shares (issued as consideration for the contribution or contributions in kind) until one year after the publication of the first financial year accounts. During this period, the shares may not be transferred; and
- The contributing companies must allocate to a blocked reserve for three years (starting from the publication of the first financial year accounts) a sum equal to the nominal value or the nominal amount of the shares (issued against the contribution(s) in kind).

An S.A. exists as from the date of its incorporation meeting.

Special limited partnership (Société en commandite spéciale or SCSp)

The SCSp may be formed before a Luxembourg notary or under private seal, which is the most common. There is a high level of contractual freedom, the provisions applicable to the SCSp being contractually provided for in the limited partnership agreement. The SCSp is formed by the execution of the limited partnership agreement by at least one general partner (associé commandité) and at least one limited partner (associé commanditaire).

The contributions can be made by means of a contribution in cash, kind or industry. No external valuation is
required.

An SCSp exists as from the date of execution of its limited partnership agreement. Extracts of the limited partnership agreement must be filed with the Luxembourg Register of Commerce and Companies within one month from its execution and published with the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

**BUSINESS RECOGNITION**

**Private limited liability company (Société à responsabilité limitée or S.à r.l.)**

Well regarded and widely used.

**Public limited liability company (Société anonyme or S.A.)**

Well regarded.

**Special limited partnership (Société en commandite spéciale or SCSp)**

Well regarded and widely used in the private equity/funds industry.

**SHAREHOLDER MEETING REQUIREMENTS**

**Private limited liability company (Société à responsabilité limitée or S.à r.l.)**

Except for amendments to the articles of association, the holding of general meetings is not compulsory as long as there are no more than 60 shareholders. In such case, each shareholder shall receive the proposed resolutions and shall cast his vote in writing. Where there are more than 60 shareholders, at least one annual shareholders’ meeting must be held each year at the time determined in the articles.

**Public limited liability company (Société anonyme or S.A.)**

Required to hold an annual shareholders’ meeting in Luxembourg within six months from the end of the financial year in order to approve the annual accounts.

**Special limited partnership (Société en commandite spéciale or SCSp)**

There are no legal requirements to hold annual general partners’ meetings.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

**Private limited liability company (Société à responsabilité limitée or S.à r.l.)**

Sole manager’s resolutions to be taken, or board meetings (if more than one manager) to be held in Luxembourg, at least once a year.

Managers may:
• Attend board meetings in person

• Grant power of attorney to another manager in order to be represented at a relevant meeting or

• Attend by means of conference call (ideally initiated from Luxembourg), unless expressly forbidden by the articles of association

If the articles allow it, the resolutions of the board of managers may be adopted unanimously in writing by means of circular resolutions.

Public limited liability company (Société anonyme or S.A.)

Sole director’s resolutions to be taken, or board meetings to be held in Luxembourg, at least once a year.

Directors may:

• Attend board meetings in person

• Grant power of attorney to another director in order to be represented at a relevant meeting or

• Attend by means of conference call (ideally initiated from Luxembourg), unless expressly forbidden by the articles of association

If the articles allow it, the resolutions of the board of directors may be adopted unanimously in writing by means of circular resolutions.

Special limited partnership (Société en commandite spéciale or SCSp)

There is no board of directors. The SCSp is managed by one or several managers, which can be general partner(s).

ANNUAL COMPANY TAX RETURNS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Annual filing of tax returns.

Public limited liability company (Société anonyme or S.A.)

Annual filing of tax returns.

Special limited partnership (Société en commandite spéciale or SCSp)

Annual tax returns should be filed for the SCSp (no tax returns for the investors).

BUSINESS REGISTRATION FILING REQUIREMENTS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)
Registration with the Luxembourg Register of Commerce and Companies and publication of the incorporation deed and subsequent deeds or filings in the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

Public limited liability company (Société anonyme or S.A.)

Registration with the Luxembourg Register of Commerce and Companies and publication of the incorporation deed and subsequent deeds or filings in the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

The identities of the shareholders are not disclosed to the Luxembourg Register of Commerce and Companies, nor published.

Special limited partnership (Société en commandite spéciale or SCSp)

Registration with the Luxembourg Register of Commerce and Companies and publication of extracts of the limited partnership agreement and subsequent amendments or filings in the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

The identities of the limited partners are not disclosed to the Luxembourg Register of Commerce and Companies, nor published.

**BUSINESS EXPANSION**

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

As long as there are no more than 100 shareholders and that the company is not to be listed on a stock market, there is no need to change the legal form as business expands, as long as the activities are included in its corporate object.

Public limited liability company (Société anonyme or S.A.)

No need to change the legal form as business expands, to the extent that the activities remain within the corporate object of the limited liability company.

Special limited partnership (Société en commandite spéciale or SCSp)

No need to change the legal form as business expands, to the extent that the activities remain within the corporate object of the SCSp.

**EXIT STRATEGY**

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

An S.à r.l. may be dissolved and liquidated upon a decision of its shareholders. The dissolution documents are to be filed with the Luxembourg Register of Commerce and Companies and published in the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).
Public limited liability company (Société anonyme or S.A.)

Specific exit strategies for the shareholders’ may be included in the articles of association or a possible shareholders’ agreement between the shareholders. In addition, an S.A. can also be dissolved and liquidated by following the dissolution and liquidation procedure. An S.A. may be dissolved and liquidated upon a decision of its shareholders. The dissolution documents are to be filed with the Luxembourg Register of Commerce and Companies and published in the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

Special limited partnership (Société en commandite spéciale or SCSp)

Specific exit strategies for the partners may be included in the limited partnership agreement.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Yearly approval by the shareholders of the balance sheet and profit and loss account prepared by the management. An annual shareholders meeting will have to be held if there are more than 60 shareholders.

The annual accounts will have to be filed with the Luxembourg Register of Commerce and Companies within one month following their approval and will be published in full to the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

Public limited liability company (Société anonyme or S.A.)

Annual shareholders' meeting in Luxembourg within six months from the end of the financial year in order to approve the annual accounts.

The annual accounts will have to be filed with the Luxembourg Register of Commerce and Companies within one month following their approval and will be published in full to the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

Special limited partnership (Société en commandite spéciale or SCSp)

No mandatory annual partners’ meeting.

DIRECTOR / OFFICER REQUIREMENTS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

At least one manager required (individual or legal person).

Public limited liability company (Société anonyme or S.A.)

An S.A. can be organized as a one-tier company, in which case at least three directors are required (individual or legal person). If a legal person is appointed as director, it must appoint a permanent representative to perform such mission in the name and on behalf of the legal person. Directors are elected for a term of maximum 6 years (which may be renewed).
If the S.A. is held by a sole shareholder, the company can be managed by a sole director.

An S.A. can also be organized as a two-tier company (ie an executive board (directoire) and a supervisory board (conseil de surveillance)).

Special limited partnership (Société en commandite spéciale or SCSp)

There is no board of directors. The SCSp is managed by one or several managers, which may be unlimited partner(s). The limited partnership agreement must designate the managers of the SCSp.

LOCAL CORPORATE SECRETARY REQUIREMENT

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

None.

Public limited liability company (Société anonyme or S.A.)

None.

Special limited partnership (Société en commandite spéciale or SCSp)

None.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

The company must be managed in Luxembourg.

Public limited liability company (Société anonyme or S.A.)

The company must be managed in Luxembourg.

Special limited partnership (Société en commandite spéciale or SCSp)

The company must be managed in Luxembourg.

LOCAL OFFICE LEASE REQUIREMENT

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Registered office in Luxembourg required.

Public limited liability company (Société anonyme or S.A.)

Registered office in Luxembourg required.
Special limited partnership (Société en commandite spéciale or SCSp)

Registered office in Luxembourg required.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

It is preferable that the managers (or at least one half of the managers, if more than one) reside or work in Luxembourg from a corporate perspective.

Public limited liability company (Société anonyme or S.A.)

It is preferable that the directors (or at least one half of the directors, if more than one) reside or work in Luxembourg from a corporate perspective.

Special limited partnership (Société en commandite spéciale or SCSp)

It is preferable that the manager(s)/managing general partner(s) reside (or work) in Luxembourg from a corporate perspective.

SUFFICIENCY OF VIRTUAL OFFICE

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Real registered office required (domiciliation allowed).

Public limited liability company (Société anonyme or S.A.)

Real registered office required (domiciliation allowed).

Special limited partnership (Société en commandite spéciale or SCSp)

Real registered office required (domiciliation allowed).

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Corporate services providers may provide registered office address.

Public limited liability company (Société anonyme or S.A.)

Corporate services providers may provide registered office address.

Special limited partnership (Société en commandite spéciale or SCSp)
Corporate services providers may provide registered office address.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Private limited liability company (*Société à responsabilité limitée* or S.à r.l.)

Corporate services providers may provide Luxembourg resident managers.

Public limited liability company (*Société anonyme* or S.A.)

Corporate services providers may provide Luxembourg resident managers.

Special limited partnership (*Société en commandite spéciale* or SCSp)

Corporate services providers may provide Luxembourg resident managers.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

Private limited liability company (*Société à responsabilité limitée* or S.à r.l.)

No nationality or residency requirements for both managers and shareholders from a corporate perspective.

Public limited liability company (*Société anonyme* or S.A.)

No nationality or residency requirements both for directors and shareholders from a corporate perspective.

Special limited partnership (*Société en commandite spéciale* or SCSp)

No nationality or residency requirements both for managers and partners from a corporate perspective.

**RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS**

Private limited liability company (*Société à responsabilité limitée* or S.à r.l.)

The shareholders will be deemed to be those indicated in the shareholders’ register of the company.

Public limited liability company (*Société anonyme* or S.A.)

The shareholders will be deemed to be those indicated in the shareholders’ register of the company.

Special limited partnership (*Société en commandite spéciale* or SCSp)

The partners will be deemed to be those indicated in the limited partnership agreement and the register of
partnership interests of the SCSp.

SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

The managers may carry out all acts necessary or useful to achieve the corporate purpose, except those reserved by law or the articles of association to the shareholders.

A manager acting alone or the managers acting together (as provided in the articles of association, if more than one), represent the company towards third parties.

Public limited liability company (Société anonyme or S.A.)

The sole director of the board of directors, as the case may be, may carry out all acts necessary or useful to achieve the corporate purpose, except those reserved by law or the articles of association to the shareholders.

The sole director or the board of directors, as the case may be, represent the company towards third parties and in court.

Special limited partnership (Société en commandite spéciale or SCSp)

Unless otherwise provided in the limited partnership agreement, each manager of the SCSp may carry out all acts necessary or useful to achieve the corporate purpose, except those reserved by law or the articles of association to the partners.

Each manager represents the SCSp towards third parties and before any courts.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

The identity of managers and the shareholders may be found in the Luxembourg Register of Commerce and Companies records and the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

Public limited liability company (Société anonyme or S.A.)

The identity of directors may be found in the Luxembourg Register of Commerce and Companies records and the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).

Special limited partnership (Société en commandite spéciale or SCSp)

The identity of managers (if any) and general partner(s) may be found in the Luxembourg Register of Commerce and Companies records and the Luxembourg electronic gazette (Recueil Electronique des Sociétés et Associations).
MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

One or several managers; maximum of 100 shareholders.

Public limited liability company (Société anonyme or S.A.)

Managers: at least 3 directors, or a sole director if there is a sole shareholder, no maximum number.

Shareholders: at least one shareholder, no maximum number.

Special limited partnership (Société en commandite spéciale or SCSp)

At least one general partner (associé commandité) and one limited partner (associé commanditaire), no maximum number.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

There must be at least one shareholder.

Public limited liability company (Société anonyme or S.A.)

There must be at least one shareholder.

Special limited partnership (Société en commandite spéciale or SCSp)

At least one general partner (associé commandité) and one limited partner (associé commanditaire).

REMOVAL OF DIRECTORS OR OFFICERS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Managers may only be removed by the shareholders for legitimate reasons. The articles of association can allow the removal ad nutum (without cause).

Public limited liability company (Société anonyme or S.A.)

Directors may be removed ad nutum (without cause) by the general meeting of the shareholders.

Special limited partnership (Société en commandite spéciale or SCSp)

Managers must be designated in the limited partnership agreement. Their removal process is to be detailed in the limited partnership agreement.
REQUIRED AND OPTIONAL OFFICERS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

None.

Public limited liability company (Société anonyme or S.A.)

None.

Special limited partnership (Société en commandite spéciale or SCSp)

None.

BOARD MEETING REQUIREMENTS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

If more than one manager have been appointed, board meetings would typically be held at least once a year and as many times as necessary.

If the articles allow it, the resolutions of the board of managers may be adopted unanimously in writing by means of circular resolutions.

Public limited liability company (Société anonyme or S.A.)

If more than one director have been appointed, board meetings would typically be held at least once a year and as many times as necessary.

If the articles allow it, the resolutions of the board of directors may be adopted unanimously in writing by means of circular resolutions.

Special limited partnership (Société en commandite spéciale or SCSp)

No specific requirement applicable.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

Shareholders’ meetings

Except in the event of an amendment to the articles and unless otherwise provided in the articles of association of the company, no decision shall be validly adopted unless it has been adopted by shareholders representing more than half of the share capital of the company. Unless otherwise provided by the articles, if that quorum is not reached at the first meeting or first written consultation, the shareholders shall be convened or consulted a second time, by registered letter, and decisions shall be adopted by a majority of the votes cast, regardless of the portion of capital represented.
Unless otherwise provided in the articles of association of the company, the shareholders representing ¼ of the share capital of the company can amend the articles of association. The increase of the shareholders’ commitments can only be decided unanimously.

**Board meetings**

Unless otherwise provided in the articles of association of the company, resolutions are validly adopted by a majority of the votes cast, provided that the majority of the managers are present or represented at the meeting.

**Public limited liability company (Société anonyme or S.A.)**

**Shareholders’ meetings**

Except in the event of an amendment to the articles of association and unless otherwise provided in the articles of association of the company, decisions are validly adopted by the majority of the votes cast, provided that the majority of the shareholders are present or represented at the meeting.

Unless otherwise provided in the articles of association of the company, amendments to the articles of association of an S.A. require:

- That at least half of the share capital of the S.A. is represented at the meeting, and
- The favourable votes of at least 2/3 of the votes cast

If the first requirement is not met at the first meeting, a second general meeting may be convened at least 15 days in advance. At such second meeting, the amendments will be adopted by 2/3 of the votes cast, regardless of the portion of share capital represented.

The increase of the shareholders’ commitments can only be decided unanimously.

**Board meetings**

Unless otherwise provided in the articles of association of the company, resolutions are validly adopted by a majority of the votes cast, provided that the majority of the directors are present or represented at the meeting.

**Special limited partnership (Société en commandite spéciale or SCSp)**

The form and quorum (if any) applicable to the decisions of the manager(s) must be detailed in the limited partnership agreement.

Decisions to be adopted by partners and the relevant quorums for partners’ meetings must be provided for in the limited partnership agreement.

Unless otherwise provided in the limited partnership agreement, the following rules apply:

- Any decision of the partners will be adopted by the favorable vote of the majority of the votes cast, save for
- Any amendments to the corporate purpose, the nationality, the transformation or the liquidation of the
SCSp must be adopted by the favorable votes of ¾ of the partnership interests and in any event unanimously by the general partner(s).

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?**

**Private limited liability company (Société à responsabilité limitée or S.à r.l.)**

In case of incorporation by means of a contribution in cash, the share capital amount must be deposited in a bank account in Luxembourg prior to incorporation.

**Public limited liability company (Société anonyme or S.A.)**

In case of incorporation by means of a contribution in cash, the share capital amount must be deposited in a bank account in Luxembourg prior to incorporation.

**Special limited partnership (Société en commandite spéciale or SCSp)**

No bank account requirement.

**AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?**

**Private limited liability company (Société à responsabilité limitée or S.à r.l.)**

Internal auditor required if more than 60 shareholders (and there is no certified statutory auditor).

Luxembourg certified statutory auditor required if the company exceeds two out of the three following thresholds in respect of total balance sheet (€4.4 million), net turnover (€8.8 million) and average number of personnel (50).

If the company has a certified statutory auditor, it does not have to appoint an internal auditor.

The company's books must be kept at the registered office of the company.

**Public limited liability company (Société anonyme or S.A.)**

Internal auditor is required (if there is no certified statutory auditor).

Luxembourg certified statutory auditor required if the company exceeds two out of the three following thresholds in respect of total balance sheet (€4.4 million), net turnover (€8.8 million) and average number of personnel (50).

If the company has a certified statutory auditor, it does not have to appoint an internal auditor.

The company's books must be kept at the registered office of the company.

**Special limited partnership (Société en commandite spéciale or SCSp)**

No auditor required.
**REQUIREMENT REGARDING PAR VALUE OF STOCK**

Private limited liability company (*Société à responsabilité limitée* or S.à r.l.)

Shares may be issued with, or without, par value.

Public limited liability company (*Société anonyme* or S.A.)

Shares may be issued with, or without, par value. Shares with different par values may be issued.

Special limited partnership (*Société en commandite spéciale* or SCSp)

Partnership interests may be represented by partnership units.

**INCREASING OF CAPITALIZATION IF NEEDED**

Private limited liability company (*Société à responsabilité limitée* or S.à r.l.)

The share capital of an S.à r.l. can be increased through a contribution in kind or cash by a decision of an extraordinary shareholders’ meeting (held in the presence of a Luxembourg notary).

The articles of association of the company may provide for authorized capital, in which case the share capital of the company can be increase by a decision of the board of managers, within the limits of the articles, and subsequently recorded by notarial deed.

Equity contributions without the issuance of any shares can also be made to the capital contribution account of an S.à r.l. (account 115 "compte des apports des actionnaires non rémunérés par des titres" of the Luxembourg Chart of Accounts) connected to the shares of such company.

Public limited liability company (*Société anonyme* or S.A.)

The share capital of an S.A. can be increased through a contribution in kind or cash by a decision of an extraordinary shareholders’ meeting (held in the presence of a Luxembourg notary public). In case of a contribution in kind, the value of such contribution must, in principle, be certified by an external auditor (*réviseur d’entreprises agréé*) to the Luxembourg notary. The general meeting may limit or suppress the preferential subscription rights of the existing shareholders when increasing the share capital.

The articles of association of the company may provide for an authorized capital, in which case the share capital of the company can be increase by a decision of the board of directors, within the limits of the articles, and subsequently recorded by notarial deed. The articles of association may allow the limitation or suppression of the preferential subscription rights of the existing shareholders by the board of directors when increasing the share capital of the company using the authorized capital.

Equity contributions without the issuance of any shares can also be made to the capital contribution account of an S.A. (account 115 "compte des apports des actionnaires non rémunérés par des titres" of the Luxembourg Chart of Accounts) connected to the shares of such company.

Special limited partnership (*Société en commandite spéciale* or SCSp)
Conditions to be determined in the limited partnership agreement.

**SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)**

Private limited liability company (*Société à responsabilité limitée* or *S.à r.l.*)

Repatriation of funds can be made through payment of (interim) dividends, redemption of shares (capital decrease) or upon liquidation (*boni de liquidation*). Debt or hybrid instruments can also be put in place, in which case the repatriation of funds can be made through interests payments, repayment of loans or redemption of securities.

Public limited liability company (*Société anonyme* or *S.A.*)

Repatriation of funds can be made through payment of (interim) dividends, redemption of shares (capital decrease) or upon liquidation (*boni de liquidation*). Debt or hybrid instruments can also be put in place, in which case the repatriation of funds can be made through interests payments, repayment of loans or redemption of securities.

Special limited partnership (*Société en commandite spéciale* or *SCSp*)

The distributions and reimbursements to the partners are to be provided for in the limited partnership agreement.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

Private limited liability company (*Société à responsabilité limitée* or *S.à r.l.*)

A transfer or issuance of shares to a non-shareholder must be approved by shareholders representing at least three-quarters of the capital given at a shareholders meeting. The articles of association may lower this threshold up to the favorable votes of shareholders representing at least half of the capital.

Further to the reform, in the absence of consent from the shareholders, the shares can be acquired, with the transferring shareholder’s consent, by (i) the other shareholders, (ii) a third party approved by them or (iii) the company itself, within a period of three months, which may be extended to six months under certain conditions. The applicable conditions to determine the transfer price of the shares should be set out in the articles of association, failing which if the parties cannot reach an agreement, the price will be determined by the competent Luxembourg court.

If the shares are not acquired in accordance with the aforementioned provisions, the shareholder may proceed with the initially proposed transfer. This represents a significant change to the previous rules under which shareholders of a *S.à r.l.* that wished to transfer their shares were unable to do so if they failed to obtain the requisite consent. It is however, still possible to provide for transfer restrictions in eg, a shareholders’ agreement.

Public limited liability company (*Société anonyme* or *S.A.*)

The shares issued by an *S.A.* are freely transferable. The articles of association of the company, or a shareholders’ agreement, may provide for certain restrictions, within the limits of the law on commercial companies.

Special limited partnership (*Société en commandite spéciale* or *SCSp*)
The limited partnership agreement should provide for the conditions at which the limited partnership interests or units issued by an SCSp may be transferred, dismembered (démembreés) or pledged. Unless otherwise provided in the limited partnership agreement, any transfer other than because of death, dismemberment of ownership (démembrement) or pledge of limited partnership interests requires the unanimous consent of the general partner(s).

The limited partnership agreement should provide for the conditions at which the general partnership interests or units issued by an SCSp may be transferred, dismembered (démembrements) or pledged. Unless otherwise provided in the limited partnership agreement, any transfer other than because of death, dismemberment of ownership (démembrement) or pledge of general partnership interests requires the consent of the partners deciding in the same manner as for the amendment of the limited partnership agreement.

**OBTAINING A NAME AND NAMING REQUIREMENTS**

**Private limited liability company (Société à responsabilité limitée or S.à r.l.)**

The corporate name of an S.à r.l. must be different from the denominations of all the other existing Luxembourg companies. Availability of corporate name can be checked with the Register of Commerce and Companies prior to incorporation, but cannot be reserved. Trademark and IP laws also apply to corporate denominations.

**Public limited liability company (Société anonyme or S.A.)**

The corporate name of an S.A. must be different from the denominations of all the other existing Luxembourg companies. Availability of corporate name can be checked with the Register of Commerce and Companies prior to incorporation, but cannot be reserved. Trademark and IP laws also apply to corporate denominations.

**Special limited partnership (Société en commandite spéciale or SCSp)**

The corporate name of an SCSp must be different from the denominations of all the other existing Luxembourg companies and partnerships. Availability of corporate name can be checked with the Register of Commerce and Companies prior to incorporation, but cannot be reserved. Trademark and IP laws also apply to corporate denominations.

**SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS**

**Private limited liability company (Société à responsabilité limitée or S.à r.l.)**

Lawyers, banks and professionals of the financial sector, including domiciliation companies (corporate services providers), as well as notaries, are subject to KYC obligations.

The Luxembourg law setting-up a register of beneficial owners, implementing the EU Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, lays down the following main obligations:

1. Obtaining and maintaining up-to-date information concerning beneficial owners of any Luxembourg entities at their registered office;
2. Filing such information in a new, specially-created, register in Luxembourg; and

3. Providing information on beneficial owners to (i) national authorities (upon simple request) and (ii) certain professional organizations and professionals of the financial sector (upon grounded request).

The notion of "beneficial owner" is defined by the Luxembourg law on the fight against money laundering and terrorist financing. In a nutshell, it refers to any individual ultimately who either holds, directly or indirectly, more than 25% of the company’s capital or voting rights, or exercises, by any other means, a control over the management or executive bodies of the company or over the general meeting of its shareholders.

In case it can be confirmed that no natural person owns, holds or controls, directly or indirectly, at least 25% of the relevant entity and, therefore, no person meets the requirements to be identified as beneficial owner, the name (and details) of the senior managing official(s) (dirigeant(s) principal/principaux) should be communicated to, and filed with, the Luxembourg Beneficial Owners Register.

While no definition of the term "senior managing official(s)" has been provided by the Law, the Circular LBR 19/02 of 18 March 2019 issued by the Luxembourg Business Registers (which is not a source of binding law, but is limited to provide a certain guidance on the interpretation of law) provides that the term of "senior managing official" refers to the entire management body of a "company".

Criminal sanctions amounting to fines ranging from EUR 1 250 to EUR 1 250 000 may be applied to entities within the scope and on the beneficial owners in case of non-compliance.

Public limited liability company (Société anonyme or S.A.)

Lawyers, banks and professionals of the financial sector, including domiciliation companies (corporate services providers), as well as notaries, are subject to KYC obligations.

The Luxembourg law setting-up a register of beneficial owners, implementing the EU Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, lays down the following main obligations:

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Criminal sanctions amounting to fines ranging from EUR 1 250 to EUR 1 250 000 may be applied to entities within the scope and on the beneficial owners in case of non-compliance.

Special limited partnership (Société en commandite spéciale or SCSp)

Lawyers, banks and professionals of the financial sector, including domiciliation companies (corporate services providers), as well as notaries, are subject to KYC obligations.

Obligation to identify the beneficial owner of corporate and legal entities, which is, in principle, any natural person holding, directly or indirectly, at least 25% of the share capital of said corporate and legal entities.

Criminal sanctions amounting to fines ranging from EUR 1 250 to EUR 1 250 000 may be applied to entities within the scope and on the beneficial owners in case of non-compliance.

As from March 2019, a register of beneficial owners shall be accessible online.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Private limited liability company (Société à responsabilité limitée or S.à r.l.)

In principle, amendments to the articles of association of an S.à r.l. require a decision of the extraordinary shareholders' meeting (held in the presence of a Luxembourg notary), with shareholders representing 3/4 of the share capital of the company.

Public limited liability company (Société anonyme or S.A.)

In principle, amendments to the articles of association of an S.A. require a decision of the extraordinary shareholders' meeting (held in the presence of a Luxembourg notary) where at least half of the share capital of the company is represented at the meeting with favourable votes of at least 2/3 of the votes cast.

Special limited partnership (Société en commandite spéciale or SCSp)

Unless otherwise provided in the limited partnership agreement, the approval of all partners is required to make amendments thereto.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Private limited liability company (Société à responsabilité limitée or S.à r.l.)
Business permits may be required depending upon the professional activities to be carried out. Holding companies are typically exempted from such requirement.

**Public limited liability company (Société anonyme or S.A.)**

Business permits may be required depending upon the professional activities to be carried out. Holding companies are typically exempted from such requirement.

**Special limited partnership (Société en commandite spéciale or SCSp)**

Business permits may be required depending upon the professional activities to be carried out. Holding companies are typically exempted from such requirement. SCSp are not typically used to conduct commercial activities.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

**Private limited liability company (Société à responsabilité limitée or S.à r.l.)**

Shelf companies can be purchased from corporate services providers (not widely used as the articles of association and, in particular, the corporate purpose clause may have to be amended to fit a given transaction).

**Public limited liability company (Société anonyme or S.A.)**

Shelf companies can be purchased from corporate services providers (not widely used as the articles of association and, in particular, the corporate object clause may have to be amended to fit a given transaction).

**Special limited partnership (Société en commandite spéciale or SCSp)**

There are generally no shelf partnership. As there is a very high contractual freedom when setting up an SCSp, it is preferable to negotiate the limited partnership agreement directly amongst parties.
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