



GLOBAL EXPANSION GUIDEBOOK CORPORATE

Luxembourg



Downloaded: 02 May 2025

INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Corporate*.

GLOBAL EXPANSION GUIDEBOOK 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 *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, executive compensation, and tax laws in key jurisdictions around the world.

CORPORATE

The *Global Expansion Guidebook – 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 *Global Expansion Guidebook – 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.

This publication is provided to you as a courtesy, and it does not establish a client relationship between DLA Piper and you, or any other person or entity that receives it.

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.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that corporate law is dynamic, and the legal regime in the countries surveyed could change.

No part of this publication may be reproduced or transmitted in any form without the prior consent of DLA Piper.

LUXEMBOURG



Last modified 07 August 2023

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 (*collège 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 represent the company acting alone, or as set out in the articles of incorporation/association, if more than one manager has been appointed.

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

Separate and distinct legal personality. An SA may be organized as a 1-tier company (ie, managed by a sole director or a board of directors composed of at least 3 directors) or 2-tier company (ie, an executive board (*directoire*) and a supervisory board (*conseil de surveillance*). Directors are elected by the shareholders and represent the company acting alone or as set out in the articles of incorporation/association, if more than one director has been appointed.

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

Largely inspired by the Anglo-Saxon limited partnership regimes, the special limited partnership 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 – a limited partnership agreement – for a limited or unlimited duration, between 1 or more general partner(s) (*associés commandités*) jointly and severally liable for the partnership's commitments and 1 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 may be contractually set forth in the limited partnership agreement.

ENTITY SET UP

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 SA) 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 1 to 100 shareholders
- Share capital may be divided into several classes of shares
- Generally no personal liability of the shareholders
- Typical incorporation documents include a notarial incorporation deed including articles of incorporation
- Register of shareholders to be maintained at the registered office of the company
- Managed by a sole manager or a board of managers
- Annual accounts must 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 one shareholder and no maximum number
- Share capital may be divided into several classes of shares
- Generally no personal liability of the shareholders
- Managed by a sole director (possible only if the company has a sole shareholder) or a board of directors composed of at least 3 directors or by an executive board (*directoire*) and a supervisory board (*conseil de surveillance*).
- Typical incorporation documents include a notarial incorporation deed including articles of incorporation
- Shares register to be maintained at the registered office of the company
- 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 3 directors
- Annual accounts must 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)

- 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 liability of the limited partners, limited to their contribution
- 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 a limited partnership agreement and a register of partnership interests
- High level of contractual freedom and structuring flexibility
- 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.)

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

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

EUR 30,000, fully subscribed and at least 1/4 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 are 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 are 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 percent), and a withholding tax may apply when dividends are paid to its shareholders (at the rate of 15 percent, 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 percent), and a withholding tax may apply when dividends are paid to its shareholders (at the rate of 15 percent, 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 EUR 12,000) must be deposited into the Luxembourg bank account opened in the name of the company. The bank will block the share capital amount and issue a blocking certificate to the attention of the instructed Luxembourg notary. The incorporation meeting must be held before a Luxembourg notary (to which the shareholders may 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 incorporation. The share capital amount will be released after incorporation and the instructed Luxembourg notary will issue a deblocking certificate, which will allow the bank to release the amount blocked. The incorporation deed, including the articles of incorporation, must 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. may 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, as founder of the company, 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 EUR30,000) must be deposited into the Luxembourg bank account opened in the name of the company. The bank will block the share capital amount and issue a blocking certificate to the attention of the instructed Luxembourg notary. The incorporation meeting must be held before a Luxembourg notary (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 incorporation. The instructed Luxembourg notary will issue a deblocking certificate, which will allow the bank to release the amount blocked.

The share capital amount will be released after incorporation. The incorporation deed including the articles of incorporation must be filed with the Luxembourg Register of Commerce and Companies within 1 month and will be published in full to the Luxembourg electronic gazette (*Recueil Electronique des Sociétés et Associations*).

An S.A. may also be incorporated by means of a contribution in kind (or a mix of cash and kind), the value of such contribution certified by an external auditor (*réviseur d'entreprise agréé*) designated by the founding shareholder(s) to the Luxembourg notary.

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

- The founding shareholders 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 3 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 under private seal (or before a Luxembourg notary, which is uncommon in practice). 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 1 general partner (*associé commandité*) and at least 1 limited partner (*associé commanditaire*).

The contributions can be made by means of contributions 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 1 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 and 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 incorporation/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 their 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 of incorporation /association. The meeting must be held within 6 months from the end of the financial year in order to approve the annual accounts.

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

At least 1 general meeting must be held in the Grand Duchy of Luxembourg each year. The meeting must be held within 6 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 meetings of the board of managers (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 otherwise provided by the articles of incorporation/association.

If the articles of incorporation/association 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 meetings of the board of directors 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 otherwise provided 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)

The SCSp is managed by one or several managers, which may be general partner(s), designated by its limited partnership agreement.

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 and filing with the Luxembourg Register of Commerce and Companies and publication of the incorporation deed and subsequent deeds in the Luxembourg electronic gazette (*Recueil Electronique des Sociétés et Associations*) within one month following the execution of the relevant deed.

The identities of the shareholders are disclosed and published in the Luxembourg Register of Commerce and Companies.

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

Registration and filings with the Luxembourg Register of Commerce and Companies and publication of the incorporation deed and subsequent deeds in the Luxembourg electronic gazette (*Recueil Electronique des Sociétés et Associations*) within one month following the execution of the relevant deed.

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 and filings with the Luxembourg Register of Commerce and Companies and publication of extracts of the limited partnership agreement and subsequent amendments (where applicable) in the Luxembourg electronic gazette (*Recueil Electronique des Sociétés et Associations*) within one month following the execution of the limited partnership agreement and subsequent amendment (where applicable).

The identities of the general partner(s) are disclosed and published in the Luxembourg Register of Commerce and Companies, while those of the limited partners are not.

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 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.)

Specific exit strategies for the shareholders may be included in the articles of association or a shareholders' agreement between the shareholders.

In addition, the S.à r.l. can be dissolved and liquidated by a decision of the shareholder(s) following the dissolution and liquidation procedure. When the S.à r.l. has a sole shareholder, it can also be dissolved without being liquidated, following the dissolution without liquidation procedure, in which case all the assets and liabilities of the S.à r.l. are transferred *ipso jure* to the sole shareholder.

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*) within one month following such dissolution.

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 a decision of the shareholder(s) following the dissolution and liquidation procedure. When the S.A. has a sole shareholder, it can also be dissolved without being liquidated, following the dissolution without liquidation procedure, in which case all the assets and liabilities of the S.à r.l. are transferred *ipso jure* to the sole shareholder.

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*) within one month following such dissolution.

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, within 6 months from the end of the financial year. An annual shareholders' meeting must be held if there are more than 60 shareholders.

The annual accounts must be filed with the Luxembourg Register of Commerce and Companies within one month following their approval and 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 to be held in Luxembourg within 6 months from the end of the financial year in order to approve the annual accounts.

The annual accounts must be filed with the Luxembourg Register of Commerce and Companies within one month following their approval and 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. may be organized as a one-tier company, in which case at least 3 directors are required (individuals or legal persons). If a legal person is appointed as director, the company 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 a maximum of 6 years, which may be renewed.

If the S.A. is held by a sole shareholder, the company may be managed by a sole director.

An S.A. can also be organized as a two-tier company (i.e., 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.

For more information on directors' duties, see our [Global Guide to Directors' Duties](#).

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 from a corporate perspective that the managers (or at least 1/2 of the managers, if more than one reside or work in Luxembourg.

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

It is preferable from a corporate perspective that the directors (or at least 1/2 of the directors, if more than one reside or work in Luxembourg.

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

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

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 a registered office address.

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

Corporate services providers may provide a registered office address.

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

Corporate services providers may provide a 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 are deemed to be those indicated in the shareholders' register of the company.

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

The shareholders are deemed to be those indicated in the shareholders' register of the company.

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

The partners are 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 manager or the board of managers, as the case may be, may carry out all acts necessary or useful to achieve the corporate object, except those reserved by law or the articles of incorporation/association to the shareholders.

Each manager shall represent the company against third parties and in legal proceedings, either as plaintiff or as defendant. The articles of incorporation/association may authorize 1 or more managers to represent the company in any instruments or in legal proceedings, either alone or jointly.

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

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

The sole director or the board of directors, as the case may be, represent the company against third parties and in legal proceedings, either as plaintiff or as defendant. The articles of incorporation/association may authorize 1 or more directors to represent the company in any instruments or in legal proceedings, either alone or jointly.

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 limited partnership agreement 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 are published with 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 are published with the Luxembourg electronic gazette (*Recueil Electronique des Sociétés et Associations*).

The identity of shareholders is not disclosed nor published with 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 are published with the Luxembourg electronic gazette (*Recueil Electronique des Sociétés et Associations*).

The identity of limited partners is not disclosed nor published with 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.)

Directors: 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 incorporation /association can allow the removal without cause (*ad nutum*).

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

Directors may be removed without cause (*ad nutum*) 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 has been appointed, meetings of the board of managers would typically be held at least once a year and as many times as necessary.

If the articles of incorporation/association 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 has been appointed, meetings of the board of directors would typically be held at least once a year and as many times as necessary.

If the articles of incorporation/association 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 incorporation/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 of incorporation/association, 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 incorporation/association of the company, the shareholders representing 3/4 of the share capital of the company may amend the articles of incorporation/association. The increase of the shareholders' commitments can only be decided unanimously.

Board meetings

Unless otherwise provided in the articles of incorporation/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 incorporation/association and unless otherwise provided in the articles of incorporation/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 incorporation/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 favorable 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 incorporation/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 which must be adopted by the favorable votes of 3/4 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 opened in the name of the company prior to its incorporation. While there is no legal requirement for the bank account to be opened in Luxembourg, it is highly recommended to have a local bank account in particular to ensure a smooth process in the incorporation process with the Luxembourg notary.

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 opened in the name of the company prior to its incorporation. While there is no legal requirement for the bank account to be opened in Luxembourg, it is highly recommended to have a local bank account in particular to ensure a smooth process in the incorporation process with the Luxembourg notary.

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 2 out of the 3 following thresholds in respect of total balance sheet (EUR4.4 million), net turnover (EUR8.8 million) and average number of personnel (50). If the company has a certified statutory auditor, it does not need 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 2 out of the 3 following thresholds in respect of total balance sheet (EUR4.4 million), net turnover (EUR8.8 million) and average number of personnel (50). If the company has a certified statutory auditor, it does not need 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 nominal value. Shares with different nominal values may be issued.

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

Shares may be issued with or without nominal value. Shares with different nominal values may be issued. Special limited partnership (*Société en commandite spéciale* or SCSp)

Partnership interests may be represented by partnership units or interests.

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 before of a Luxembourg notary).

The articles of incorporation/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 as set out in the articles of incorporation/association 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 I 15 "*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 before 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 company's articles of incorporation/association may provide for an authorized capital, in which case the share capital of the company can be increased by a decision of the board of directors, within the limits as set out in the articles of incorporation/association, and subsequently recorded by notarial deed. The articles of incorporation /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 I 15 "*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, repayment of distributable reserves (share premium or account I I 5 repayment), redemption of shares (capital decrease) or upon liquidation (*boni de liquidation*). Debt or hybrid instruments may also be put in place, in which case the repatriation of funds can be made through interest 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, repayment of distributable reserves (share premium or account I I 5 repayment), redemption of shares (capital decrease) or upon liquidation (*boni de liquidation*). Debt or hybrid instruments may also be put in place, in which case the repatriation of funds can be made through interest 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 the shareholders representing at least 3/4 of the share capital given at a shareholders' meeting. The articles of incorporation/association may lower this threshold up to the favorable votes of the shareholders representing at least half of the share 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 3 months, which may be extended to 6 months under certain conditions. The applicable conditions to determine the transfer price of the shares should be set out in the articles of incorporation/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 incorporation/association of the company, or a shareholders' agreement, may provide for certain restrictions, within the limits of the Luxembourg law of 10 August 1915 on commercial companies, as amended from time to time.

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 (*démembrées*) 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 (*démembrées*) 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 Luxembourg Register of Commerce and Companies prior to its 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 Luxembourg Register of Commerce and Companies prior to its 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 Luxembourg Register of Commerce and Companies prior to its 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 of 12 November 2004 on the fight against money laundering and terrorist financing, as amended from time to time. In a nutshell, it refers to any individual ultimately who either holds, directly or indirectly, more than 25 percent 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 percent 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 Luxembourg 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.)

The same rules as the ones set out above apply to S.A.

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

The same rules as the ones set out above apply to SCSp.

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 SA 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 favorable 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 incorporation/association, and, in particular, the corporate object clause may need 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 incorporation/association, and, in particular, the corporate object clause may need to be amended to fit a given transaction).

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

There is 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 among parties.

KEY CONTACTS



Mélody Brunot
Counsel
DLA Piper Luxembourg
Melody.brunot@dlapiper.com
T: +352 26 29 04 2629
[View bio](#)



Céline Pignon
Counsel
DLA Piper Luxembourg
celine.pignon@dlapiper.com
T: +352 26 29 04 2007
[View bio](#)

Disclaimer

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication.

This may qualify as 'Lawyer Advertising' requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2022 DLA Piper. All rights reserved.