LPEA

THE LUXEMBOURG VOICE OF PRIVATE CAPITAL

LIMITED PARTNERSHIPS IN LUXEMBOURG

A comprehensive Q&A for all practitioners

ABOUT LPEA

The Luxembourg Private Equity and Venture Capital Association (LPEA) is the representative body of private equity and venture capital practitioners with a presence in Luxembourg.

With over 250 members, LPEA plays a leading role locally and actively promotes PE and VC in Luxembourg.

LPEA is the go-to platform for PE and VC investors and advisers, with a focus on the latest trends in the industry. International by nature, it allows members to discuss and exchange while learning via workshops and networking events held on a regular basis and often with distinguished partners.

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Foreword

The Luxembourg government took the opportunity of the transposition of the AIFMD into Luxembourg law to revamp the limited partnership regime with the aim at making it more attractive for fund managers and, in particular, private equity managers.

In a nutshell, the law implementing the AIFMD has revamped the existing limited partnership regime (“CLP” - common limited partnership or “SCS” - société en commandite simple) and introduced a new type of partnership (“SLP” - special limited partnership or “SCSp” - société en commandite spéciale). In addition, further to the change of paradigm from a “product” regulation to a “manager” regulation resulting from the entry into force of the AIFMD, Luxembourg has adopted in 2016 an act on the reserved alternative investment funds (RAIFs) that builds on the solid success of the Luxembourg regulated products (SIFs and SICARs) by enabling fund managers to set up SIF or SICAR-like vehicles which are subject to a “manager regulation” only and not subject to the authorisation of the Luxembourg regulatory authority.

The purpose of this user guide is not to provide an exhaustive accounting, legal and tax advice on, or description of, Luxembourg partnerships but rather to answer a number of the typical questions private equity managers and service providers may have when setting up and administering a Luxembourg limited partnership vehicle. It should also be noted that in line with the current trend, the focus of this guide has been placed on RAIFs and “unregulated” partnerships rather than on regulated funds such as the SIFs or SICARs. SIFs and SICARs, while remaining attractive for certain type of fund promoters, are less likely to be used by fund managers that seek to set up AIFMD compliant funds or that are happy to use the “unregulated” (tax transparent) limited partnership structures.

Legislation

1915 Law	Law of 10 August 1915 on commercial companies, as amended
AIFMD	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations No 1060/2009 and (EU) No 1095/2010
AIFM Law	Law of 12 July 2013, as amended, on Alternative Investment Fund Managers transposing Directive 2011/61/EU
RAIF	A reserved alternative investment fund under the RAIF Law
RAIF Law	Law of 23 July 2016 on Reserved Alternative Investment Funds, as may be amended
RCS Law	Law of 19 December 2002 on the Register of Commerce and Companies and on the accounting records and annual accounts of companies, as amended
SICAR Law	Law of 15 June 2004, as amended, relating to the Investment Company in Risk Capital
SIF Law	Law of 13 February 2007, as amended, relating to the Specialised Investment Fund

Introduction

Luxembourg has historically been quick to grasp any opportunity to enhance competitiveness through speedy and smart legislation, being the first to transpose the European Directive on UCITS into national law and continuing to lead in this field over the decades. This was again the case with the AIFM Law by which the Luxembourg legislator transposed the AIFMD into domestic law. Sensing an opportunity with the transposition of the AIFMD into national law, Luxembourg has once more been quick off the mark to introduce favorable measures for both alternative investment fund managers and fund raising vehicles, with proposals to modernize its limited partnership regime.

The Luxembourg legislator and tax authorities have built an environment that perfectly responds to the needs of the private equity industry. The flexibility of the limited partnership coupled with the dynamism of Luxembourg as one of the main fund domiciles makes the common limited partnership (“SCS”) and special limited partnership (“SCSp”) the vehicles of choice for both regulated (SIF or SICAR) and unregulated funds (whether opting in for the application of the RAIF Law or not).

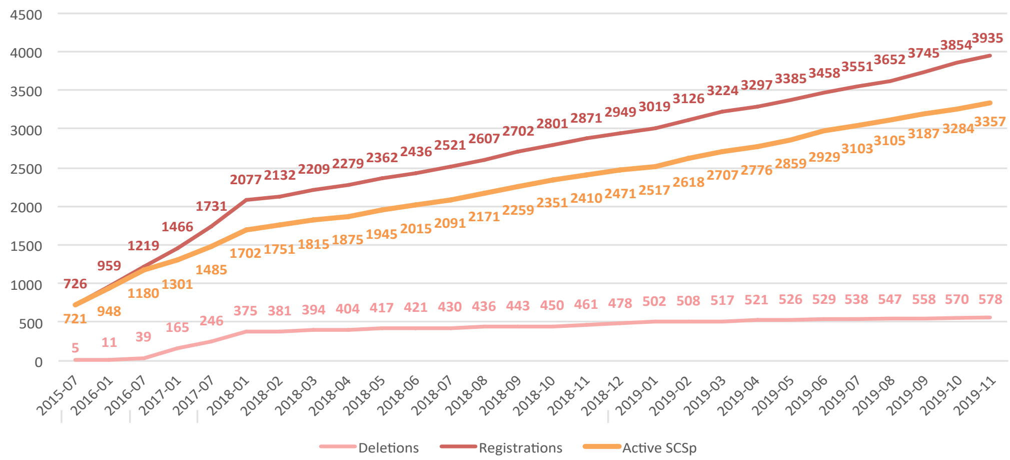
The SCSp, a partnership without a legal personality distinct from its partners, was created to rival the Anglo-Saxon models of limited partnership in terms of flexibility and confidentiality.

Since its introduction into Luxembourg, the new SCSp has expanded in popularity. As an illustration, between April 2014 and November 2019, the number of SCSp in Luxembourg increased almost 27-fold from 123 to 3,357. This demonstrates a steady adoption of this vehicle by the market. All of these figures clearly illustrate to which extent these vehicles confer to Luxembourg the status of attractive domicile in the eyes of the investors and fund managers. The decision of the UK to notify the European Council of its withdrawal from the European Union – i.e., the so-called Brexit process – and the political and legal uncertainty surrounding such process, combined with tax developments such as BEPS, have triggered further interest and a continuous and increasing appetite to use Luxembourg partnerships and generally, ensure that there is substance in one single jurisdiction – with Luxembourg clearly emerging as a jurisdiction of choice for such purpose.

Confidentiality and speed of set-up are key advantages of the SCS and SCSp. Due to Luxembourg’s flexible legal regime, there is a high degree of contractual flexibility surrounding the set-up of partnerships.

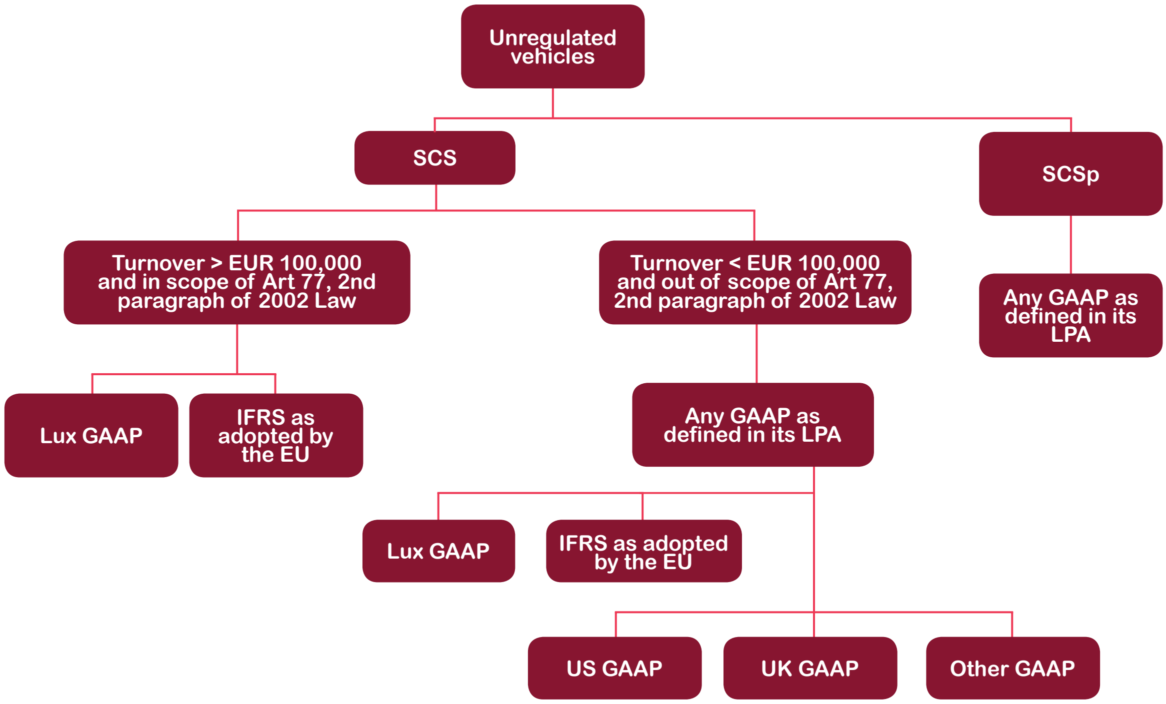
On 9 January 2015, the Luxembourg tax authorities published a circular (Circular L.I.R. No 14/4) which provides for guidance on the taxation of income realized by a SCS/SCSp. It clarifies the situations in which SCS and SCSp are treated as flow-through vehicles not carrying out any commercial activity.

**Evolution
SCSp market in Luxembourg**



Source: RCSL - Statistiques de dépôt, PwC analysis

1. What accounting principles are acceptable?



Unregulated vehicles[2]

Applicable accounting principles for common limited partnership (SCS):

The accounting principles requirements are different depending on the turnover of the SCS and if it can benefit from the exemption to apply any accounting principles as set out in its LPA (LPA GAAP) as per the Art 13 of the RCS Law which referred to Article 77, 2nd paragraph, point 2 & 3 of the amended law of 19 December 2002.

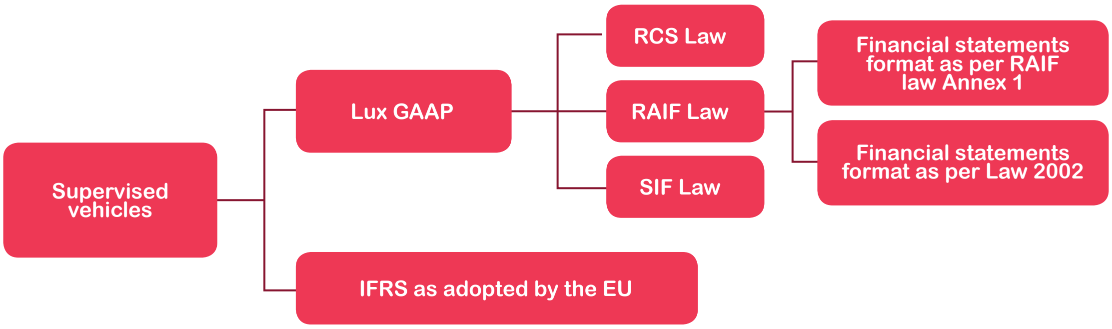
Only SCS with a turnover below EUR 100,000 (and most private equity SCS should be below such threshold, as dividend income, gain on participa¬-tions and interest income are not considered as turnover) and which have all of their partners having unlimited liability are themselves not organized in the form of an SA, SE, SARL or SECA will not be subject to Chapter 2 of the RCS Law and therefore the accounting principles will not be imposed by mandatory regulation but as set out in the SCS's LPA.

The use of Lux GAAP, IFRS, UK GAAP, US GAAP or "Other GAAP" to meet investors' wishes or requirements of any other stakeholders (e.g. banks) is thus allowed.

It results that a SCS which has a General Partner incorporated in the form of an Sarl (which is usually the case for Private Equity structure) will have to follow the GAAP foreseen by the RCS Law, i.e., Lux GAAP or IFRS as adopted by the European Union (EU).

Applicable accounting principles for special limited partnerships (SCSp):
Regardless of its turnover, a SCSp will be allowed to apply any accounting principles as set out in its LPA (Lux GAAP, IFRS, UK GAAP, US GAAP and "Other GAAP" as defined above).

2 - A reference to "Unregulated vehicles" in this document excludes, for the avoidance of doubt, SCS/SCSp qualifying as AIF managed by an Authorized AIFM and SCS/SCSp subject to the RAIF Law.



Supervised vehicles[3]

RAIFs, SIFs, SICARs:

"Standard" RAIFs[4] and SIFs must apply Lux GAAP or IFRS as adopted by the EU. In addition, they have specific requirements in their respective Law in relation to the layout of, and minimum information in, their financial statements.

In order to clarify this requirement for RAIFs, it is necessary to distinguish three categories of RAIFs, namely:
(i) «RAIF - Investment companies» (other than those referred to in Article 48 (1) of the RAIF Law) which has to present the balance sheet and profit and loss accounts under Lux GAAP based on the format prescribed in the Annex of the RAIF Law.
(ii) «RAIF – Risk Capital» (referred to in Article 48 (1) of the RAIF Law) which has the option to prepare the balance sheet and profit and loss accounts under Lux GAAP based on the format prescribed in that Annex of the RAIF Law or as per the format in the commercial Law 2002 (Articles 34, 35, 46 and 47).
(iii) «RAIF – IFRS EU regime» (exercising the option provided for in Article 72bis L20022) which will prepare it annual accounts in accordance with IFRS as adopted by the EU.

It must be noted that with respect to RAIFs, a separate annual report may be established for each compartment provided that each annual report contains also the combined data of all the compartments.

The publication of the Q&A 19/018 issued by the Commission des Normes Comptables in February 2019, clarified some questions related to the determination of the applicable accounting regime for RAIF organized in the form of commercial companies with legal personality and particularly regarding the formalism of filing financial data with the **Trade and Companies Register** (RCS). The Q&A clarified the following two questions:

1) Are RAIFs subject to the Standard Chart of Account (PCN)?
• Only RAIFs which are required to file financial data with the RCS are subject to the PCN; an important point is that RAIF which are set up as SCSp and FCP are out of scope.
• RAIFs which are required to file financial data with the RCS cannot benefit from the PCN exemption reserved for companies subject to prudential supervision by the CSSF (e.g. SICAVs under 2010 UCI Law, SIFs under 2007 Law, SICARs under 2004 Law).
• RAIFs which are required to file financial data with the RCS may benefit from the PCN exemption if they prepare and publish their annual accounts in accordance with IFRSs as adopted by the European Union.

2) Which formalism of filing financial data with the RCS?
RAIFs which are required to file their financial data with the RCS under the accounting frameworks "Lux GAAP with Fair value option" or "Lux GAAP" are subject to the obligation to deposit their account balances prepared in accordance with the PCN without the obligation to submit their balance sheet and profit and loss accounts in accordance with the required format as prescribed by the Law 2002 (eCDF).

AIFs SCS/SCSp:
SCS/SCSp that are managed by an authorised Alternative Investment Fund Manager (AIFM) are required to apply accounting principles recognized as per article 20 of the AIFM Law which states that "The accounting information given in the annual report must be prepared in accordance with the accounting standards of the home Member State of the AIF […]".
It should also be noted that the preparation of the financial statements and the choice of the accounting standard is the responsibility of the management of the fund and the AIFM.

3 - A reference to "Supervised vehicles" in this document includes, for the avoidance of doubt, SCS/SCSp qualifying as AIF managed by an Authorized AIFM, RAIF formed as SCS/SCSp, SIF and SICAR [formed as SCS/SCSp].
4 - "Standard RAIFs" are RAIFs that have not opted for the application of article 48 of the RAIF Law (and are subject to the tax regime applicable to RAIFs by default).

2. Where does the booking/documentation need to take place?

SIF, SICAR and RAIF:

Article 3 of the SIF Law states that "Specialised investment funds subject to this Law shall be deemed to be situated in Luxembourg if the registered office of the management company of the common fund or the registered office of the investment company is situated in Luxembourg. The head office must be located in Luxembourg." Article 1(3) of the SICAR Law provides that "The registered office and the head office of a Luxembourg SICAR must be situated in Luxembourg". The RAIF Law contains a similar provision with respect to a Luxembourg RAIF.

The administration of an undertaking for collective investment (UCI) includes all back-office functions in the widest sense of the term, notably:

- fund accounting;
- calculation of the net asset value;
- performance calculation;
- preparation of reports;
- executing sales and redemption of fund shares and units;
- maintenance of the shareholder register;
- administration of client accounts;
- communication with shareholders and unit holders.

Luxembourg law requires that, as a matter of principle, tasks belonging to the central administration be carried out in the Grand Duchy.

SCS/SCSp:

The office of the Special Limited Partnership (SCSp/SCS) is located at its head office (Article 320-1(7)/100-2 of 1915 Law). The head office is assumed to be located at the same place as its registered office (as stated in its LPA) but that presumption can be rebuked.

3. Is consolidation required?

The present section solely covers consolidation requirements applicable to limited partnerships having their head office (administration centrale) in Luxembourg under Luxembourg legal and regulatory provisions. The purpose of the section is not to analyse additional consolidation requirements or exemptions resulting from the application of specific accounting frameworks (foreign or international GAAPs).

Even if an undertaking is exempted by law from drawing up consolidated financial statements, a limited partnership still has the option to prepare consolidated financial statements on voluntary or contractual basis.

The requirements are different depending on the limited partnership form and, as such, the present Q&A analyses separately the requirements under the SCS regime and those applicable to the SCSp regime. The SIF, SICAR and RAIF Laws exempt from the obligation to consolidate for each of these regimes.

3.1 Consolidation requirements applicable to an SCS (excluding SIFs, SICARs and RAIFs formed as SCS)

The Luxembourg legislation applicable to the preparation of consolidated financial statements is defined in section XVI of the 1915 Law, and is derived from the transposition of related European Directives into national law.

3.1.1 General Principle – consolidation

Article 1711-1[5] of the 1915 Law includes the SCS implicitly within the scope of the consolidation requirements but only if all their unlimited liability members are organized as limited liability companies.

Considering that limited partners of an SCS have, in principle, their liability limited to their contribution and that the unlimited general partner is generally organized as limited liability company, an SCS might fall within the scope of the consolidation requirements.

5 - In reference to article 77 of the RCS Law.

If article 77 of the RCS Law is deemed to apply, all SCS (i) the unlimited partners of which are set up as limited liability companies and (ii) that control another company, are obliged to prepare consolidated financial statements.

Article 1711-1 of the 1915 Law sets out that an entity ("Entity A") controls another entity ("Entity B") if:

- Entity A has a majority of the shareholders' or members' voting rights in Entity B; or
- Entity A has the right to appoint or remove the majority of the members of the administrative, management or supervisory body of Entity B and is at the same time a shareholder or member of Entity B; or
- Entity A is the shareholder or member of Entity B, and controls alone pursuant to an agreement with other shareholders or members of Entity B, a majority of shareholders' or members' voting rights in Entity B.

3.1.2 Specific exemptions – no consolidation

By way of derogation from article 1711-1 paragraph (1) of the 1915 Law, a parent company is exempted from the obligation to draw up consolidated accounts in the following cases:

Size exemption (Small Group exemption): as provided by article 1711-4 of the 1915 Law, a parent company that, at its balance sheet date, together with the undertakings that would have to be consolidated, do not exceed the limits of two of the three following criteria:

a. total balance sheet total: EUR 20 million;

b. net turnover: EUR 40 million;

c. average number of full-time staff employed during the financial year: 250.

The first two criteria may be increased by 20% if the usual consolidation eliminations have not been made. The consolidation requirement only becomes effective if two of the three criteria thresholds are exceeded for two consecutive financial years.

This exemption does not apply if one of the companies to be consolidated has issued securities that are admitted to official trading on an EU regulated market.

Sub-group exemption**:** as provided by article 1711-5 of the 1915 Law, a parent company, which is also a subsidiary, if its own parent company is governed by the law of an EU member state and holds all shares issued in the exempted entity (or at least 90% of the shares and the remaining shareholders have approved the exemption). The exemption shall be conditional upon compliance with the following conditions:

a. the exempted company and its subsidiaries are consolidated in the accounts of a larger body of undertakings, the parent company of which is governed by the law of an EU member state;

b. the consolidated financial statements, the consolidated management report of the larger body and the report of the auditor shall be published by the exempted undertaking with the Luxembourg Register of Commerce and Companies within one month of the approval, must be drawn up and audited according to the law of an EU member state (or in accordance with the provisions of the Luxembourg law or in a manner equivalent thereto);

c. the notes to the annual accounts of the exempted company must disclose the name and registered office of the parent undertaking which prepares consolidated accounts as well as the exemption from obligation to prepare consolidated accounts and consolidated management report.

This exemption does not apply to companies that have issued securities that are admitted to official listing on an EU regulated market.

Extension to sub-group exemption**:** as provided by article 1711-7 of the 1915 Law, any parent company which is also a subsidiary of a parent undertaking not governed by the law of an EU member state, is exempted from the obligation to draw up consolidated accounts and consolidated management report if all the following conditions are fulfilled:

a. the exempted company and all of its subsidiaries are consolidated in the accounts of a larger body of undertakings;

b. the consolidated accounts referred to above and the management report must be drawn up in accordance with the provision of the Luxembourg law or in a manner equivalent thereto;

c. the consolidated accounts referred to above must be audited according to the national law governing the undertaking which drew them up.

3.1.3 Specific exclusions to consolidation requirements

An SCS that is required to prepare consolidated financial statements may exclude a specific undertaking from the consolidation scope if such undertaking meets one of the following five exclusions set out by the 1915 Law:

a. Immateriality considerations: such undertaking is not material either individually or collectively for the purposes of the true and fair view of the SCS's [accounts];

b. Severe restrictions: there are severe long-term restrictions that hinder the [SCS] in the exercise of its rights over the assets or management of that undertaking;

c. Disproportionate cost: the information in respect of that undertaking necessary for the preparation of consolidated financial statements of the SCS in accordance with the law cannot be obtained without disproportionate expense or undue delay; or

d. Temporary holding: the shares of that undertaking are held exclusively with a view to their subsequent resale, reference is made here to the Luxembourg Private Equity Consolidation Exemption described below.

3.1.4 The Luxembourg Private Equity Consolidation Exemption

On 18 December 2009, the Luxembourg Accounting Standards Commission has released Notice CNC 09/002 consisting of an official clarification on the interpretation of the exclusion from the consolidation scope for Temporary holding in the specific case of investment companies in risk capital (venture capital/ private equity) which also applies to SCS.

To benefit from the consolidation exemption under analysis and as specified in the notice issued by the Luxembourg Accounting Standards Commission, six criteria will have to be met:

a. The company is a company subject to Luxembourg law pursuant to article 100-2[6] of the 1915 Law held by one or several well-informed investors[7];

b. The company's exclusive corporate object is to invest its assets in one or more securities representing risk capital, which is defined as direct or indirect contribution of funds to one or several entities in view of their launch, their development and their listing on a stock exchange. These investments are held by the company with the intention to resell them at a profit;

c. Its management or administration body formally defines ex ante in a written document, that is communicated to its investors, an exit strategy which is part of its investment policy and which implies the intention of divestment on a mid-term basis, generally within three to eight years. This investment policy should be distinguished from a strategic investment that has no predefined termination;

d. Its objective is to provide its investors with the benefit of the investment(s) management in return of the risk borne by the investors;

e. If the investment(s) is (are) not carried at fair value on the face of the balance sheet, the fair value shall be made available in the disclosure notes of the financial statements in order to provide relevant information to investors;

f. Any event, guarantee or uncertainty that might have a significant impact on the entity's ability to continue its activities as going concern, or which may raise any concern related to its cash-flows situation, available liquidities or its solvency has to be disclosed adequately in the disclosure notes to the annual accounts.

3.2 Consolidation requirements applicable to SCSp (excluding SIFs, SICARs or RAIFs formed as SCSp)

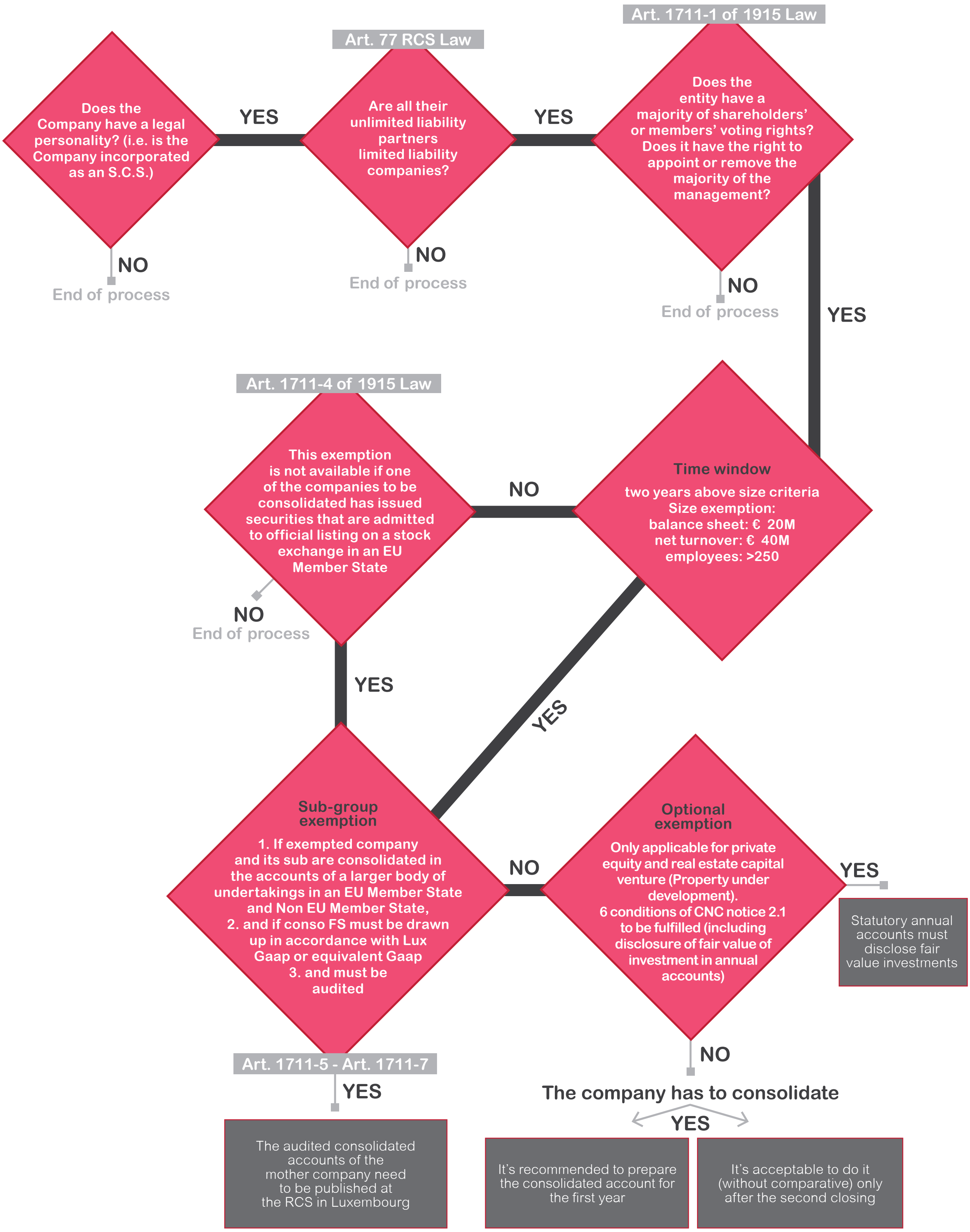
An SCSp does not have a separate legal personality. On that basis, the general interpretation is that the SCSp is out of the scope of Directive 2013/34/EU and related national transpositions. Furthermore article 77 of the RCS Law only refers to common limited partnerships (SCS) and does not include an explicit reference to special limited partnerships (SCSp). Consequently no consolidation obligations pertain for SCSp under Luxembourg legal and regulatory requirements.

An official formal validation of this general interpretation with the provisions of Directive 2013/34/UE would be considered as advantage.

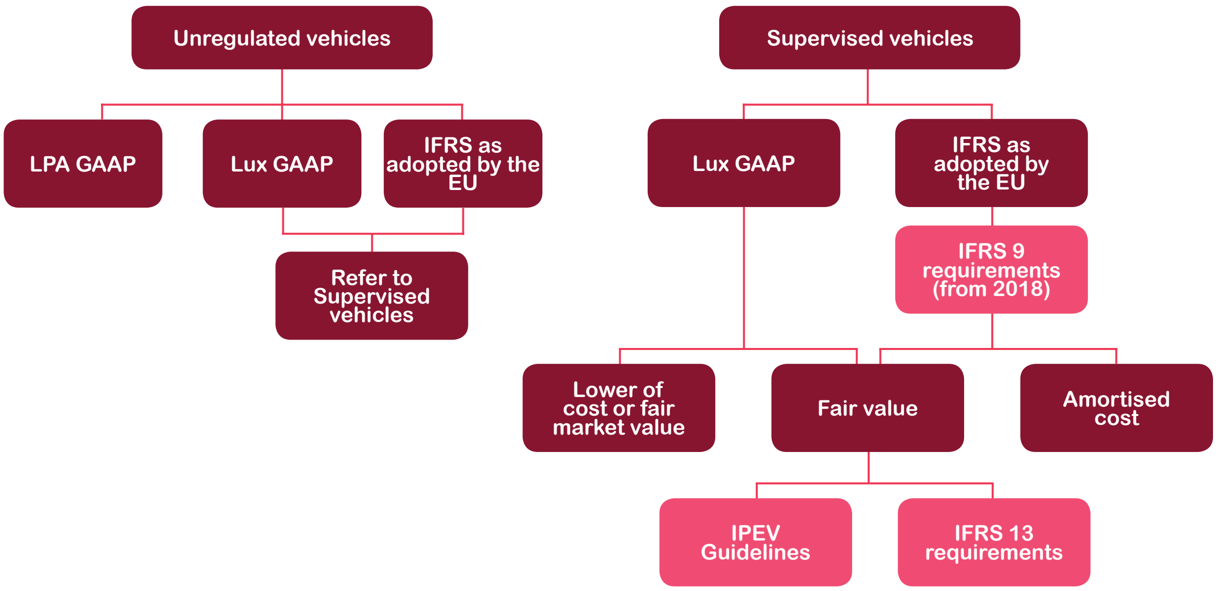
6 - The entities are undertakings which take one of the following legal forms: société anonyme (public company limited by shares); société à responsabilité limitée (private limited liability company); société en commandite par actions (corporate partnership limited by shares), société coopérative (co-operative company); société européenne (European company); société en nom collectif (unlimited corporate partnership); société en commandite simple (limited corporate partnership).

7 - A 'well-informed investor' is defined in the SICAR Law and in the SIF Law as qualified investors, including not only institutional and professional investors but also private individuals fulfilling certain conditions (for example, a EUR 125,000 minimum investment and written acknowledgement of risk awareness).

Consolidation decision tree



4. What valuation policies need to be followed?



Unregulated vehicles:

For the unregulated vehicles the valuation policy is to be defined by the GAAP used or in the LPA. If LPA does not require Lux GAAP or IFRS, market practice is to refer to IPEV Guidelines.

Examples of valuation policies include (non-exhaustive list):

- Fair value, defined as the arm's length realisable value of the securities/assets;
- Amortised cost;
- Lower of cost or fair market value.

Supervised vehicles:

RAIFs, SIFs, SICARs:

RAIFs and SIFs shall in principle value the investments at "fair value". However, they can derogate from that principle in their constitutive documents.
SICARs are required to value their investments at Fair value.

AIFs SCS/SCSp:

As per Article 17 of the AIFM Law, assets of SCS/SCSp qualifying as AIF with an authorised AIFM must be valued in accordance with the applicable national law and the AIF constitutive documents or so called Limited Partnership Agreement. Therefore, any of the valuation policies considered above could be applied.

Valuation Methods following the accounting standard:
As mentioned above, although the valuation methodology is to be defined in the Limited Partnership Agreement and therefore are freely to be agreed upon by the partners, it is to be noted that the valuation method will mainly be determined also by the accounting standard chosen.

For vehicles that have chosen Lux GAAP except SICAR, they have the option to apply the Lower of cost or market value method (LOCOM) to value financial fixed assets. This method which will be required to be mentioned explicitly in the article of constitution of the vehicle would usually not be used for a Private equity fund but may find some interest for a Private debt fund.

Lux GAAP gives also the possibility to value financial assets at fair value for which the most widely accepted valuation guidelines for private equity investments is the one issued by the International Private Equity and Venture Capital board (IPEV).

For financial statements prepared under IFRS as adopted by the EU, Financial assets are classified into one of three measurement categories:

- amortised cost;
- fair value through other comprehensive income (FVOCI); or
- fair value through profit or loss (FVTPL).

The categorisation determines whether and where any re-measurement to fair value is recognised.

Financial assets classified as at FVTPL are further subcategorised as mandatorily measured at FVTPL (which includes derivatives) or designated as at FVTPL on initial recognition.

For financial statements prepared under IFRS as adopted by the EU, the reference is the one set forth by International Accounting Standard Board (IFRS13) as accepted by the EU.

Where a quoted price is not observable, it has to rely on valuation methodologies:

To determine fair value, IFRS recognise three types of approaches: the Market approach, Cost approach and the Income approach.

- The Market approach encompasses amongst other techniques the Market multiples;
- The Income approach includes the Discounted Cash Flow methodologies;
- The Cost approach reflects the amount that would be required currently to replace the service capacity of an asset (current replacement cost).

The IPEV also recommends the same three types of approaches as for IFRS and the following methodologies where private equity investments are reported at fair value:

- The Market Approach including the below valuation techniques:
  - Price of Recent Investment;
  - Multiples;
  - Industry valuation benchmarks;
  - Available market prices.
- The Income Approach including the below valuation techniques:
  - Discounted cash flows or earnings (of underlying Business);
  - Discounted cash flows (from the Investment).
- The Replacement Cost Approach including the below valuation techniques:
  - Net assets.

5. What are the rules in terms of distributions?

Article 1832 of the Civil Code sets out the general rule pursuant to which shareholders of a company cannot be deprived from the right to participate in the profits.

However, depending on the form of the company the rule is subject to some additional requirements or conditions, most of these requirements being listed in the 1915 Law. The Civil Code also rules the prohibition of leonine clauses in the LPA, which would allocate all the profits to only one of the partners or which would free any one of the partners from its obligation to take part to the losses of the partnership.

Unregulated vehicles

As regards SCS and SCSp articles 310-4 and 320-5 of the 1915 Law, respectively, provide that distributions and repayments to members, as well as the conditions under which the SCS and the SCSp may request their restitution, are subject to the LPA. Unless the LPA provides otherwise, the share of each member in the partnership's gains and losses is proportional to its interests.

These provisions are designed to provide SCS and SCSp with the highest level of flexibility.

Supervised vehicles

SIF are regulated by the SIF Law. In terms of distributions, under the SIF Law, a distinction must be made between common funds and SICAV (société d'investissement à capital variable).

- Common fund SIF: As regards common funds, article 10 of the SIF Law sets out the general rule under which neither the holders of units nor their creditors may claim for distribution.

  Therefore, article 15 specifies that, unless otherwise provided for in the management regulations, the net assets of the common fund may be distributed subject to the limits set out in article 21 of the SIF Law. Which itself provides that the net assets of a common fund may not be less than EUR 1,250,000.

Hence it can be concluded, in common funds, that there is no right for distribution, unless some more flexible provisions of the management regulations prevail. In any case, the management company cannot allow distribution as long as the net assets of the fund are below EUR 1,250,000.

- SICAV SIF: Contrary to common funds, the net assets of the SICAV may be distributed but still subject to the EUR 1,250,000 limits set out in article 27 of the SIF Law.

SICAVs are not subject to any rules in respect of payment of interim dividends other than those set forth in their articles of association.

Should the SIF be established under chapter 3 of the SIF Law, the rules applicable are those set forth in the 1915 Law".

SICAR
Under article 6 of the SICAR Law, repayments and distribution of dividends to investors and interim dividends are not subject to any restriction other than those set forth in the articles of association or the LPA. Although, the subscribed capital of the SICAR increased by the share premium, shall not be less than EUR 1 million.

RAIF
Under the RAIF Law, RAIFs with variable capital are not subject to any specific distributions restrictions and can be freely organised in the articles of incorporation/limited partnership agreement.

AIFs SCS and SCSp
They are not subject to any specific distributions restrictions and can be freely organised in the limited partnership agreement.

Restriction of distribution under IFRS
With the application of IFRS or Lux GAAP with fair value option, for certain entities except SIFs and SCSp, the Art. 72ter of the law of 19 December 2002 on the Trade and Companies Register and the accounting and annual accounts of undertakings will be applicable and therefore any unrealized gain are not entitled to be distributed whether they come from profit or Other Comprehensive Income. In addition, an undistributable reserve has to be constituted corresponding to the amount of unrealized gains.

The undistributable reserve is built upon the allocation of the result of the year or from other reserves/retained earnings.

From an accounting point of view, the nature and classification of the income received from the portfolio companies would have an impact on the amount eligible for distribution afterward.

6. Can different classes of partnership interests be issued?

Various classes of (securitised) partnership interests may be created and contractual freedom is the rule since the partners can freely determine within the LPA the rights and obligations attached to their partnership interests.

The only limitation to the determination of the economic rights attached to the partnership interests is the prohibition of leonine clauses, prohibiting one partner from receiving at least a share (even nominal) of the profits of the partnership, as well as preventing one or more partners from sharing any losses of the partnership.

As an alternative to the issuance of securitized partnership interests, the LPA can provide for partnership accounts. To each partnership account will be allocated directly the contributions/repayments of capital, the profit or loss realized or the distributions made. The allocation and apportionment will be made according to the criteria determined in the LPA.

7. What are the main tax substance considerations for a Luxembourg common limited partnership ("SCS") or special limited partnership ("SCSp")?

SCSs/SCSp falling outside the scope of the AIFM Law in Luxembourg

Typically, such SCS/SCSp have a Luxembourg-resident general managing partner ("GP") or Luxembourg resident statutory manager (gérant), which is managed in Luxembourg, so that the discussions about a potential tax residency or taxable presence of the SCS/SCSp outside of Luxembourg become not relevant. Although no specific substance is required at the level of the SCSs/SCSp or of its GP, adequate measures should be taken to ensure that the GP is actually managed from Luxembourg (e.g. adequate board composition, regular meetings in Luxembourg).

Typically, the GP/gérant of SCS/SCSp is a Luxembourg resident. Adequate measures should be taken to ensure that the GP/gérant is actually managed from Luxembourg.

SCSs/SCSps falling within the scope of the AIFM Law in Luxembourg

In most countries, an alternative investment fund (AIF) should be tax resident where it is effectively managed. In recent years tax residency and taxable presence through a permanent establishment have been increasingly hot issues for tax authorities and taxpayers. The location of the alternative investment fund manager ("AIFM") may influence the tax residency of the AIF which is determined based on the statutory seat or central administration/the place of effective management and ultimately on the specific facts and circumstances, including where key decisions are made, the board composition, the level and type of activities, office and employees.

A foreign AIF managed by a Luxembourg AIFM is generally not tax resident in Luxembourg.
Individual advice is recommended for a Luxembourg AIF managed by a foreign AIFM.

The EU Passport for AIFMs may give rise to more complex taxation issues in cross-border situations when an AIFM located in a given jurisdiction manages AIFs in various jurisdictions, with this complexity increasing when certain AIFM functions are delegated. The question may arise as to whether the residence or taxable presence of AIFs is in their country of establishment or in the place of establishment of the AIFM. If the AIF is considered as being a tax resident of, or as having a taxable presence in, the country of establishment of the AIFM, the AIF and/or the investors may become subject to taxation in such country. In a worst case scenario, the AIF and/or the investors may be subject to taxation in the countries of establishment of both the AIF and the AIFM.

Finally, this separation may alter the ability of the investors to access double taxation treaties.
The specific tax provisions that accompany the AIFMD transposition into national law are decisive in relation to this tax risk. Similar to the approach taken when transposing UCITS IV into national law, the AIFM Law ensures Luxembourg tax neutrality when a foreign AIF is managed by a Luxembourg AIFM. In this case, a foreign AIF would be exempt of corporate income tax, municipal business tax and net wealth tax in Luxembourg. A Luxembourg AIF managed by a foreign AIFM may however be taxable abroad based on the approach taken by the foreign tax authorities. In order to enable economies of scale, reduction of costs and concentration of key resources and expertise in one place, sponsors may prefer to concentrate substance in one jurisdiction (i.e. one AIFM to manage AIFs in several jurisdictions). This may however trigger adverse tax consequences, as described above, compared to set-ups where the AIFM is located in the jurisdiction of the AIF. An AIFM active in multiple jurisdictions should therefore need to carefully consider the tax implications in each jurisdiction when planning for a streamlining of their operating model. Consequently, a Luxembourg SCS/SCSp should be effectively managed solely in Luxembourg. If the Luxembourg GP of the SCS/SCSp appoints an AIFM, this AIFM should have at least a Luxembourg presence by way of a Luxembourg permanent establishment, ideally the AIFM should be exclusively tax resident in Luxembourg.

8. What is the tax regime of a Limited Partnership?

Direct tax – Unregulated Partnerships (excluding SIF, SICAR and RAIFs)

On 9 January 2015, the Luxembourg tax authorities published a circular (Circular L.I.R. No 14/4) which provides for guidance on the taxation of income realized by a SCS/SCSp. It clearly explains the situations in which SCS and SCSp are treated as flow-through vehicles not carrying out any commercial activity.

Full tax neutrality and tax transparency for the SCS/SCSp under certain conditions.

The regime applicable to an SCS and an SCSp – that are not alternative investment funds – provides for full tax neutrality and tax transparency, such that neither the SCS/SCSp, nor its non-resident limited partners should be subject to corporate income tax, municipal business tax and net wealth tax provided no commercial or deemed commercial activity is given at the level of this SCS/SCSp.

A commercial activity means an activity

- which is independent,
- with a permanent character (i.e. with the intent to repeat it),
- with a participation in the general economic life,
- with an intent to realize profit,
- and the activity must not belong to
  - an agricultural or forestry business or
  - a self-employed activity or
  - private wealth management.

Examples of private wealth management comprise investments of capital assets in an interest-bearing manner or the renting of immovable properties. These activities should generally correspond to the activity of private equity funds qualifying as AIF. Therefore, as per the circular mentioned above, AIFs in the sense of the law of 12 July 2013 are considered exercising a non-commercial activity in light of their investment policies.

In addition to the non-commercial activity, the SCS/SCSp must not perform a deemed commercial activity due to its general partner. This means that the general partner of such SCS/SCSp taking the form of a limited company must hold a partnership interest in the SCS/SCSp of less than 5%.

If the SCS/SCSp excerised or was deemed exercising a commercial activity, then the SCS/SCSp should be subject to municipal business tax, and its non-resident partners, in the case there is a permanent establishment in the meaning of Luxembourg law (subject to any applicable double tax treaties), should be subject to (i) corporate income tax on the SCS/SCSp's income (for legal entities) or personal income tax on the SCS/SCSp's income (for individuals) and (ii) net wealth tax on the SCS/SCSp's worth, in proportion to their interest in the SCS/SCSp (in the case of legal entities only, unless exemptions apply).

Regulated Vehicles and RAIFs

An SCS or SCSp set up as a SIF is in principle subject to an annual subscription tax at a rate of 0.01% per annum, computed on its net asset value, payable and computed quarterly. There are a number of exemptions from the subscription tax (microfinance funds, pension pooling vehicles, etc.).

An SCS or SCSp set up as a SICAR is, by law, not considered as carrying out a commercial activity. An SCS and SCSp set up as a SICAR would thus never be subject to municipal business tax and its non-resident partners will not be considered as having a permanent establishment in Luxembourg as a result of holding interests in the SICAR. The SICAR status presupposes an investment in "risk capital" assets only.

An SCS or SCSp set up as a RAIF triggers the same Luxembourg corporate income tax, municipal business tax, net wealth tax and subscription tax consequences as an SCS or SCSp formed under the SIF regime. In addition, the RAIF Law grants the SCS/SCSp the possibility to opt for the SICAR regime and to apply the related tax treatment (see above).

VAT

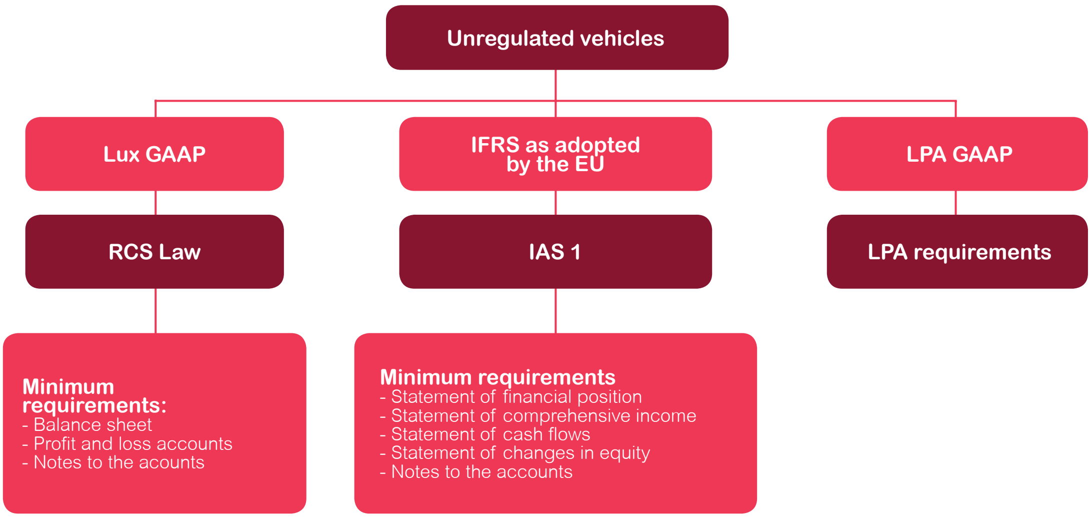
From a VAT perspective, management fees charged by an alternative investment fund manager to its alternative investment fund should under certain conditions be VAT exempt, similarly to management fees charged in connection with the management of UCITS and securitization vehicles. The alternative investment fund is not entitled to recover any input VAT incurred.

Management fees charged by an AIFM to its AIF should under certain conditions not be subject to VAT.

9. What does a typical set of financial statements include?

The content of the financial statements would have to consider the following requirements:

- GAAP selected (Lux GAAP, IFRS as adopted by the EU or LPA GAAP)
- LPA specific conditions
- Applicable supervised regime (RAIF, SCS/SCSp with authorised AIFM)
- Industry guidelines (Invest Europe, ILPA, ALFI)



Unregulated vehicles

GAAP selected and LPA specific conditions.
The applicable Luxembourg laws offer a wide scope of options for choosing the accounting framework applicable to SCS and SCSp.
The LPA could refer to Lux GAAP and would induce typically a set of financial statements including at minimum the following:

- Balance sheet
- Profit and loss accounts
- Notes to the accounts

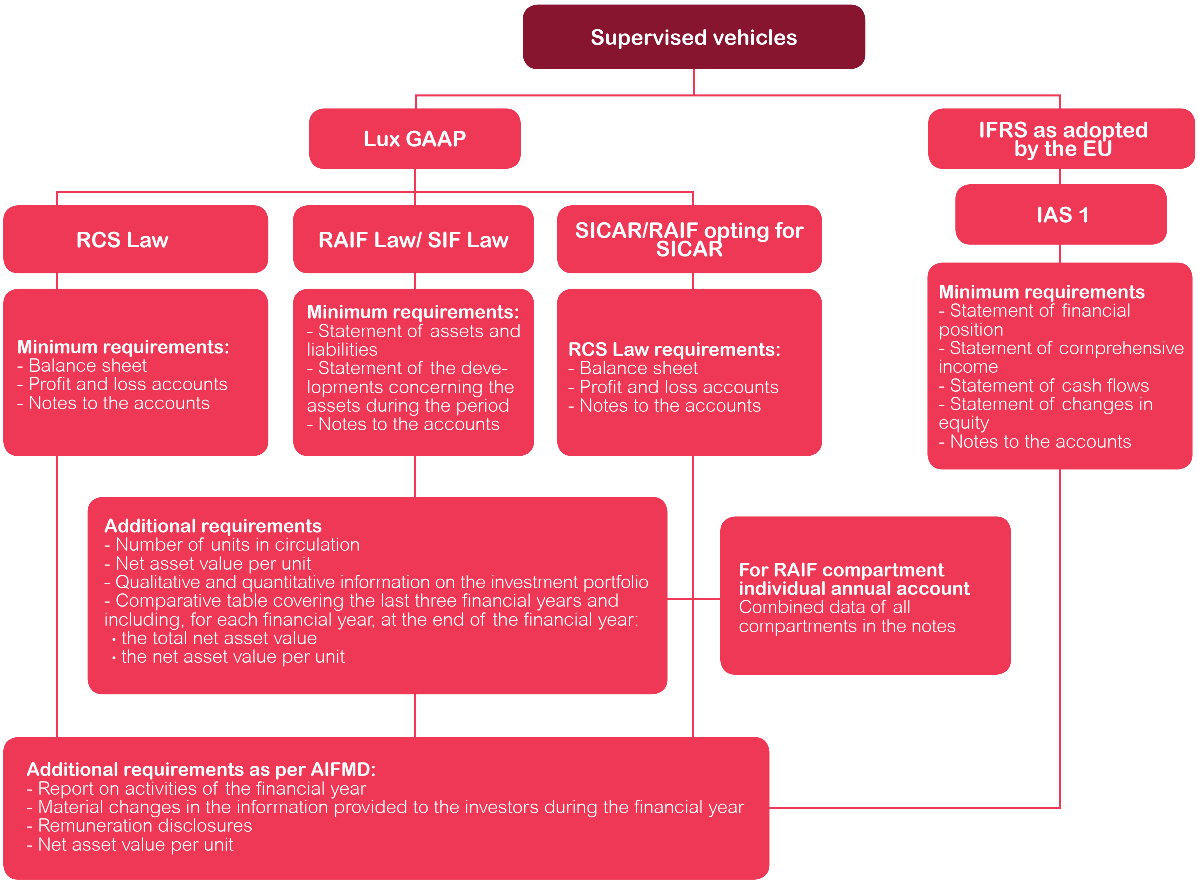
The balance sheet, the profit and loss accounts and the notes to the accounts derive their lay out from the RCS Law. Depending on the size of the vehicle, requirements in relation to the layout of the annual accounts, the extent of disclosures and management report when required may be different.

But the financial statements could be prepared as well under IFRS as adopted by the EU or under US GAAP. Then, a typical set of financial statements would include the following:

- Statement of financial position/Balance sheet
- Statement of comprehensive income/ Profit and Loss
- Statement of cash flows (maybe waived under some conditions)
- Statement of changes in equity
- Notes to the accounts

The different statements would be prepared according to the different applicable standards. Similarly, the minimum content of disclosures would be prescribed by the IFRS as accepted in the EU or the US GAAP. Most of the private equity structure would also qualify as Investment entities and therefore would refer to the specific US GAAP requirement for funds.

Finally, the financial statements could follow LPA GAAP which is an investor-defined accounting framework. It gives flexible accounting and disclosure rules based on what is described in the LPA. The underlying outcome is that there is no minimal content to expect from the financial information except the one agreed with the investors.



Supervised vehicles

AIFs SCS SCSp, SICAR and RAIF opting for SICAR regime:
By opting for a supervised regime, the SCS or the SCSp will have to prepare financial statements under accounting standards in Luxembourg (refer to question 1) and will add a layer of requirements to align their disclosure requirements with further information required by the law (AIFMD Law) and by the CSSF.

Additional disclosures as per the AIFMD Law with regards to the information required in the financial statements of those supervised vehicles include as per its article 20:

- Report on activities of the financial year;
- Material changes in the information provided to the investors during the financial year;
- Remuneration disclosures.

For RAIFs and SIFs:
Additional disclosures as per the RAIF and SIF Law with regards to the information required in the financial statements of the RAIFs include:

- Number of units in circulation;
- Net asset value per unit;
- Qualitative and quantitative information on the investment portfolio;
- Comparative table covering the last three financial years and including, for each financial year, at the end of the financial year:
  - The total net asset value;
  - The net asset value per unit.

For RAIF that have opted for the SICAR regime as per the Article 48 of the RAIF Law, the additional disclosures mentioned above for RAIF and SIF are not applicable for RAIF that have for exclusive object to invest their funds in assets representing risk capital.

The RAIF law also offers the possibility to issue individual annual accounts for each of its compartment with the requirement to include the combined data of all the compartments in each individual annual report. In our view, this additional requirement would be waived by issuing a combined annual report of the RAIF which would constitute the statutory annual report of the RAIF.

Industry guidelines

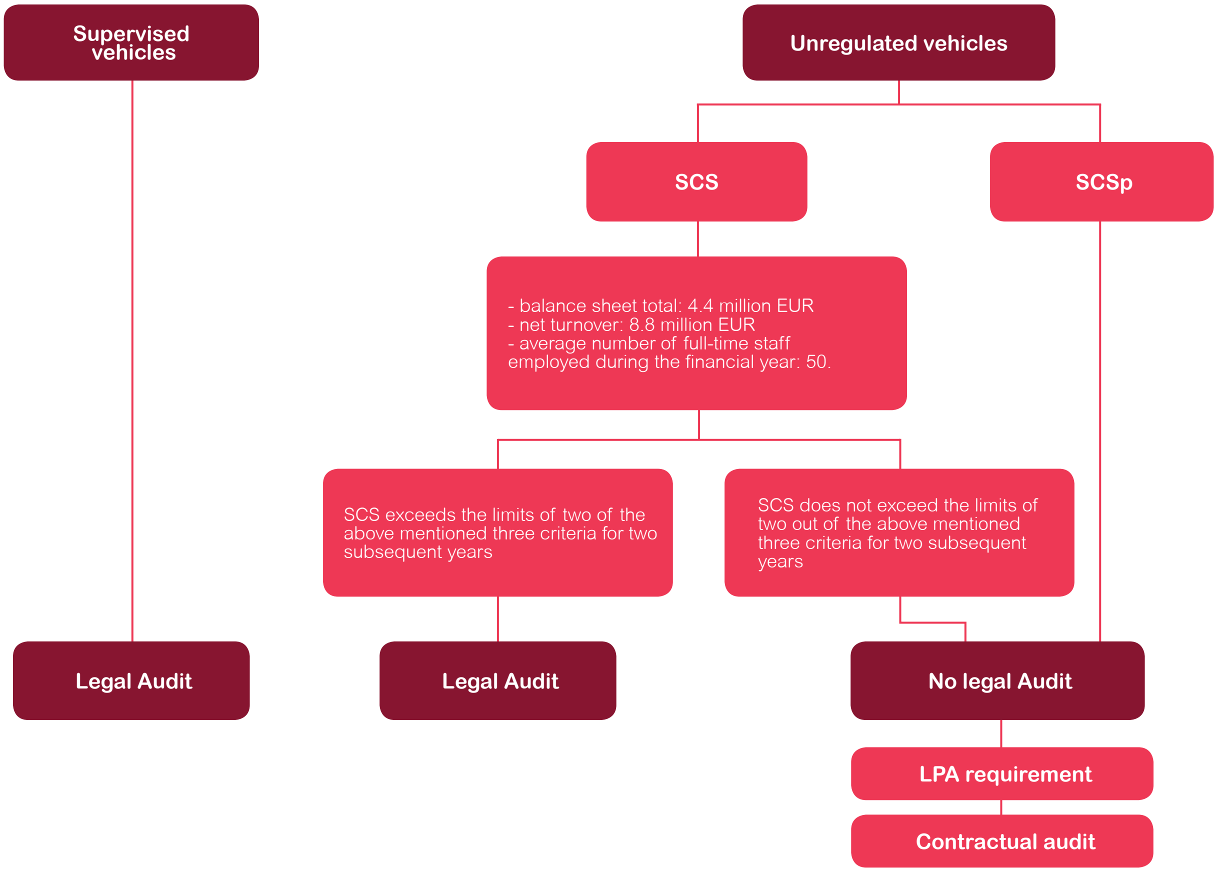
The two main Industry guidelines that set the scene in terms of what should be the critical investment information exchanged between GPs and LPs are:

- Invest Europe Investor Reporting guidelines[8] that are promoted by the General Partners;
- ILPA Quarterly Reporting Standards Best Practices[9] that represent the point of view of the Limited Partners.

ALFI also publishes guidelines and recommendations on reporting to investors and annual reports under the AIFMD.

These guidelines define good recommendation in the reporting process and reporting content and represent a helpful support if the financial statement content needs to be enriched.

10. Does the limited partnership vehicle need to be audited?



In accordance with article 47 (3) of the Law of 23 July 2016 on the audit profession, the use of International Standards on Auditing (ISA) is conferred on *réviseurs d'entreprises and réviseurs d'entreprises agréés* and cabinets de revision and cabinets de révision agréés. In order to perform an audit in accordance with ISA, the *réviseur d'entreprises* shall be licensed by the CSSF. Legal audit are only conferred by *réviseurs d'entreprises agréés.*

SCS and SCSp will have to prepare accounts for investors where this is required by specific laws such as the AIFMD, RCS Law or RAIF Law, or when stated in the LPA.

8 - https://www.investeurope.eu/media/431779/Invest-Europe-Professional-Standards-Handbook-2015.pdf
9 - https://ilpa.org/wp-content/uploads/2017/03/ILPA-Best-Practices-Quarterly-Reporting-Standards_Version-1.1_optimized.pdf

Luxembourg's limited partnerships that are structured as supervised vehicles such as SCS/ SCSp with an authorised AIFM or RAIF will require a legal audit. Although for unregulated structures where no audit is mandatory, an audit of the annual accounts would be required because it is stated in the LPA or for group reporting purposes (contractual audit).

Legal audit for supervised vehicles

They will have to prepare audited annual reports in accordance with Lux GAAP or IFRS as adopted by the EU (refer to question 1 above) and make these reports available to the investors within a period of six months from the year-end.

The purpose of the legal audit is to obtain reasonable assurance whether the financial statements are free from material misstatement in accordance with ISA as adopted for Luxembourg by the CSSF together with Luxembourg legislation and the Practice Guidelines (recommandations professionnelles) issued by the CSSF and the Institut des Réviseurs d'Entreprises (hereafter "IRE").

In addition, for regulated vehicles, the *réviseur d'entreprises agréé* is required to promptly inform the CSSF whenever he becomes aware of any fact or decision that is likely to constitute a material breach of the SIF Law or SICAR Law or the regulations adopted for its execution, or affect the continuous functioning of the SIF, or lead to a refusal to certify the accounts or to the expression of qualifications.

Under the legal audit, the *réviseur d'entreprises agréé* will state in the audit report to the investors of the vehicle whether, in his opinion, the financial statements give a **true and fair** view of the financial position and of the results of its operation and changes in its net assets in accordance with one of the recognized accounting standards established by an organization that is authorized or recognized to promulgate standards by law or regulation i.e. Lux GAAP, IFRS as adopted by EU.

Unregulated vehicles

SCS:
The audit of the annual accounts is required when on its balance sheet date it exceeds the limits of two of the following three criteria for two subsequent years:

- balance sheet total: 4.4 million EUR;
- net turnover: 8.8 million EUR;
- average number of full-time staff employed during the financial year: 50.

Consequently, as interest, dividend income and capital gains are not recognized as turnover, and the average number of full-time staff employed during the financial year will be less than 50, in many cases no legal audit will be required for unregulated investment fund SCS. A contractual audit of such accounts would typically take place if it is mentioned explicitly in the LPA or required by article 69 (4) of RCS Law.

As most of the unregulated SCS investment vehicles will not report any turnover and will not exceed the average number of full-time staff employed, it is therefore expected that no legal audit would be required for such structure.

SCSp:
Accordingly, accounts of unregulated SCSp are only prepared in cases where this is stated in the LPA or required by the investors. No legal audit is required and consequently, the contractual audit of such accounts will typically take place if the LPA explicitly mentions this or if investors require it.

The unregulated SCSp has considerably fewer obligations as regards the preparation, filing, registration and publication of the annual accounts and no obligation to have annual accounts audited.

Contractual audit for unregulated vehicles

Unlike legal audit, under a contractual audit, the management of an unregulated vehicle enjoys relative freedom in terms of GAAP to be used.
In applying a financial reporting framework established by an authorized or recognized standards (Lux GAAP, IFRS,US GAAP…) the *réviseur d'entreprises* and the r*éviseur d'entreprises agréé* will state, in the audit report, that in his opinion, the financial statements give a true and fair view, like in a legal audit.

Under a contractual audit, the GP and the LP have the choice of GAAP which can significantly increase or reduce complexity in the reporting and accounting process of a limited partnership.

Although, in applying LPA GAAP, the *réviseur d'entreprises* and the *réviseur d'entreprises agréé* will state, in the audit report, that in his opinion, the financial statements of the vehicle are prepared in all material respects in accordance with the accounting rules set out in note XX to the financial statements and will also include in the audit report a specific statement highlighting to the users of the report that the financial statements are prepared in accordance with a specific financial reporting framework and that, as a result, the financial statements may not be suitable for another purpose.

Additional audit requirement for RAIFs that opted for the SICAR regime

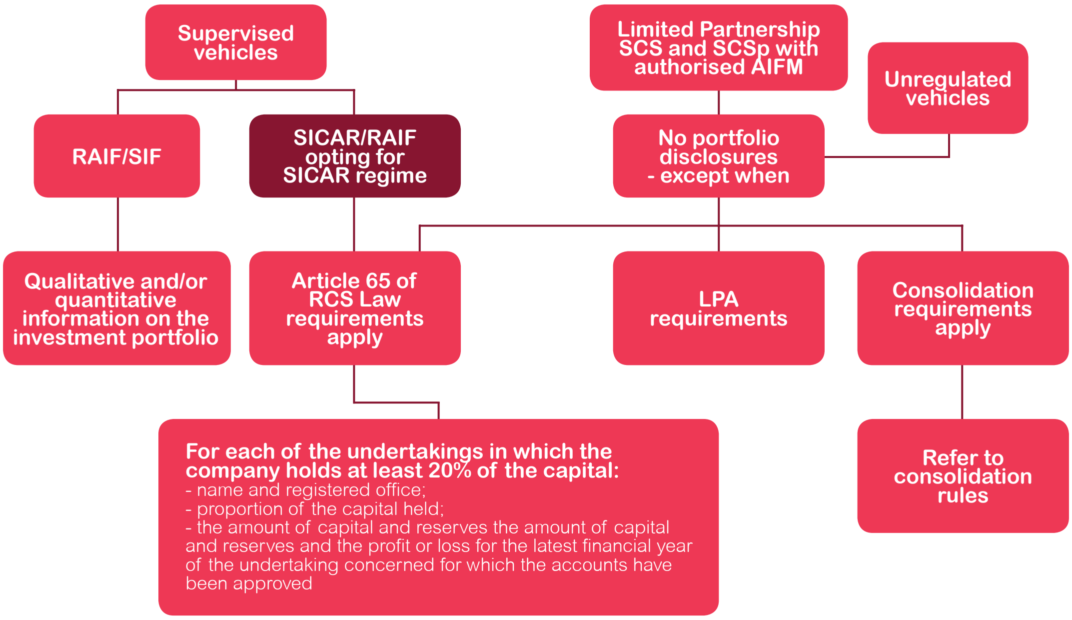
RAIFs which provide in their constitutive documents that their exclusive object is investing in assets representing risk capital would benefit of an exemption to pay the 1bps subscription tax. For these RAIFs, the Réviseur d'Entreprises agréé shall establish on an annual basis a report which will be transmitted to the Tax Administration certifying that during the past financial year, the RAIF has complied with the policy of investing in risk capital (The Réviseur d'Entreprises agréé would refer to CSSF circular 06/241 applicable to SICAR to assess the risk capital criteria).

Additional audit requirement for European venture capital fund (EuVeCA) and on European social entrepreneurship funds (EuSEF)

For unregulated SCS or SCSp that apply for the label EuVeCA or EuSEF, the Regulation (EU) No 345/2013 and 346/2013 on European venture capital funds and on European social entrepreneurship funds, respectively are required to have their annual accounts audited by a *réviseur d'entreprises agréé* and will also have to perform additional audit procedures as described below:

"An audit of the qualifying venture capital/ social entrepreneurship fund shall be conducted at least annually. The audit shall confirm that money and assets are held in the name of the qualifying venture capital/ social entrepreneurship fund and that the manager of a qualifying venture capital/ social entrepreneurship fund has established and maintained adequate records and checks in respect of the use of any mandate or control over the money and assets of the qualifying venture capital/ social entrepreneurship fund and the investors therein."

11. Is there a requirement to disclose portfolio company information?



The level of disclosure will depend mainly on the two following aspects:
- The legal and regulatory requirements applicable to the vehicle;
- The governance of the structure.

Supervised vehicles

Requirements are different depending on the regulation that is applicable.

RAIF and SIF in LuxGAAP / IFRS:
As mentioned in the annex of the SIF and RAIF law, the Financial Statements shall include qualitative and/or quantitative information on the investment portfolio enabling investors to make an informed judgment on the development of the activities and the results of the fund.

SICAR in LuxGAAP / IFRS:
As per the article 24 (2) of the SICAR law of June 14, 2004, the annual report should include significant information enabling investors to make an informed judgment on the development of the activities and the results of the SICAR.

As per article 65 (1)2° of the law of December 19, 2002, the notes of the financial statements should include the name, registered office, capital and reserve, profit or loss for the latest financial year for all the investments where the Company holds at least 20% of the capital issued. Article 67 (2) of the law of December 19, 2002 provides an exemption to disclose this information if the nature of this disclosure is such that it would be seriously prejudicial to the Company. The omission of such information must be disclosed in the notes to the annual accounts.

AIFs SCS/SCSp
There is no specific requirement in the AIFMD Law as such for disclosing portfolio company information in the financial statements of SCS and SCSp vehicles with an authorised AIFM. As for the unregulated vehicles, the requirements will come from the requirements which will be defined by the investors in the LPA.

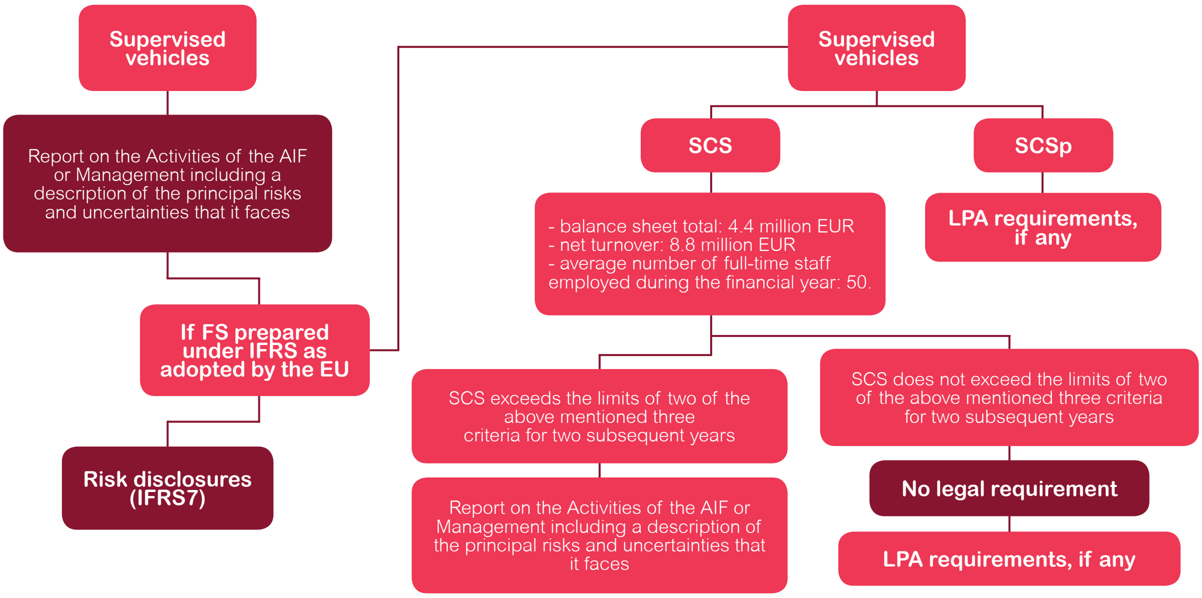
If the financial statements are prepared under Lux GAAP, they may be subject to consolidation rules as well as required to provide information required per Article 65 of the RCS law when applicable.

However, in order to provide a fair view of its activities, the SCS and SCSp shall at least include qualitative and/or quantitative information on the investment portfolio enabling investors to make an informed judgment on the development of the activities and the results of the fund.

Unregulated vehicles

Refer to AIFs SCS/SCSp.

12. What are the requirements for risk disclosures?



The level of disclosure will depend mainly on the following aspects:
- The legal and regulatory requirements applicable to the vehicle;
- The governance of the structure;
- The GAAP selected.

Supervised vehicles

Requirements are different depending on the regulation that is applicable.

However, as per the AIFMD requirement, the annual report shall include a report on the activities of the financial year. The report shall include a fair and balanced review of the activities and performance of the AIF, containing also a description of the principal risks and investment or economic uncertainties that the AIF might face.

In addition, information such as arrangements for managing liquidity of the AIF, leverage employed, risk profile and risk management system shall be periodically disclosed to investors and at least as the same time as the annual report is made available. This implies that the AIF may opt to include such information in its annual report or to send a separate periodic statement to its investors.

Unregulated vehicles

For unregulated SCS, there is no specific requirement in the RCS Law as such for disclosing risk management in the financial statements. The requirements will come from the requirements which will be defined by the investors in the LPA.

However, the annual accounts of an SCS must contain a management report that includes, among others, a description of the principal risks and uncertainties that it faces, when on its balance sheet date it exceeds the limits of two of the following three criteria:

- Balance sheet total: 4.4 million EUR;
- Net turnover: 8.8 million EUR;
- Average number of full-time staff employed during the financial year: 50.

As most of the unregulated SCS investment vehicles will not exceed the net turnover and average number of full-time staff employed limits, it is therefore expected that no management report will be required for such structure.

For unregulated SCSp, as the annual accounts are only prepared in cases where this is stated in the LPA or required by the investors, the requirements for disclosing risk management in the financial statements will be defined by the investors in the LPA.

Supervised and Unregulated vehicles which prepared financial statements under IFRS as adopted by the EU

Disregarding whether the limited partnership is supervised or unregulated, it must be noted that vehicles preparing financial statements under IFRS as adopted by the EU will have a significant impact in term of supplemental disclosures and will be subject to the minimum content of risk disclosures prescribed by the different applicable standards (mainly IFRS7).

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THE LUXEMBOURG VOICE OF PRIVATE CAPITAL

Limited Partnerships
in Luxembourg