

The competitiveness of the French private equity and capital investment industry is reinforced with the creation of the Société de Libre Partenariat

In the current context of increasingly fierce competition between European private equity structures following the adoption of Directive 2011/61/EU, referred to as the “AIFM Directive” [\[1\]](#), aimed at creating an harmonized framework for alternative investment funds (“AIF”) in Europe while strengthening the protection of investors and savers, the French Government wanted to show that it desires to attract not only French institutional investors but also foreign investors who until now tended to turn to UK’s limited partnerships or Luxemburg’s *Sociétés en Commandite Spéciales* (i.e. special limited partnerships).

Law n°2015-990 of August 6, 2015 on growth, economic activity and equality of economic opportunity, commonly known as the “Macron Law”, now provides venture capital investors on the Paris financial market with a new competitive French-style “Limited Partnership”: The so-called *Société de Libre Partenariat* or SLP [\[2\]](#).

1. A new form of company inspired by the Anglo-Saxon limited partnership key characteristics

The SLP is a new type of AIF that belongs to the family of the *fonds professionnels spécialisés* (specialized

professional funds, or hereinafter “FPS”). It offers an alternative to *sociétés d’investissement à capital variable* (investment companies with variable capital, or hereinafter “SICAVs”) and *fonds communs de placement* (collective investment funds, hereinafter “FCPs”) used for alternative financing (infrastructures, debts, etc.) and investment in non-listed European securities.

Taking over the key features of the *société en commandite simple*, (i.e. simple limited partnership) the SLP has a governance structure that is familiar to foreign institutional investors, with two categories of partners: general partners with personal, joint and several liability, and limited partners who are liable only to the extent of their contribution. The distinction with the *société en commandite simple* lies in the fact that (i) within a SLP investors can be involved in the life of the company as, by way of derogation from ordinary law, limited partners may take part in the management of the SLP (without, however, being authorized to perform any act of management that would make them perceived by external parties as a general manager with full and unlimited liability), and (ii) the shares of the general partners can take the form of marketable securities.

Any individual or legal entity approved in the by-laws can become a limited partner in the SLP. Investors in the SLP are, as a matter of principle, professional investors. The shares of limited partners can only be subscribed to by professional investors or investors considered as such: (i) French or foreign professional investors, as defined by the French Monetary and Financial Code^[3], (ii) the persons responsible for the management of the assets of the SLP, and (iii) non-professional investors, to the extent, however, that their subscription be equal to or higher than 100,000 Euros.

Within a SLP, it is possible to distinguish between, or conversely, to centralize, the governance of the company and the management of the fund. The management of the asset portfolio – which represents only a part of the management of the company – can be performed either internally by its managers (in which case the investment vehicle is self-managed), or delegated, in whole or in part, to a portfolio management company approved by the *Autorité des Marchés Financiers* (French Financial Market Regulator).

2. Operational flexibility

The operation of, and investments in, the SLP are flexible and governed by contractual freedom. Contrary to SICAVs and FCPs, the by-laws and the documentation intended for the partners can be drafted in any language customarily used in the business community^[4]. The by-laws of the SLP freely define the policy and rules governing the investment in and commitment of the company, including (i) the conditions in which the equity shares and securities can be issued and paid-up, (ii) the decisions that must be made collectively by the partners and the terms and conditions in which such decisions are to be made, or (iii) the conditions in which the equity shares can be transferred. The SLP is not subject to any restriction as regards the assets in which it may invest. As such, it may invest in any assets that meet the criteria laid down in the French Monetary and Financial Code^[5], but also in securities issued by companies organized and operating under the laws of a foreign State and advances on current accounts made, for the duration of the investment, to company in which the SLP has an ownership interest. If the by-laws so provide, the SLP can have one or several sub-fund(s), thereby deviating from the principle of unicity of assets and liabilities. In other words, a sub-fund’s assets shall be used solely to pay the debts, commitments and obligations of said sub-fund and to earn receivables in

connection with it. The SLP may freely borrow money[6] - to the extent this is provided for in the by-laws - which is a true advantage in the early life of the company. Lastly, the SLP will not be required to file its accounts every year[7].

3. Fiscal attractiveness

The objective of the SLP is to maintain the tax benefits currently available to French investors in SICAVs and FCPs while ensuring tax neutrality for foreign investors.

Indeed, until now, the tax transparency of the FCPs and SICAVs was *de facto* ensured under French law but not always recognized by foreign States due to the specific legal forms of these investment vehicles. As such, some countries refused, and still refuse, to recognize the tax transparency of such vehicles, thereby depriving their members of the benefits of international tax treaties. The result was that the income was usually taxed twice: a first time in the country where the income originated, and a second time in the country where the member was domiciled.

The SLP, that has a legal personality and whose operation is aligned on international standard vehicles like the Anglo-Saxon limited partnerships, should benefit from a tax transparency regime likely to respond to the need for tax neutrality expressed by French and foreign investors. This regime should thus prevent foreign investors from double taxation due to inter-State conflicts over the legal and tax classification of a type of investment funds[8].

The creation of the SLP fills in a significant gap in the range of French investment funds, as foreign institutional investors turned to vehicles managed and regulated in other countries of the Eurozone that were more favorable from a tax standpoint. By aligning on Anglo-Saxon and Luxemburg standards to revitalize asset management in France, the SLP should increase the attractiveness of the French finance industry as it will respond to the need of an international institutional clientele.

[1] Directive 2011/61/EU on Alternative Investment Fund Managers, known as the “AIFM Directive”.

[2] The SLP will probably make its first steps only in the first half of 2016, pending the adoption of implementing texts and decrees. Such texts and decrees will provide further information on the legal and tax regime applicable to the SLP.

[3] Article L.214-144 of the French Monetary and Financial Code.

[4] Except for the extract intended to be filed with the Registry of Trade and Companies. Such extract must be drafted in French.

[5] Article L 214-154 of the French Monetary and Financial Code.



[6] Contrary to the *fonds commun de placement dans l'innovation* (innovation-focused collective investment funds) that can make borrowings up to the limit of 10% of its assets (Article R.214-48-1 of the French Monetary and Financial Code).

[7] The provisions set forth in Article L.221-7 §1 of the French Commercial code do not apply to the SLP.

[8] The tax regime applicable to the SLP is theoretically aligned on international standards.

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