FELTEN & ASSOCIES
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PRESENTATION OF LUXEMBOURG MAIN COMMERCIAL COMPANIES AND SPV

Disclaimer:

This presentation is only meant to highlight some of the aspects of Luxembourg laws in relation to the Luxembourg main commercial companies and SPV.

The present document shall, under no circumstances, be considered as a legal opinion.

No decision shall be made on the sole basis of this document without considering appropriate professional advice.

I. MAIN TYPES OF COMMERCIAL COMPANIES

A. The "*société anonyme*" (S.A.), Luxembourg Public Limited Companies

The "*société anonyme*" (S.A.) is considered as the equivalent of the joint-stock company or public limited company.

Since the August 25, 2006 law, it is possible for a S.A. to consist of one single shareholder.

The shares of a public limited company can be issued as registered or bearer shares.

If the shares are issued as bearer shares, the shares' owner is indeed the person who holds the certificate. The transfer takes place without any formality by giving the shares to somebody else.

Regarding its incorporation, a public limited company may be incorporated for an unlimited period of time.

It must be incorporated before a Luxembourg notary once the share capital is blocked on a bank account open in Luxembourg in the name of the company.

Without a certificate stating that the funds are held on a blocked account, the notary may not set up the company.

The act of constitution must be signed by the founding shareholders.

The minimum share capital for a public limited company is EUR 31,000.-; 25 % of this capital must be paid when the company is incorporated (i.e. before a notary).

With bearer shares, please note that the total amount of the share capital has to be paid up when the company is incorporated.

The board of directors is made of a minimum of three members (unless there is only one shareholder). They are appointed by the shareholders for a maximum 6-year term, which can be extended. There is no requirement for them to be Luxembourg nationals or residents. They shall not necessarily be natural persons (i.e. they can be a company), or shareholders. The Board elects a President amongst its members.

With the August 25, 2006 law, the S.A. management can be structured at two levels: the Board of Directors (“*directoire*”) and the supervisory Board (“*conseil de surveillance*”).

The supervision of the company must be entrusted to one or more statutory auditors, who may but shall not necessarily be members.

B. The “société à responsabilité limitée“ (S.A.R.L), Luxembourg Private Limited Companies

The “*société à responsabilité limitée*“ (S.A.R.L) is considered as the equivalent of the private limited company.

It is possible for an S.A.R.L to consist of one single member.

A member holds registered shares in the company. These registered shares must be fully paid up, and non-negotiable.

Registered shares to non-members may be transferred only with the approval of the members representing three-quarters of the capital.

An S.A.R.L must have a minimum capital of EUR 12,500.- fully paid up.

The incorporation of an S.A.R.L has to take place before a notary, such as the incorporation of a Luxembourg public limited company (S.A.).

An S.A.R.L. can be set up once its capital has been blocked on a bank account open in Luxembourg in the name of the company to be incorporated.

An S.A.R.L cannot issue bearer shares.

Instead of having a board of directors, the S.A.R.L has one or several managers who are appointed by the members. Only one manager is required for a S.A.R.L (whereas a minimum of three directors is required for an S.A.).

Moreover, managers shall not necessarily be Luxembourg nationals or residents. Finally, managers are appointed for an unlimited or limited period of time.

No statutory auditors are required unless the S.A.R.L. has more than twenty-five members.

II. EXAMPLES OF SPECIAL PURPOSE VEHICLES (SPV)

A. "Sociétés de participation financière "- SOPARFI- (Luxembourg Financial Holding Companies)

The SOPARFI have a common law legal system and fiscal status, which is quite interesting in Luxembourg. However, in order to benefit from the parent company and subsidiary fiscal system, which is dealt with hereinafter, it is essential for a SOPARFI to be a corporation such as a Luxembourg public limited company - "SA" or a Luxembourg private limited company - "S.A.R.L." as explained in the first two sections.

Their status as ordinary corporations may allow them not to confine to an activity of share management ("prise de participation") and to practise, principally or accessorily, other activities, either industrial or trade activities, or to provide services.

It has to be emphasized that if the activity of the SOPARFI is **mixed** - share management and commercial activity -, the part of the refinancing costs relating to the purchase of the participations that exceeds the exempt dividends due to the affiliation system shall diminish the taxable income resulting from trade or industrial activities.

The same goes for foreign tax credits and capital losses realised with the transfer of participations or the ascertained latent capital losses in the form of reserves for the depreciation of participations. Capital gains resulting from the sale of participations are, as a rule, tax exempt if all the conditions are met (see below). However, the exempt amount is reduced by the total amount of the depreciation costs on the participations and revenues that have been tax-deductible in the year of the transfer or in previous years.

In Luxembourg tax law, the tax losses can be entirely imputed and carried forward without time restriction.

On the contrary, if SOPARFI have an **exclusive** share management activity, the purely theoretical subjection to the "Impôt sur les Revenus des Collectivités (IRC)" (corporate income tax) allows the SOPARFI to benefit from the fiscal agreements and the EEC parent-subsidiary directive.

The fiscal system of the SOPARFI has three main characteristics: exemption of the dividends which are paid by the subsidiaries (a), no deduction at the source on the dividends paid out among EEC-resident companies or application of rates reduced through by double taxation agreements (b) and exemption of transfer capital gains (c).

a.- Exemption of the Dividends Paid by the Subsidiaries

1.- Luxembourg Parent and Subsidiary System

Since they are ordinary corporations, the SOPARFI benefit from the Luxembourg parent company and subsidiary exemption system set out in the articles 147 & 166 of the Income Tax Act (LIR - "Loi de l'Impôt sur le Revenu") and its implementation regulations.

To benefit from this system, the SOPARFI have to meet certain conditions upon the shares as well as the present companies.

The SOPARFI must either hold at least 10% of the subsidiary's capital, or the purchase price of its participation must be of at least EUR 1,200,000.-. The shares of the subsidiary have to be held for an uninterrupted and non-reducible period of twelve months at least. If this time condition is not met at the moment of the receipt of the dividends, the SOPARFI must commit itself to hold its participation for a minimum 12-month-period, in order to benefit from the tax exemption.

The subsidiary has to be a resident corporation fully taxable for the Luxembourg corporate income tax ("IRC") or, a non-resident corporation fully taxable for a corporation tax similar to the "IRC" in the country where it is based, or a company resident in the EU as listed in article 2 of the European parent-subsidiary directive. Is considered as a corresponding tax, an obligatory tax which is collected by public authorities at a current minimal 10,50% rate (corresponding to half the applicable "IRC").

2.- Tax Treaties Containing a Parent / Subsidiary System

Some fifteen double taxation treaties concluded by Luxembourg also set out a system of parent companies and subsidiaries that reduces the withholding tax rate.

The conditions to benefit from this system vary from one treaty to the other, and can largely diverge from the conditions set out, for the internal system, by the article 166 of the LIR.

b.- No Deduction at Source on the Dividends Paid out among EEC-Resident Companies and Companies subject to tax located in countries having a tax treaty with Luxembourg

Being subject to common law, the SOPARFI may benefit from the provisions regarding company groups which appear in the double taxation agreements concluded by Luxembourg. The parent company and subsidiary systems instaured by these agreements generally reduce the rates of the withholding tax levied on the dividends, as part of specific parent and subsidiary systems.

In the absence of an agreement system, and provided that the shareholder of the SOPARFI is not a legal entity meeting the exemption conditions of the revenues from dividends relating to the share holding duration and to the share rate, it is obviously the internal rate of 15% which shall apply to the deduction at source.

The SOPARFI also benefits from the European directive relating to the common fiscal system applicable to the parent companies and subsidiaries from different Member States. There is no deduction at source on the dividends paid by the SOPARFI to their parents when the hereinafter mentioned conditions are met.

The parent company, which has to reside in one of the Member States and stated in article 2 of the EEC parent-subsidiary directive, has to be subject to a corporation tax corresponding to the "IRC" in the residing's State without any option or exemption possibility. It shall hold at least 10% of the SOPARFI's capital (or at least a EUR 1,200,000.- interest) during an uninterrupted period of at least twelve months at the time the dividends are paid out.

An exemption is also available pursuant to the law of December 2009 for parent companies which are established in a country which has concluded a tax treaty with Luxembourg and are subject to foreign

corporate income tax at a rate of at least 10,5% if a qualified share-holding of at least 10% or an acquisition price of at least EUR 1,200,000.- is maintained for an uninterrupted period of at least 12 months.

c. - Exemption of Transfer Capital Gains

To benefit from the parent company and subsidiaries' system for the capital gains realized on the sales of shares held in a resident corporation, or in a non-resident corporation that is submitted to a tax similar to the Luxembourg corporation tax, or in a company resident in the EU as listed in article 2 of the European parent-subsidiary directive, may apply to a SOPARFI.

Presently, a resident corporation subject to the "common law" fiscal system can realize capital gains on the shares transfer in a participation, in tax-exemption, if the following conditions are met.

The SOPARFI must hold at least 10% of the registered capital represented by voting shares of the subsidiary or, failing that, its participation in the subsidiary shall represent a purchase price of at least EUR 6,000,000.-. The shares of the subsidiary have to be held for an uninterrupted and non-reducible period of at least twelve months. If this time condition is not met at the moment of the realization of the capital gain, the SOPARFI must commit itself to hold the minimum participation during a minimum period of 12 months, in order to benefit from the tax exemption.

Benefiting from this exemption has been extended to the establishments of non-resident companies in Luxembourg (that is to say companies in the European Union or public limited companies or cooperative companies in a country other than a Member State of the European Union being integral part of the EEA Agreement or companies in countries with which Luxembourg concluded a double taxation agreement).

The subsidiary must be a resident corporate company fully subject to the corporation tax or a non-resident corporate company subject to a tax similar to the corporate income tax in the country where it is established or a company of the European Union States members affected by the EEC directive dated July 23, 1990.

If the capital gains do not meet the exemption conditions mentioned above, the provisions laid out by the fiscal agreements are, of course, applicable.

d. - Other Exemptions

Besides the dividends, the liquidation bonus and the transfer capital gains taken in tax franchise, **the SOPARFI's other revenues** (borrowing interest and ordinary trade benefit) remain taxable for the IRC, that is to say :

- the Luxembourg corporate income tax ("IRC") at a progressive rate (please refer to the chart below)

- the municipal business tax ("ICC") on the operating profit, at an average 6,75% rate

- the wealth tax, at the 0.5% rate

Furthermore, the corporate income tax increased by 4% (for the Luxembourg employment fund), calculated on the tax quotation itself. Then, for a 21% base rate shall be a 21.84% effective tax.

Tax bands	2010
up to EUR 15,000.-	20%
superior to EUR 15,000.-	21%

The corporate income tax global rate currently amounts to 28.59% (IRC + ICC, the wealth tax not included). This rate may vary depending on the city where the company has its registered office: for instance, the current global IRC rate for Luxembourg-City amounts to 28.59%.

As stated before, the SOPARFI is usually a Luxembourg private limited company ("société à responsabilité limitée") or public limited company ("société anonyme").

The SOPARFI is subject to the common law fiscal system.

B. "Sociétés de Gestion de Patrimoine Familial" (SPF)

The Luxembourg law dated May 11th, 2007 implemented a new vehicle for private wealth investment: «Société de Gestion de Patrimoine Familial» (hereinafter referred to as the «S.P.F»), meant to be an alternative solution after the disappearance of the former H29 companies regime.

Unlike H29 companies, the SPF will not be challenged by the European Commission, since it cannot be considered as a state aid granted to certain companies, and since it cannot be considered as affecting the competition within the European Union, its shares being mostly kept for individuals.

a.- Definition of an SPF

An S.P.F. shall be defined as any company which is **expressly subject** to the provisions of the May 11th, 2007 law **and** which has been incorporated under the form of a:

- Luxembourg public limited company (S.A.)
- Luxembourg limited liability company (Sàrl)
- Luxembourg partnership limited by shares (Sca)
- Luxembourg cooperative company organized in the form of a public limited company

Shares of an S.P.F. may neither be sold to the public nor listed on the stock exchange.

b.- Purpose

The purpose of the SPF shall be restricted to **passive** investments, more precisely to the «*acquisition, holding, management and disposal of financial assets excluding any kind of commercial activity.*»

Under the terms of the May 11th, 2007 law, «financial assets» are:

(1) Financial instruments within the meaning of August 5th, 2005 Law on Financial Guarantees, that is to say shares, bonds and other forms of debt instruments;

(2) Cash and assets of any kind held in a bank account.

Please note that the S.P.F. can hold a participating interest in another company, provided that it does not interfere with its management.

c.- Eligible Investors

The eligible investors are restricted, so that the shares of the S.P.F. are kept for the sole:

(1) Individuals managing their private wealth,

(2) Private wealth entities acting for one or several individuals,

(3) Intermediaries acting on behalf of the previously mentioned investors.

d.- Tax Regime

The SPF is fully tax exempted after the dividend income test, from:

- corporate income tax
- municipal business tax
- net wealth tax

Provided that the S.P.F. does not receive 5% or more of the total amount of its dividends from non-EU companies that are not listed on the Stock Exchange and that are not subject to a corporate income tax equivalent to the Luxembourg IRC (a corporate income tax is deemed «equivalent» to the IRC if calculated according to similar tax calculation rules, and at a current rate of at least 10,50%).

The SPF is submitted to a yearly subscription tax at a 0.25% rate (with a minimum amount of EUR 100.- and a maximum amount of EUR 125,000.- per year).

The tax basis of the SPF amounts to its paid-up capital, plus its premiums, plus the part of the debts that exceeds 8 times the paid-up capital and premiums.

For instance:

Capital	= 100
Premium	= 100
Debt	= 2,500
Tax basis	= 100+100+(2500-8x(100+100))
	= 200+900
	= 1,100

Please note that the SPF cannot be asked for any information aimed to the taxation of taxpayers (as for banks, H29 companies and UCIs)

e.- Administrative Requirements

The SPF shall be subject to the control of the «*Administration de l'Enregistrement et des Domaines*» (Land Registration & Estates Department), which is besides the Luxembourg tax authority competent for indirect taxation matters.

The SPF shall also be certified by a registered auditor or a chartered accountant.

FELTEN & ASSOCIES
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