

# Private Asset Management Company (SPF) in Luxembourg

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The following text is an extract from LCG's brochure "Business Luxembourg Company Formation".

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*Your LCG Team*

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# Private Asset Management Company (SPF) in Luxembourg

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## I. Concept

The Private Asset Management Company (Société de gestion de patrimoine familial, SPF) has been in existence in Luxembourg since 2007 and is the successor to the abolished Luxembourg Holding 1929. The latter was abolished following a Decision of the European Commission that the taxation of this company represented prohibited state aid. The Private Asset Management Company (SPF) in Luxembourg is not a new company form. In its capacity as a legal person, it instead represents a suitable investment vehicle for the management and planning of the family assets, of a system for matrimonial property and of the succession of natural persons.

In the context of a Private Asset Management Company (SOF) in Luxembourg, “family assets” should be understood exclusively as the private assets of natural persons. The existence of family ties between the shareholders of a Private Asset Management Company (SPF) in Luxembourg is not required.

## II. Legal structure of a Private Asset Management Company (SPF) in Luxembourg

### 1. Legal form

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A Private Asset Management Company (SPF) in Luxembourg is only permitted to be formed as a corporation and therefore in the form of the Public Limited Company (PLC., Corp./SA), Limited Liability Company (LLC., Ltd./SARL), Partnership Limited by Shares (SCA) or Co-operative in the form of the Public Limited Company (SCOSA).

In practice in Luxembourg, the Public Limited Company (PLC., Corp./SA) and the Limited Liability Company (LLC., Ltd./SARL) are the predominant legal forms in which the SPF is formed.

### 2. Formation

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A Private Asset Management Company (SPF) in Luxembourg is formed through the recording of its articles of association by a notary. The articles of association will subsequently be published in the Official Bulletin (Mémorial C) and lodged with Luxembourg’s Trade and Companies Register.

It is required that the articles of association of a SPF in Luxembourg state expressly that the company is subject to the provisions of Luxembourg’s law on Private Asset Management Companies.

### **3. Minimum capital**

The minimum capital of a SPF in Luxembourg is dependent upon the particular legal form chosen.

### **4. Shareholders**

The shareholders of a SPF in Luxembourg must be natural persons who are resident in or out-with Luxembourg and who will be active in the management of the private assets. Furthermore, trustees or patrimonial entities with or without legal personality, such as Trusts or private Foundations managing the private assets of natural persons, may be shareholders. Notwithstanding this, the number of shareholders requires to be restricted. For example, the said number is to be restricted to a particular family or any other group of investors. In contrast thereto, other corporations are not permitted to hold the position of shareholder in a Private Asset Management Company (SPF) in Luxembourg.

### **5. Activity**

#### *5.1. Permitted activity*

The exclusive purpose of a Private Asset Management Company (SPF) in Luxembourg as laid down by statute is the acquisition and possession as well as the management and realisation of investments in financial instruments, in the broadest sense, including derivatives such as, for example, shares, investments; Funds; futures; bonds; options; precious metals as well as bank accounts.

Furthermore, a SPF in Luxembourg is only permitted to hold majority or 100% company shareholdings under the condition that a SPF is not involved in the management of the individual companies.

The unlimited taking out of loans from shareholders or from external third parties as well as the issuing of securities by a SPF in Luxembourg are also permitted.

#### *5.2. Prohibited activity*

A SPF in Luxembourg is prohibited from carrying on any type of commercial activity including the provision of management activity or financial services to third parties or shareholders.

Furthermore, the guaranteeing of loans is not permitted, even where a SPF has an interest in the relevant company. The exception thereto is where the guaranteeing involves a gratuitous deposit or surety in companies to which the Luxembourg SPF is affiliated.

A Private Asset Management Company (SPF) in Luxembourg is likewise not permitted to hold patents or rights, to directly possess real estate, to receive more than 5% of the complete dividend income of companies which is liable to taxation of less than 11% as well as the stock market flotation of SPF shares or their public offering.

Notwithstanding this, a SPF in Luxembourg may have a financial interest in structures carrying on the afore-mentioned prohibited activities.

## 6. Company name

It is required that the company name of a Private Asset Management Company (SPF) contains the abbreviation “SPF”.

## 7. Supervision

A Private Asset Management Company (SPF) in Luxembourg is subject to the supervision of Luxembourg’s Indirect Tax Administration (Administration de l’Enregistrement et des Domaines, AED) and to no further supervision. The domiciliation agent is required to submit a report annually on the SPF’s operation in Luxembourg within the given legal framework.

# III. Advantages of forming a Private Asset Management Company (SPF) in Luxembourg

## 1. Tax advantages

### 1.1. Taxation

In Luxembourg, a SPF is liable to the so-called “subscription tax” (taxe d’abonnement) annually at a rate of 0.25% on its paid-up share capital, the share premium plus on a proportion of its debts exceeding 8 times the paid up share capital and the share premium. However, the maximum payment of subscription tax is restricted to 125,000 EUR.

### 1.2. Tax exemptions

In general, the income and profits of a Private Asset Management Company (SPF) in Luxembourg are exempt from corporation tax, municipal business tax as well as from the net wealth tax. Luxembourg’s lawmakers have justified the afore-mentioned subjective tax exemptions on the ground that the SPF does not carry on any commercial activities and is accordingly to be considered as an instrument for the management of the private assets of natural persons. The afore-mentioned tax exemptions consequently mean, however, that Luxembourg’s multiple double taxation agreements (DTA’s) do not apply to the SPF in Luxembourg.

### 1.3. Further tax exemptions

In Luxembourg, interest payments are exempt from withholding tax. Moreover, the distributions of a SPF in Luxembourg in the form of dividends to non-resident investors is exempt from withholding tax. This affects gains generated by a SPF in Luxembourg from its available capital and which are later distributed to non-resident shareholders.

Furthermore, gains from the transfer or sale of shares in a SPF in Luxembourg by a non-resident shareholder as well as a the liquidation proceeds of a SPF are exempt from taxation.

A SPF in Luxembourg is not liable to value-added tax (VAT) due to it not carrying on commercial transactions.

## 2. Further advantages

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The Private Asset Management Company (SPF) in Luxembourg is an attractive vehicle for managing the private assets of wealthy natural persons. This is particularly so due to its special tax status as well as its wide spectrum of application.

A SPF in Luxembourg does not require an official licence prior to commencing its activities. Moreover, the shareholders of a SPF benefit from the liability liability of it as a legal person as well as from its ability to issue bearer and registered shares.

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