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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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# SOPARFI-Financial Holding Company in Luxembourg

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## I. Legal structure of a SOPARFI in Luxembourg

### 1. Concept

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A SOPARFI-Financial Holding Company (Société de participations financières) in Luxembourg is a non-regulated Trading Company in Luxembourg which is fully liable to tax. It benefits from the “inter-corporate privilege” of the parent subsidiary Directive and is able to pursue and carry on Holding activities in addition to financing activities.

#### 1.1. Holding: concept

The connected organisational form of the “Holding” involves the parent company of affiliated companies. The said parent company is a Trading Company which, as the umbrella organisation, holds shares in other companies.

#### 1.2. Forms of Holding

With regard to the functions of a Holding Company, the following forms of Holdings are differentiated between:

- a) The Operational Holding or the Head Office Holding;
- b) The Management Holding or the Strategy Holding;
- c) The Financial Holding or the Asset Holding; and
- d) The Organisational Holding or the Structural Holding.

### 2. Purpose

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The purpose of a SOPARFI in Luxembourg is predominantly the acquisition, management and realisation of investments in companies in or outwith Luxembourg.

A SOPARFI is permitted to carry on all types of commercial activities insofar as they are consistent with the articles of association and Luxembourg’s statutory provisions.

### 3. Formation

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A SOPARFI 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.

A natural or legal person of any nationality and regardless of where the said person is resident may form a SOPARFI in Luxembourg.

A SOPARFI which carries on commercial or industrial activities as its principal or secondary activity is required to obtain a trade licence from Luxembourg's Ministry of Small and Medium-sized Businesses, Tourism and Housing.

#### **4. Legal Form**

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A SOPARFI in Luxembourg is formed as a corporation and may take the form of the Public Limited Company (PLC., Corp./SA), Limited Liability Company (LLC., Ltd./SARL) or of the Partnership Limited by Shares (SCA).

#### **5. A Luxembourg SOPARFI in the form of the Public Limited Company (PLC., Corp./SA)**

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In examining the legal structure, the following information uses as its example the Public Limited Company (PLC., Corp./SA) in Luxembourg due to a SOPARFI in Luxembourg being formed predominantly in that form:

##### *5.1. Shares and minimum capital*

A Public Limited Company (PLC., Corp./SA) in Luxembourg is permitted to issue bearer as well as registered shares. The said shares may be issued with or without voting rights. In the case of registered shares, a share register requires to be kept.

The minimum capital of a Public Limited Company (PLC., Corp./SA) in Luxembourg is 31,000 EUR and requires to be subscribed in full. It is required that at least 25% of the nominal value of each share is paid up. Only registered shares may be issued until the company's capital is fully paid up. Thereafter, the said shares may be converted to bearer shares.

##### *5.2 Transfer of shares*

The transfer of bearer shares is effected through the agreement and delivery of the bearer securities.

In contrast, the transfer of registered shares only becomes effective on the company if a transfer statement dated and signed by both the transferor and the transferee in the register of registered shares as well as the notification of the said transfer to the Public Limited Company (PLC., Corp./SA) or the acceptance thereof by the Public Limited Company (PLC., Corp./SA) in the form of a notarial deed are available.

##### *5.3 Company name*

The company name of a Public Limited Company (PLC., Corp./SA) in Luxembourg is able to be freely chosen insofar as an examination of the Trade and Companies Register shows that the chosen name has not already been allocated. It is a mandatory requirement that the company name ends with "AG" or "SA".

It is not permitted that company name be the name of one of the company's shareholders.

#### 5.4 Organisation

The bodies of a Public Limited Company (PLC., Corp./SA) in Luxembourg are the general meeting, the board of directors as well as the commissaire.

## II. Tax advantages of a SOPARFI in Luxembourg

### 1. Exemption from taxation of dividends and sale and liquidation proceeds from investments

Since January 1<sup>st</sup>, 2013, the rate of corporate taxation on the distribution of dividends and sale and liquidation proceeds by a corporation resident in or outwith Luxembourg to a corporation in Luxembourg has, in general, been 29.22% (21% or 20% corporate income tax, plus the solidarity surtax at a rate of 7% as well as the municipal business tax at a rate of 6.75%).

Notwithstanding this, SOPARFI-Financial Companies in Luxembourg which do not carry on commercial activities and whose assets, securities and bank balance together exceed 90% of their total balance sheet are required to pay only the minimum corporate taxation of 3,210 EUR (3,000 EUR plus the 7% solidarity surtax).

Notwithstanding this, under the application of the “inter-corporate privilege”, the dividends and sale and liquidation proceeds distributed to a SOPARFI in Luxembourg are exempt from tax upon satisfaction of the following requirements:

#### 1.1 Requirements for the parent company

The parent company (SOPARFI) must be either a corporation resident in Luxembourg with unlimited tax liability or the permanent establishment in Luxembourg of an EU Company within the meaning of the parent subsidiary Directive or must be a corporation resident in a country which has agreed a double taxation agreement (DTA) with Luxembourg.

Furthermore, the parent company is required to hold at least 10% of the capital of the subsidiary company or to have acquired the said investment for at least 1.2 million EUR (or 6 million EUR for sale profits) and at the time of the making available of the dividends, the investment must have been held for an uninterrupted period of at least 12 months or an undertaking exists to do so.

#### 1.2 Requirements for the subsidiary company

The subsidiary company must either be a corporation which has its registered office in Luxembourg with unlimited tax liability or a foreign corporation with unlimited tax liability which is liable to tax comparable to Luxembourg’s corporation tax or be an EU-subsiary company fully liable to corporate taxation (congruity with Luxembourg’s rate of corporation tax is not mandatory) within the meaning of the parent subsidiary Directive.

If the said requirements are not met, dividends may be at least 50% tax exempt if they are distributed by a corporation which is resident in Luxembourg with unlimited tax liability or a foreign corporation which is liable to corporate taxation (corresponding with Luxembourg’s rate

of corporation tax) and which has its registered office in a country which has agreed a DTA with Luxembourg or an EU-Subsidiary Company within the meaning of the parent subsidiary Directive.

## **2. Deduction of investment-related expenses**

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Investment-related expenses such as the interest on loans, incurred through the taking out of the said loans, are deductible to the extent which they exceed the tax-free income generated from the investment in the respective year. This also applies to losses suffered from the sale of or value adjustment of the said investments.

The exemption from taxation of the sale proceeds from investments is restricted if earlier write-offs to the going value of the investments have been made or where the expenses exceed the tax exempt income of the investments during the period in which they were held. The tax exempt sale profits will accordingly be adjusted for the amount of the investment-related expense which has already been deducted from the income liable to tax.

## **3. Exemption from the net wealth tax**

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The net wealth tax in Luxembourg applies at a rate of 0.5% on taxable assets. Corporations having their registered office or place of central control and management in Luxembourg are liable to the net wealth tax on their entire assets, namely assets within and outwith Luxembourg. In contrast thereto, corporations which are not resident in Luxembourg are only liable to tax on those assets within Luxembourg.

Notwithstanding this and under the mandatory requirement that the following requirements be fulfilled without exception, the value of an investment remains exempt from the net wealth tax:

The SOPARFI in Luxembourg must hold at least 10% of the capital of the subsidiary company or must have acquired the investment for a sum amounting to at least 1.2 million EUR. The subsidiary company must have been a resident or non-resident corporation with unlimited tax liability. For the application of the parent subsidiary privilege herein, no minimum holding period is prescribed.

## **4. Exemption from withholding tax**

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### *4.1. Withholding tax on dividend distributions*

In general, dividends distributed by a corporation in Luxembourg are subject to withholding tax at a rate of 15%. However, the said tax will not be levied on a SOPARFI if the following requirements are satisfied:

#### *4.1.1. Requirements for the distributing company*

The SOPARFI-Financial Company distributing the dividends must be resident with unlimited tax liability.

#### *4.1.2. Requirements for the receiving company*

The receiving company must be a resident corporation with unlimited tax liability, a corporation resident in an EU member state within the meaning of the parent subsidiary Directive, a resident permanent establishment of a European Company within the meaning of the parent subsidiary Directive or a resident permanent establishment of a parent company which has its registered office in a country which has agreed a DTA with Luxembourg. Moreover, the receiving company is required to have an investment in the SOPARFI in Luxembourg amounting to at least 10% of the company's share capital or of a purchase price amounting to at least 1.2 million EUR which has been held for a period of 12 months or an undertaking exists to do so.

If a SOPARFI in Luxembourg distributes dividends to companies outwith the EU, these will most often be liable to withholding tax at the reduced rate of 5% insofar as there exists a DTA between Luxembourg and the relevant country.

#### *4.2. Withholding tax on royalty payments, interest and liquidation proceeds*

In Luxembourg, no withholding tax requires to be paid on royalty and interest payments as well as, in the case where a SOPARFI is liquidated, on the distribution of liquidation proceeds.

### **5. Double taxation agreements (DTA's)**

A SOPARFI in Luxembourg can benefit from Luxembourg's multiple double taxation agreements (DTA's) due to the tax exemptions arising from the "inter-corporate privilege" not affecting the general tax liability of a SOPARFI.

### **6. Value added tax (VAT)**

If the business activity of a SOPARFI in Luxembourg is not exclusively limited to the holding of investments, it will be liable to value-added tax (VAT) and is consequently required to register for value-added tax (VAT).

Luxembourg's rate of value-added tax (VAT) is 15%. Notwithstanding this, a reduced rate applies to certain goods and services. For example, a rate of 3% applies to the trade of e-books.

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