

CLP (*common limited partnership*) and SLP (*special limited partnership*)*

consolidated version as of 19 December 2017



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(*) Extract of the amended Law of 10 August 1915 on commercial companies.

Common limited partnerships (*sociétés en commandite simple*) and special limited partnerships (*sociétés en commandite spéciale*)

Chapter I – Common limited partnerships (*sociétés en commandite simple*)

Art. 310-1.

(1) A common limited partnership is a partnership established by contract, for a limited or unlimited duration, between one or more general partners with unlimited and joint and several liability for all obligations of the partnership and one or more limited partners, who are only liable up to the amount contributed thereto, consisting of partnership interests, represented or not by instruments, in accordance with the provisions of the limited partnership agreement.

(2) The contributions of the partners to the partnership may be made in cash, in kind or by way of services ("*apport en industrie*"). The contributions, including the admission of new partners by means other than a transfer of partnership interests, shall be made under the conditions laid down in the limited partnership agreement.

(3) Debt securities may be issued by the partnership.

(4) Unless otherwise provided for in the limited partnership agreement, a general partner may also be a limited partner provided that there is always at least one general partner and one limited partner legally separate from each other.

(5) Each common limited partnership shall keep a register containing:

1° a full and certified copy of the current version of the limited partnership agreement;

2° a list of all the partners, with their last name, first names, professions and personal or professional addresses, or in the case of legal entities, their company name, their legal form, their address and their registration number with the trade and companies register as may be provided by the national legislation governing said partnership, as well as the partnership interests held by each partner;

3° a record of all transfers of partnership interests issued by the partnership and the date on which such transfers have been notified or accepted.

Any partner may examine this register, subject to the restrictions provided for in the limited partnership agreement.

Art. 310-2.

The common limited partnership is managed by one or more managers, who may but are not required to be general partners, appointed in accordance with the limited partnership agreement.

Managers who are not general partners are liable in accordance with Article 441-9.

The limited partnership agreement may allow the managers to delegate their powers to one or more representatives that are only liable for the execution of their mandate.

Unless otherwise provided for in the limited partnership agreement, each manager can take, on behalf of the partnership, all measures that are necessary or useful for achieving the corporate purpose. The restrictions to the powers of the managers laid down in the limited partnership agreement are unenforceable against third parties, even if these restrictions have been published. However, the limited partnership agreement can entitle one or more managers to represent the partnership, alone or collectively, and such provision is enforceable against third parties under the conditions provided for in Title I, Chapter *Vbis* of the amended law of 19 December 2002 on the trade and companies register and the accounting as well as annual accounts of companies.

The partnership shall be bound by the acts of the manager(s) even if these acts exceed the corporate purpose unless it proves that the third party knew that the act exceeded the corporate purpose or that it could not have been unaware of it, given the circumstances.

Each manager shall represent the partnership vis-à-vis third parties and in legal proceedings, either as plaintiff or as defendant.

Art. 310-3.

A limited partner may enter into any transaction with the common limited partnership without compromising, solely because of his status as a limited partner, his rank as unsecured or secured creditor, according to the terms of the contemplated transaction.

He shall not carry out any act of management in relation to third parties.

A limited partner shall be jointly and severally liable to third parties for any commitments of the partnership in which he participated in breach of the prohibition contained in the preceding subparagraph.

He shall also be jointly and severally liable to third parties, even for commitments in which he did not participate, if he regularly performed acts of management in relation to such third parties.

The following do not constitute acts of management for which the limited partner is jointly and severally liable to third parties: the performance of the duties of a partner, the opinions and advice given to the partnership, to its affiliate entities or to their managers, the performance of control and supervisory tasks, the granting of loans, guarantees or securities or any other form of assistance to the partnership or its affiliate entities as well as the authorisations given to the managers for the acts exceeding their powers in the cases provided for in the limited partnership agreement.

A limited partner may act as a member of a management body or representative of a manager of the partnership, even if such manager is a general partner, or use the latter's corporate signature, even acting as a representative of the partnership, without incurring joint and several liability, provided that the capacity in which he is acting is indicated.

Art. 310-4.

Distributions and reimbursements made to partners, as well as the conditions under which the common limited partnership may ask for their restitution, are determined according to the limited partnership agreement.

Unless otherwise provided for in the limited partnership agreement, each partner shall share in the profits and the losses of the partnership in proportion to the partnership interests he holds.

Art. 310-5.

(1) Unless otherwise provided for in the limited partnership agreement, the voting rights of each partner are proportional to his partnership interests.

(2) Any amendment regarding corporate purpose, change of nationality, conversion or liquidation shall be decided by the partners. The limited partnership agreement shall determine, among the other decisions, those that are not required to be taken by the partners. It shall also set out the conditions for taking such decisions. In the absence of such provisions in the limited partnership agreement:

1° partners' decisions are adopted during general meetings or by written resolution during which each partner receives the proposed resolutions or decisions to be made, expressly worded, and casts his vote in writing;

2° any decision shall only be validly made with a majority of votes cast, regardless of the proportion of partnership interests represented, except for decisions regarding changes to the corporate purpose, changes of nationality, conversion or liquidation which will be adopted only with the approval of partners representing three-quarters of the partnership interests and, in all cases, with the approval of the general partners;

3° these meetings or written resolutions may be convened or initiated by the manager(s) or by the partners representing more than half of the partnership interests.

(3) At least annually, the partners will decide on the annual accounts by a special vote which should take place on the date fixed in the limited partnership agreement, but no later than six months after the end of the financial year. The limited partnership agreement may provide that the first special vote may take place within eighteen months after the incorporation of the partnership. Fifteen days, or more if the limited partnership agreement so provides, before the date on which the partners shall approve the annual accounts, the partners of a common limited partnership shall be allowed to examine and to obtain a copy at the registered office of:

1° the annual accounts;

- 2° the management report, as the case may be;
- 3° the report of the independent auditor (*réviseur d'entreprises agréé*), as the case may be;
- 4° any other information required by the limited partnership agreement.

Art. 310-6.

The partnership interests of the limited partners may only validly be transferred, assigned, subdivided in ownership or pledged in accordance with the terms and formal conditions provided for in the limited partnership agreement. In the absence of such provisions in the limited partnership agreement, any transfer other than a transfer for cause of death, assignment, subdivision of ownership and pledge of a limited partner's interests shall require the approval of the general partner(s).

The partnership interests of the general partners may only be validly transferred, assigned, subdivided in ownership or pledged in accordance with the terms and formal conditions provided for in the limited partnership agreement. In the absence of such provisions in the limited partnership agreement, any transfer other than a transfer for cause of death, assignment, subdivision of ownership and pledge of a limited partner's interests shall require the approval of the partners taking decisions as in the case of amendment of the corporate purpose.

Transfers, assignments and subdivisions of ownership of partnership interests shall be effective towards the partnership and towards third parties only after their notification to or their acceptance by the partnership. However, these shall not affect third parties retrospectively, with respect to commitments prior to their publication, unless such third party had knowledge of or could not have been unaware of them.

The limited partnership agreement may authorise management or partners to reduce or repurchase, partially or in full, as the case may be, upon the request of one or more partners, the partnership interests of one or more partners and define the terms thereof.

Art. 310-7.

In the event of the death of the general partner, or if he becomes subject to legal incapacity, or is otherwise unable to act, or is subject to winding-up, revocation, resignation, insolvency or any other similar situations and if there is no other general partner, provided that the common limited partnership is to continue to exist, such general partner shall be replaced. In the absence of such provision in the limited partnership agreement, the president of the chamber of the district court dealing with commercial matters may, at the request of any interested party, appoint a temporary administrator who may or may not be a partner and who shall solely take all urgent and purely administrative measures until a decision of the partners is taken, which the administrator shall bring about within fifteen days following his appointment. The administrator is only liable for the execution of his mandate. Any interested party may object to the order; the objection shall be notified to the partnership as well as to the person appointed and to the person who applied for the appointment. The proceedings regarding the objection shall be heard as in summary proceedings.

Chapter II – Special limited partnerships (sociétés en commandite spéciale)

Art. 320-1.

(1) A special limited partnership is a partnership established by contract, for a limited or unlimited duration, between one or more general partners with unlimited and joint and several liability for all obligations of the partnership, and one or more limited partners, who are only liable up to the amount contributed thereto, consisting of partnership interests, represented or not by instruments, in accordance with the provisions of the limited partnership agreement.

(2) A special limited partnership does not constitute a legal entity separate from its partners.

(3) The contributions of the partners to the partnership may be made in cash, in kind or by way of services (*apport en industrie*). The contributions, including the admission of new partners by means other than a transfer of partnership interests, shall be made under the conditions and formalities laid down in the limited partnership agreement.

(4) Debt securities may be issued by the partnership.

(5) Unless otherwise provided for in the limited partnership agreement, a general partner can also be a limited partner provided that there is always at least one general partner and one limited partner legally separate from each other.

(6) Each special limited partnership shall keep a register containing:

1° a full and certified copy of the current version of the limited partnership agreement;

2° a list of all the partners, with their last name, first names, professions and personal or professional address, or in the case of legal entities, their company name, their legal form, their address and their registration number with the trade and companies register as may be provided by the national legislation governing said partnership, as well as the partnership interests held by each partner;

3° a record of all transfers of partnership interests issued and the date on which such transfers have been notified or accepted.

Any partner may examine this register, subject to the restrictions provided for in the limited partnership agreement.

(7) The domicile of a special limited partnership is located at the head office of the partnership. Unless evidence to the contrary is produced, the head office of the partnership is deemed to coincide with the place where its registered office is located as stated in the limited partnership agreement.

(8) The nullity of a special limited partnership can only be declared in the following circumstances:

1° if the limited partnership agreement contains no information concerning the company name or the corporate purpose;

2° if the corporate purpose is unlawful or contrary to public policy;

3° if the partnership does not comprise at least one distinct general partner and at least one distinct limited partner who are both validly committed. Articles 100-19 to 100-21 shall apply.

Art. 320-2.

(1) Inscriptions and other formalities regarding assets pooled in the special limited partnership or those upon which it has any rights are made in the name of the special limited partnership.

(2) Assets pooled in the special limited partnership shall exclusively satisfy the claims of creditors arising from the formation, the operation or the liquidation of the partnership.

Art. 320-3.

A special limited partnership is managed by one or more managers, who may but are not required to be general partners, appointed in accordance with the limited partnership agreement.

Managers who are not general partners are liable in accordance with Article 441-9.

The limited partnership agreement may allow the managers to delegate their powers to one or more representatives that are only liable for the execution of their mandate.

Unless otherwise provided for in the limited partnership agreement, each manager can take, on behalf of the partnership, all measures that are necessary or useful for achieving the corporate purpose. The restrictions to the powers of the managers laid down in the limited partnership agreement are not effective towards third parties, even if these restrictions have been published. However, the limited partnership agreement can entitle one or more managers to represent the partnership, alone or collectively, and such provision is enforceable against third parties under the conditions provided for in Title I, Chapter *Vbis* of the law of 19 December 2002 on the trade and companies register and the accounting as well as annual accounts of companies.

The partnership shall be bound by the acts of the manager(s) even if these acts exceed the corporate purpose unless it proves that the third party knew that the act exceeded the corporate purpose or that it could not have been unaware of it, given the circumstances.

Each manager shall represent the partnership vis-à-vis third parties and in legal proceedings, either as plaintiff or as defendant.

Writs served for or against the partnership shall be validly served in the name of the partnership alone.

Art. 320-4.

A limited partner may enter into any transaction with the special limited partnership without compromising, solely because of his status as limited partner, his rank as unsecured or secured creditor, according to the terms of the contemplated transaction.

He shall not carry out any act of management in relation to third parties.

A limited partner shall be jointly and severally liable to third parties for any commitments of the partnership in which he participated in breach of the prohibition contained in the preceding subparagraph.

He shall also be jointly and severally liable to third parties for commitments, even in which he did not participate, if he regularly performed acts of management in relation to such third parties.

The following do not constitute acts of management for which the limited partner is jointly and severally liable to third parties: the performance of the duties of a partner, the opinions and advice given to the partnership, to its affiliate entities or to their managers, the performance of control and supervisory tasks, the granting of loans, guarantees or securities or any other form of assistance to the special limited partnership or its affiliate entities as well as the authorisations given to the managers for the acts exceeding their powers in the cases provided for in the limited partnership agreement.

A limited partner may act as a member of a management body or representative of a manager of the special limited partnership, even if such manager is a general partner, or use the latter's corporate signature, even acting as a representative of the special limited partnership, without incurring joint and several liability, provided that the capacity of representative in which he is acting is indicated.

Art. 320-5.

Distributions and reimbursements made to partners, as well as the conditions under which the special limited partnership may ask for their restitution, are determined according to the limited partnership agreement.

Unless otherwise provided for in the limited partnership agreement, each partner shall share in the profits and the losses of the partnership in proportion to the partnership interests he holds.

Art. 320-6.

Unless otherwise provided for in the limited partnership agreement, the voting rights of each partner are proportional to his partnership interests.

Any amendment regarding corporate purpose, change of nationality, conversion or liquidation shall be decided on by the partners. The limited partnership agreement shall determine, among the other decisions, those that are not required to be taken by the partners. It shall also set out the

conditions for taking such decisions. In the absence of such provisions in the limited partnership agreement:

1° partners' decisions are adopted during general meetings or by written resolution during which each partner receives the proposed resolutions or decisions to be made, expressly worded, and casts his vote in writing;

2° any decision shall only be validly made with a majority of votes cast, regardless of the proportion of partnership interests represented, except for decisions regarding changes to the corporate purpose, changes of nationality, conversion or liquidation which will be adopted only with the approval of partners representing three-quarters of the partnership interests and, in all cases, with the approval of the general partners;

3° these meetings or written resolutions may be convened or initiated by the manager(s) or by the partners representing more than half of the partnership interests.

The information to be notified to partners is solely such information as is provided for in the limited partnership agreement.

Art. 320-7.

The partnership interests of the limited partners may only validly be transferred, assigned, subdivided in ownership or pledged in accordance with the terms and formal conditions provided for in the limited partnership agreement. In the absence of such provisions in the limited partnership agreement, any transfer other than a transfer for cause of death, assignment, subdivision of ownership and pledge of a limited partner's interests shall require the approval of the general partner(s).

The partnership interests of the general partners may only be validly transferred, assigned, subdivided in ownership or pledged in accordance with the terms and formal conditions provided for in the limited partnership agreement. In the absence of such provisions in the limited partnership agreement, any transfer other than a transfer for cause of death, assignment, subdivision of ownership and pledge of a general partner's interests shall require the approval of the partners taking decisions as in the case of amendment of the corporate purpose.

Transfers, assignments and subdivisions of ownership of partnership interests shall be effective towards the partnership and towards third parties only after their notification to or their acceptance by the partnership. However, these shall not affect third parties retrospectively, with respect to commitments undertaken prior to their publication, unless that third party had knowledge of or could not have been unaware of them.

The limited partnership agreement may authorise management or partners to reduce or repurchase, partially or in full, as the case may be, upon the request of one or more partners, the partnership interests of one or more partners in the partnership and define the terms thereof.

Art. 320-8.

In the event of the death of the general partner, or if he becomes subject to legal incapacity, or is otherwise unable to act, or is subject to winding-up, revocation, resignation, insolvency or any other similar situations and if there is no other general partner, provided that the special limited partnership is to continue to exist, such general partner shall be replaced. In the absence of such provision in the limited partnership agreement, the president of the chamber of the district court dealing with commercial matters may, at the request of any interested party, appoint a temporary administrator who may or may not be a partner and who shall solely take all urgent and purely administrative measures until a decision of the partners is taken, which the administrator shall bring about within fifteen days following his appointment. The administrator is only liable for the execution of his mandate. Any interested party may object to the order; the objection shall be notified to the partnership as well as to the person appointed and to the person who applied for the appointment. The proceedings regarding the objection shall be heard as in summary proceedings.

Art. 320-9.

Conversion of a special limited partnership into a company of one of the types provided for in the first subparagraph of Article 100-2 entails the creation of a new legal entity. In addition to the conditions provided for in the limited partnership agreement, the substantial and formal requirements applicable to the incorporation of a company having the corporate form into which the special limited partnership is converted shall apply.