

luxembourg newflash

31 january 2013

A new legal and regulatory regime for Family Office in Luxembourg

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On 21 December 2012, Luxembourg has adopted a law on the activity of Family Offices (the "Law"). Luxembourg is thus one of the first countries to implement a specific and coordinated legal and regulatory framework for the activity of Family Offices. Within this new framework, the activity of a Family Office will be reserved to specific Luxembourg professionals, which will have to comply with additional professional obligations.

The Law entered into force on 2 January 2013.

Scope and Definition

The activity of a Family Office within the meaning of the Law consists in providing, on a professional basis, *advice or services as regards private wealth* to:

- private individuals;
- families; or
- private wealth entities (such as any type of corporate or contractual entity, trust or foundation) founded or owned by, or whose beneficial owners are, private individuals or families.

The Law defines the advice and services related to private wealth as:

- the advice provided in relation to private wealth organisation, private wealth planning, administrative and financial supervision of private wealth; or
- the coordination of service providers acting in relation to private wealth, the supervision or assessment of their performances;
- to the exclusion of holding cash or financial instruments on behalf of its clients or the provision of investment services or activities within the meaning of the law of 5 April 1993 on the financial sector, as amended (the "1993 Law").

The Law shall however not apply to the activities of 'mono' Family Offices' (*i.e.* those that are carried out between members of the same family or are only provided to a single private individual, a single family or private wealth entities founded or owned by, or whose beneficial owner is a single private individual or a single family), neither to activities carried out in the context of corporate mandates (directorships), in the capacity of council member of a foundation, trustee, trust protector, fiduciary agent or judicially appointed agent.

Professionals authorised to act as a Family Office

Only specific regulated professionals are authorised to carry out the activities of a Family Office and may avail themselves of this title:

1) Professionals authorised per se in view of their activities

The Law provides for an exhaustive list of regulated professionals which are automatically authorised to act as Family Offices:

- credit institutions;
- investment advisers;
- private portfolio managers;
- corporate domiciliation agents;
- professionals providing company e-setting-up and management services;
- lawyers admitted to the Luxembourg bar;
- notaries;
- auditors; and
- certified accountants.

2) New specialised category of professional of the financial sector as Family Office

The Law also modified the 1993 Law, by inserting a new Article 28-6 in such law. Pursuant to this new Article 28-6, persons other than the above-mentioned professionals and who contemplate carrying out Family Office activities in Luxembourg are required to apply for an authorisation to act as a professional of the financial sector (a "PFS") – Family Office, which constitutes a new category of PFS.

Authorisation shall be granted by the Minister of Finance, upon written application, following an investigation conducted by the Luxembourg Financial Supervisory Authority (the *Commission de Surveillance du Secteur Financier*, the "CSSF") to verify whether the conditions of the 1993 Law are fulfilled. This PFS-Family Office falls therefore under the prudential supervision of the CSSF.

Authorisation to act as a PFS-Family Office is only granted to a legal entity and is subject to the existence of a share capital of at least EUR 50.000-. As for any other PFS, a PFS-Family Office is also subject to authorisation requirements relating for instance to the central administration, the shareholder structure or the professional standing and experience of its managers.

The Law provides for a grandfathering provision for existing unregulated professionals carrying out the activity of a Family Office. They have six months from the entry into force of the Law to ensure compliance with the new regime and to apply for the necessary authorisation.

Professional obligations applicable to Family Offices

The Law requires that a professional carrying out the activity of a Family Office must comply with additional professional obligations relating notably to the transparency of its remuneration, to the combat against money laundering and terrorism financing and to professional secrecy.

Please contact us should you require any information.

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