

HOW TO SET UP

A FAMILY OFFICE

DESCRIPTION

Within the meaning of the Luxembourg law a Family Office is an office that provides, on a professional basis, advice or services relating to 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 "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 and 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").

Activities purely relating to non-financial assets, and the roles of trustee, fiduciary or court appointed agent are excluded from the scope of the law, as are offices acting for a single family. Luxembourg legislation is aimed uniquely at multi Family Offices, that is, entities that offer their services to several clients.

AUTHORISATION REQUIREMENT

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:
 - banks, investment advisers and managers;
 - domiciliation agents and professionals providing company formation or management services;
 - lawyers and public notaries;
 - auditors and chartered accountants.
2. A new category of specialised Professional of the Financial Sector (PSF): Family Office.

No authorisation is required for group 1, however, entities with the status of PSF must inform the supervisory authority of their intention to add Family Office to their list of activities.

Legal or physical persons falling into group 2 must apply for authorisation as a PSF: Family Office.

THE REMAINDER OF THIS TEXT APPLIES TO NEW APPLICANTS SEEKING THE STATUS OF PSF-FAMILY OFFICE

SUPERVISORY AUTHORITY

Authorisation is granted by the Minister of Finance on the advice of the *Commission de Surveillance du Secteur Financier* (CSSF). The CSSF is responsible for ongoing regulation and supervision.

LEGAL AND REGULATORY FRAMEWORK

Law 6366 of 21 December 2012 (the Family Office Law).

The Law of 5 April 1993 on the Financial Sector, as modified; notably, Article 28-6.

Family Offices must comply with additional obligations relating notably to the transparency of its remuneration, to the combat against money laundering and terrorism financing and to professional secrecy.

CAPITAL BASE

The law requires a minimum capital of EUR 50,000.

The depositary must be a Luxembourg bank or branch of an EU or EEA bank approved by the CSSF.

LEGAL STRUCTURE

The legal form will depend on the activities to be undertaken. Authorisation may be requested by a natural person or a legal person.

SHAREHOLDERS

Authorisation is subject to communication to the CSSF of the identity of shareholders or partners, whether direct or indirect and whether natural or legal persons, that have qualifying holdings in the PSF and the amounts of those holdings. Authorisation shall be refused if, taking into account the need to ensure the sound and prudent management of the PSF, the suitability of those shareholders or partners is not satisfactory.

Where close links exist between the PSF and other natural or legal persons, authorisation shall only be granted if these links do not prevent the PSF from effectively exercising its supervisory functions.

CENTRAL ADMINISTRATION

A PSF that is a legal person must produce evidence that the registered office and central administration are in Luxembourg. An applicant who is a natural person must produce evidence that he effectively conducts business in Luxembourg and has his central administration in Luxembourg.

PROFESSIONAL STANDING AND EXPERIENCE

Natural persons and, in the case of legal persons, the members of the bodies performing administrative, management and supervisory functions and also the shareholders, must produce evidence of their professional standing. This is assessed on the basis of their CV, police records and of any evidence showing that the persons concerned are of good repute and offer every guarantee of irreproachable conduct.

INFRASTRUCTURE

At least two persons must be charged with the management of the undertaking and must be able to determine effectively the undertaking's goals. They must possess professional experience deemed to be sufficient by virtue of the fact that they have already carried out similar activities at a high level of responsibility and autonomy.

EXTERNAL AUDITING

The annual accounts must be audited by an external auditor that is established as a Luxembourg certified accountant (*réviseurs d'entreprise agréé*) and that has adequate professional experience. The external auditor is appointed by the board of directors or the managers.

Any change in external auditors must be authorised beforehand by the CSSF.

AUTHORISATION PROCEDURE

When setting up a new company, it is customary for an entity seeking authorisation to submit an informal file to the CSSF before submitting a formal request.

This file should contain the following elements:

- the Articles (or draft Articles) of incorporation, where a legal person is concerned;
- a detailed memorandum describing the activities to be undertaken;
- the names of the shareholders of the company, the percentage of capital held by each and, in the case of legal persons, the annual report and accounts for the previous three years;
- a structure chart of the company;
- the names, curriculum vitae, police record and personal declaration of honour of natural persons and of each board member and each supervisory board member in the case of a legal person, and likewise of the people who will be responsible for day to day management of the entity;
- the name of the external auditor charged with auditing the annual accounts;
- the name of the internal auditor or the company responsible for the internal audit function, if outsourced;
- a provisional budget for each of the three upcoming financial years;
- details of the human, technical and material resources to be employed in Luxembourg;
- anti-money laundering and "know your customer" (KYC) procedures.
- procedures for full transparency with regard to the direct and indirect remuneration of the Family Office, including any rebates obtained in the management of a client's assets.

A number of consultants, legal firms and domiciliation agents specialise in the creation of companies and can assist in the work of setting up business as a PSF: Family Office.

Useful information sources

www.lafo.lu

Luxembourg Association of Family Offices

www.supportpsf.lu

Support PSF Association

www.cssf.lu

Commission de Surveillance du Secteur Financier
(Luxembourg financial supervisory authority)