

# A LABEL OF QUALITY

Franck Cera introduces Luxembourg's new licensing regime for family offices

**LUXEMBOURG FAMILY BUSINESSES** require a family officer who is independent of the various service providers or investment-product suppliers involved in wealth management, and who is able to play a pivotal role in liaising with the wide spectrum of professionals involved in the wealth management of the family. The family officer should be skilled enough to negotiate with the banker's family, wealth managers or lawyer, while remaining completely independent from service providers. In the past few years there has been an increase in family office activity in Luxembourg, leading to the creation of two professional associations: the Luxembourg Association of Family Offices and Luxembourg for Family Offices asbl. To further increase the standards governing Luxembourg's family office sector, new legislation regulating the sector has been introduced. The *Family Office Act* came into force on 28 December 2012 and introduced a new licensing regime for financial-sector professionals carrying out family-office activities. The regime is overseen by Luxembourg's financial services regulator, the Commission de Surveillance du Secteur Financier (CSSF).

## What is a family officer?

Pursuant to the *Family Office Act*, a family officer is a professional offering advice and/or services in connection with an estate to individuals, families or patrimonial legal entities (corporations, foundations, trusts or any other contractual scheme) owned and founded by individuals or families that benefit from them. The Act aims at offering a label of quality to the multi-family office profession, and mono-family offices remain unregulated.

Advice and/or services include:

- advice in wealth management or estate planning, or administrative or financial monitoring of that estate; or
- liaison and coordination between the various service providers involved in the estate, and the monitoring and assessment of their performance.

The estate shall partly or wholly include cash or financial instruments. A family office is not entitled to act as depository of cash or financial instruments or to carry out investment services, such as investment advice or private portfolio management, that constitute activities otherwise regulated by Luxembourg's financial sector law.

The family office adds value for the benefit of the family by:

- being a coordinator and facilitator, and helping to speed up the decision-making process for time-sensitive decisions;
- offering continuous and efficient reporting to the family;

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- removing the unnecessary layers that the family has accumulated over the years in different jurisdictions; and
- helping to maintain confidentiality within the service providers.

The family office may perform additional functions, such as providing family governance, managing the philanthropic activities of the family and managing the real estate of the family, as long as those services are not otherwise regulated.

Persons who act as trustee, trust protector or *fiduciaire* are not regulated by the Act.

## A regulated profession

Professionals already supervised by the CSSF may provide family office services without making an additional application. This includes credit institutions, investment advisors, private portfolio managers, domiciliation agents, professionals carrying out services such as the incorporation or management of companies, lawyers (*avocats*), notaries, accountants and auditors (*réviseurs d'entreprises*).

All other entities must file an application with the CSSF. The following criteria must be met: the entity is a 'professional of the financial sector' within the meaning of the financial sector law, the family office has a minimum share capital of EUR50,000, the shareholders and the management of the company must prove their professional skills, and the accounts of the company must be certified by external auditors. At least two directors of the family office must be appointed to represent the family office with the CSSF. Furthermore, all family officers must comply with the anti-money laundering requirements. Professionals acting as a family officer *ultra vires* of the law may be sentenced to imprisonment (term of imprisonment varies from eight days to five years) and/or a fine of EUR1,250 to EUR125,000.

## A protective legal framework

A family officer is subject to the obligation of professional secrecy as set out in Luxembourg's financial sector law. In addition, as a pledge of independence, the family officer shall disclose to the client, in writing, the details of direct or indirect remuneration, including the remuneration derived from the client's estate and any retrocession.

Luxembourg has created a label of quality for the family office profession, which sets the necessary link to the private banking sector in Luxembourg. The *Family Office Act*, alongside other initiatives such as the creation of the Luxembourg Freeport and the innovations in the alternative fund industry, has strengthened Luxembourg's wealth management industry. ■