

# HOW TO SET UP

## A BUSINESS AS A PROFESSIONAL OF THE FINANCIAL SECTOR (PFS)

### DESCRIPTION

Luxembourg law requires that companies engaged in financial services other than banking services adopt a regulated legal status called “Professional of the Financial Sector” (PFS). There are three types of PFS:

#### 1. Investment Firms

This concerns investment firms in the meaning of European directives. Luxembourg law recognises 10 different types of investment firms, including companies active in the business of providing financial advice, investment and brokerage services, market making and the distribution of financial products.

A firm may choose to be active in several of these.

Investment firms benefit from the European passport and can offer their services throughout the European Union.

#### 2. Specialised PFS

Specialised PFS are financial professionals that exercise activities outside the scope of “investment firms” as defined in European directives. Luxembourg law recognises 12 different types of specialised PFS including corporate domiciliation agents, registrar agents, Family Offices and professionals performing securities lending. A firm may choose to be active in several of these.

Specialised PFS do not benefit from the European passport.

#### 3. Support PFS

A support PFS is a company that enters into an outsourcing arrangement with a credit institution, payment institution, investment fund, pension fund, insurance/reinsurance undertaking or another PFS to provide services that require access to confidential data.

These services include the management of customer and investor communications, document and records management, market price data management and IT system operation. Thanks to their PFS status, these companies operate under the same regulatory regime as the financial institutions themselves.

Support PFS fall into four categories and a firm may choose to be active in several of them:

- client communication agents: production, maintenance, destruction, distribution and archiving of investor and client statements;
- administrative agents: provision of administrative services forming an integral part of the business activities of their client company;
- primary IT systems operators: responsible for the operation of IT systems that generate accounts and financial statements that are part of the core IT systems of their client company;
- secondary IT systems and communication network operators: responsible for the operation of IT systems other than those that generate accounts and financial statements and of communication networks that are part of the IT systems of their client company. This includes IT processing or transfer of data stored in the IT systems. These IT systems and communication networks may either belong to the outsourcing company or be provided to them by the operator.

### CAPITAL BASE

The Law requires a minimum capital of EUR 50,000-730,000, depending on the activity of the firm.

Authorisation for any professional activity in the financial sector involving the applicant in the management of third-party funds requires a paid-up share capital of at least EUR 125,000.

## SUPERVISORY AUTHORITY

PSF are regulated by the financial sector supervisory authority, the *Commission de Surveillance du Secteur Financier* (CSSF).

## LEGAL AND REGULATORY FRAMEWORK

The legal conditions for undertaking business as a PFS are laid down in Articles 13 to 23 of the Law of 5 April 1993 on the financial sector.

Specific Articles in the same Law relate to the activities of investment firms (Articles 24 to 24-9), specialised PFS (Articles 25 to 28-10) and support PFS (Articles 29-1 to 29-4).

## AUTHORISATION REQUIREMENT

Authorisation is granted by the Minister of Finance upon written application, following an investigation by the CSSF to establish whether the conditions laid down by the law of 5 April 1993 are fulfilled. Where the services offered or activities performed by a PSF also concern insurance products, the authorisation is granted after investigation by the CSSF and by the insurance supervisory authority (*Commissariat aux Assurances* - CAA) on the conditions required under the above Law and the Law of 6 December 1991 on the insurance sector.

## LEGAL FORM

Authorisation as a PFS may be requested by a natural person or a legal person with the following exceptions:

1. the activity of support PFS which must be carried on by a legal entity;
2. authorisation for any activity involving the management of third-party funds may be granted only to legal persons having the form of a public entity or a commercial company.

## 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 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.

The persons responsible for the management must be empowered effectively to determine the direction taken by the business and must possess adequate professional experience by virtue of their having previously carried on similar activities at a high level of responsibility and autonomy.

Where authorisation is granted to a legal person, the persons referred to in the preceding paragraph must be at least two in number. In the case of an investment firm which is a natural person run by a single person, the authorisation is subject to the production of evidence by the applicant to the CSSF that s/he has taken alternative arrangements to ensure the sound and prudent management of the investment firm.

## SHAREHOLDERS

Authorisation of legal persons shall be subject to communication to the CSSF of the identities of the shareholders or members, 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 PFS, the suitability of those shareholders or members is not satisfactory.

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

## CENTRAL ADMINISTRATION

An applicant 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 s/he effectively conducts business in Luxembourg and has his/her central administration in Luxembourg.

## INFRASTRUCTURE

Investment firms shall have robust internal governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes for identifying, managing, monitoring and reporting the risks it is or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures, as well as control and security arrangements for information processing systems.

A PFS other than an investment firm shall produce evidence that it has a sound administrative and accounting organisation and adequate internal control procedures.

## EXTERNAL AUDITING

The annual accounts must be audited by an external auditor who must be established as a *Luxembourg réviseur d'entreprises agréé* (approved statutory auditor) and have adequate professional experience. The external auditor must be appointed by the board of directors.

Investment firms are required to join an investors' compensation scheme set up in Luxembourg and recognised by the CSSF.

---

## AUTHORISATION PROCEDURE

An entity seeking authorisation in Luxembourg should, before filing the formal application request with the Minister of Finance, submit an informal file to the CSSF.

To compile the application file, applicants must fill in the form "Main application form for PFS authorisation" which represents the core document for a PFS authorisation 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 the day-to-day management of the entity;
- the name of the external auditor in charge of auditing the annual accounts;
- the name of the compliance officer and 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;
- a description of the IT infrastructure.

A number of legal firms in the financial centre specialise in the creation of companies and can assist in the work of setting up a business as a PFS.

### Useful information sources

[www.cssf.lu](http://www.cssf.lu)

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

[www.supportpsf.lu](http://www.supportpsf.lu)

Support PSF Association

[www.limsa.lu](http://www.limsa.lu)

Luxembourg International Management Services  
Association