

How to **set up**

business as an Investment Adviser

Definition

Investment advisers are professionals whose activity consists in providing personal recommendations to a client, either at the initiative of the investment firm, or upon request of that client, in respect of one or more transactions relating to financial instruments.

Investment advisers are not authorised to act directly or indirectly in the implementation of the advice provided by them.

Authorisation requirement

Exercise of the activity of an investment adviser is subject to written authorisation by the Minister of the Treasury and the Budget who is responsible for the CSSF, the Luxembourg financial supervisor.

Supervisory authority

Investment advisers are subject to supervision by the *Commission de Surveillance du Secteur Financier* (CSSF).

Legal and regulatory framework

The legal conditions for undertaking business as an investment adviser are laid down in articles 13-24 of the law of 5 April 1993 on the financial sector, as amended.

The legal form of the entity

Authorisation for activity as an investment adviser may be requested by a natural person or a legal person.

Capital base

Authorisation to carry on business as investment adviser is conditional on the production of evidence of:

- (a) a capital base of not less than 50,000 euros, or
- (b) a professional indemnity insurance covering the whole territory of the European Union or another comparable guarantee against liability arising from professional negligence, representing at least 1,000,000 euros applying to each claim and in aggregate 1,500,000 euros per year for all claims, or
- (c) a combination of capital base and professional indemnity insurance in a form resulting in a level of coverage equivalent to points (a) or (b).

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 he effectively conducts business in Luxembourg and has his central administration in Luxembourg.

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 PFS, 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.



Infrastructure

The investment adviser must have robust internal governance arrangements and fulfill the organisational requirements laid down by the EU in the Markets in Financial Instrument Directive 2004/39/CE (MiFID).

Professional standing and experience

In order to obtain authorisation, natural persons and, in the case of legal persons, the members of the bodies performing administrative, management and supervisory functions, must produce evidence of their

professional standing. Such standing shall be assessed on the basis of police records and of evidence showing that the persons concerned are of good repute and offer every guarantee of irreproachable conduct.

External auditing

Authorisation is conditional on the PFS having its annual accounts audited by an external auditor who can demonstrate adequate professional experience. The external auditor is appointed by the body responsible for managing the PFS.

Authorisation procedure

It is customary for an entity seeking authorisation as an investment adviser in Luxembourg to submit an informal file to the CSSF before submitting a formal request for authorisation to the Ministry of the Treasury and the Budget.

This file should contain the following elements:

- ▶ The Statutes of the company, where a legal person is concerned;
- ▶ A detailed memorandum describing the activities to be undertaken;
- ▶ The curriculum vitae, personal declaration of irreproachable conduct and police record of each board member, in the case of a legal person;
- ▶ The names of the people who will be responsible for day to day management of the entity, together with their curriculum vitae, personal declaration of irreproachable conduct and police records;
- ▶ 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;
- ▶ The name of the external auditor charged with auditing the annual accounts;
- ▶ A provisional budget for each of the three upcoming financial years;
- ▶ Details of the human, technical and material resources to be employed in Luxembourg.

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

Useful information sources

www.cssf.lu

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

www.alpp.lu

Association Luxembourgeoise
des Professionnels du Patrimoine