REGULATION

Concerns about the new draft law on the Family Office

Interview with Diana Diels-Kneip, Luxembourg For Family Office

In the context of the new draft law on the Family Office, several Family Offices, founding members and office-holders of the various associations, have expressed their views on the draft law and its implications.

AGEFI LUXEMBOURG · FEBRUARY 2012

What is the role of a Family Office?

The Family Office plays, above all, the role of the family's external adviser, touching on practically everything that wealth encompasses (private, professional and social): from wealth management to corporate governance, by way of family policy and governance, legal advice, tax advice, wealth-structuring engineering, consolidation and succession. It has a coordinating role and is a point of reference.

Who are Family Office services aimed at?

The Family Office provides its tailor-made services, whether through a Single Family Office or a Multi Family Office, to large fortunes with a complex, international structure, and only above a certain wealth-value threshold. In Europe, HNWIs and UHNWIs (High Net Worth Individuals and Ultra High Net Worth Individuals) avoid bankers and create their own Family Office, or entrust everything to an external Family Office.

How are the family's usual advisers involved? Tell us about a Family Office's relationship with its client.

With the Family Office, families find long-term support and very high-level expertise. Relationships with the Family Office are based on trust, which is earned through confidentiality and skills in the most varied fields. Strong empathy is just as fundamental as neutrality, objectivity and independence of judgement.

What are the main missions of a Family Office?

The Family Officer's principal mission is to be the central coordinator for the family for services such as: tax advice (national and international taxation, lump-sum taxation, consolidation or reporting, tax planning, tax domicile); wealth advice (wealth analysis, wealth management, consolidation, reporting); succession planning (wills, transmission, gifts, inheritance, restructuring of wealth by means of trusts, companies and family foundations); fiduciary functions (corporate foundation, insurance expertise); family governance and policy (defining the roles of family members), organising the life of the generations (schools, sporting events, etc.); real-estate advice; art advice; risk-management advice; philanthropy, and so on.

What are Luxembourg's strengths for this sector?

Luxembourg is a central financial centre in Europe, unique of its kind, with a high degree of political and economic stability. The presence of many professionals in European wealth-structuring engineering, the legislation surrounding attractive financial structures, the creation of the Free Port and the Private Foundation, the supervision by the CSSF of professionals who handle sensitive financial-sector data, and the investment-fund vehicles all demonstrate Luxembourg's competence in every field touching wealth closely or remotely, and make Luxembourg a centre of competence offering, moreover, unrivalled protection and discretion, not to mention its multilingualism.

How has your profession evolved over recent years?

Since the banking financial crisis and the sovereign-debt crisis of the European countries, the wealthy no longer trust the banks. As a general rule, in Europe as in Asia, the wealthy take their fortune into their own hands, and often through a Family Office. A study shows the same trend in Europe as in Singapore, with 30% annual growth in the number of Family Offices.

A draft law on Family Offices was adopted by the Government Council on 21 October 2011 and tabled on 17 November 2011 in the Chamber of Deputies. Its adoption is anticipated during 2012. Can you outline the main features of this draft?

The draft law aims to regulate the activity of the Family Office and to reserve the provision of these services to certain categories of regulated professionals. Its objective is the protection of the client and the integrity of the financial centre. Excluded from the law are activities carried out for a single natural person or a single family (Single Family Office), and activities performed in the capacity of a corporate officer, a member of a foundation board, a trustee, the protector of a trust, a fiduciary or a court-appointed agent. The following regulated professions will be entitled to use the designation "Family Office" and to carry out the related activities: credit institutions; investment advisers; wealth managers; specialised PFS approved as a Family Office, company domiciliation agent, or professional providing company-formation or company-management services; attorneys at the Bar; notaries; company auditors and approved company auditors; and chartered accountants. These new categories will have professional obligations regarding the fight against money laundering and the financing of terrorism. They are bound by professional secrecy. Anyone carrying out Family Office activity must communicate to the client, in writing, the details of the remuneration charged or received in connection with the client's wealth.

Why regulate Family Office activity?

The risk is that the term "Family Office" becomes a marketing product and is debased and used in an uncontrolled way by any organisation or person without their being connected, closely or remotely, to the true profession of the Family Office. The Family Office profession also needs an organisation with standards of professional ethics, a kind of accreditation that would be granted by a body such as a Luxembourg Institute of Independent Family Offices. This profession cannot be conflated with the external providers who are partners, such as the banks, the wealth managers, the notaries, the lawyers, the chartered accountants, and so on.

What are your main concerns regarding this draft law?

The draft law automatically grants the "Family Office" label to all the traditional financial providers. Conversely, the participants who are genuine Family Offices must apply for authorisation. Should each participant not be treated in the same way, by ensuring that the organisation seeking this new status has put everything in place to fulfil its role adequately? Which players will then be able to claim the title of Family Officer? Those who obtain authorisation under the future law. By contrast, a Family Office specialising in the oversight of real-estate wealth and of art collections, for example, would have to give up its designation, which seems to us abusive. The Family Office is truly a multi-faceted profession. This new profession should not be placed under the law relating to the financial sector, since Family Offices have a control role and are not participants in the financial sector.

Why, in your view, is the question of the independence of Family Office service providers not addressed in this draft law?

Because the draft law is the emanation of certain large players of the financial centre who, as their main activity, practise another profession. The fact that these players can also appropriate the designation "Family Office" is an important marketing tool, which will most often allow them to sell their products or services better. This way of operating is the very negation of independence. As a result, these players, co-authors of the draft law, had no interest in emphasising an obligation of independence. Moreover, the legislation provides for no criminal prosecution regarding the transparency of commissions and retrocessions. That is precisely what we deeply deplore: independence and impartiality must be at the very heart of our profession, and are the only guarantors of the relationship of trust that we establish with our clients, a relationship that must be free of any conflict of interest. It is therefore essential that this notion of independence be clearly taken up by legislation governing this profession. The Family Office can only be practised through a structure that is totally independent of the structure of the providers cited in the draft law.

How else could Family Office activity be regulated?

We propose to regulate this profession by creating a Professional Order that regulates Independent Family Offices, with its standards and rules of professional ethics, and which supervises professionals as regards compliance with a reference charter.

If this draft law passes, do you genuinely fear the disappearance of the independent Family Office profession in Luxembourg?

Yes. The draft law excludes Single Family Offices, but on the other hand imposes a restriction of 10 generations. To our knowledge, there are Family Offices in Europe that already manage the 13th generation. Furthermore, there are Family Offices with 400 active family members; the draft law is not clear as to whether, in that case, it is a Multi Family Office or a Single one.

What is the future of the Family Officer profession in Luxembourg?

Important, provided that it is not subjected to over-regulation disproportionate to the risks incurred by our clients. In Europe, the number of participants is estimated at nearly 2,000 Family Offices. In Germany there are 400 Single Family Offices and 50 Multi Family Offices, according to a recent estimate. Nearly 6,000 families with wealth of more than 30 million euros already use Family Office services. According to a Family Office association in Greenwich, there are 2,500 to 3,500 Family Offices in the world. In the United States the SEC does not want to regulate Family Offices, but it does not grant authorisation to those it does wish to regulate, for example, Multi Family Offices that make their services available to all kinds of families, and not to one family or a small restricted group of a few families who come together to pool costs.

What do you propose to the Ministry of the Economy and Foreign Trade?

Most participants hold an authorisation to provide economic advice. Provision should be made, upon authorisation, to require these professionals to join the Professional Order of Independent Family Offices, in order to allow their activity to be supervised.

What do you propose to the Ministry of Finance?

To allow Family Offices to organise self-regulation through the creation of a Professional Order, and to refrain from automatically treating them as Professionals of the Financial Sector. Supervision by the CSSF is not justified, given that we merely coordinate other professionals who are themselves regulated, and that we have no transactional power over our clients' wealth: we are facilitators, not managers, and it is always our client who alone takes the final decision.