

Regulatory News Alert

Professional secrecy amendments - Update of article 41 of the law of 5 April 1993 related to the financial sector

27 February 2018

On 6 February 2018, the Chamber of Deputies adopted the first constitutional vote on the draft bill 7024 implementing interchange fee regulation into Luxembourgish Law and amending professional secrecy obligations for the financial sector. On 22 February 2018, the Council of State agreed to waive the second constitutional vote making the law adopted. The 7024 draft bill offered the opportunity to amend several other articles among which the key Article 41 of the law of 5 April 1993 on the financial sector. The objective of the amendments is to modernize the current provisions and to facilitate outsourcing arrangements.

Within the context of outsourcing arrangements, the amended Article 41 acknowledges that the client's consent is an **exemption to apply professional secrecy as long as the client has accepted it in accordance with the law or with the contractual conditions** agreed between parties.

The governmental amendments dropped the distinction between intragroup and extra group outsourcing. As of now, the only differentiation criteria will be considered between outsourcing operated by Luxembourgish entities towards another Luxembourgish entity regulated by the CSSF, the ECB or the CAA, and all the other case of outsourcing. It creates a preferred regime where it is assumed that the professional secrecy obligations are respected for all Luxembourgish entities regulated by the CSSF, the ECB or the CAA. Besides, this regime is also extended to financial holdings in the case of a prudential review.

In addition, some of the outsourcing related provisions provided by CSSF Circular 12/552 and 17/656 have been enacted in the new law strengthening their status. It includes the following requirements:

- Outsourcing should not jeopardize the level and quality of services provided to the clients
- A service level agreement (SLA) must be concluded
- Credit institutions and investment firms retain full and sole responsibility of their obligations

- Successive sub-contracting should be previously accepted by the client
- Reasonable measures should be set up to avoid an excessive increase of operational risk
- Outsourcing of key operational functions should not significantly affect the quality of the internal control or to prevent CSSF to control the compliance
- Credit institutions and investment firms should have in place robust security measures to ensure the confidentiality and the authentication of the means of information sharing

The amendment of Article 41 facilitate outsourcing arrangements inside a same group or to external service providers. This softening of professional secrecy provision will modernize the legal framework by adjusting it to the digital era and to sustain the development of new activities such as Fintech in Luxembourg.

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- KPIs definition and dashboard implementation
- Target operating model definition

At this moment in time, approximately a year before Brexit goes live, it is of a paramount importance to start assessing the business structure, evidencing potential disruptions in the access or provision of services or products, ensuring that sources of funding remain available as well as designing and implementing remediation plans. Any transition period, however short it is or may be, must be seen as an opportunity to create a new business model.

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