

## OUTSOURCING

A draft bill aiming at implementing Directive 2004/39/EC relating to markets in financial instruments (so called "MIFID") notably provides for amendments to the Act of 5 April 1993 (the "Act"), as amended, relating to the financial sector and which defines the concept professional of the financial sector ("PFS"). The amendments should, according to European provisions, come into force in November 2007.

The major amendments relating to IT outsourcing in the financial sector are the following according to the current version of the draft bill:

### 1. Two categories of providers

- Article 29-3 of the Act would only regulate **operators of primary IT systems of the financial sector** (i.e. those operators who are in charge of running information systems allowing the setting up of accounts and of financial statements). These providers would be required to dispose of an initial corporate capital of at least 370.000 EUR (instead of the current 1.500.000 EUR) and would also be able to carry out the activities provided for in the new Article 29-4 of the Law (see below);
- A new Article 29-4 of the Act would apply to **operators of secondary IT systems and communication networks of the financial sector** (i.e. those operators who are in charge of information systems not covered by new Article 29-3 of the Law). These providers would be required to dispose of an initial corporate capital of merely at least 50.000 EUR.

### 2. PFS would no longer be required to provide their services exclusively to companies of the financial sector

### 3. More generally

The draft bill intends to give more precisions as to PFS's corporate governance (including those concerning the professional qualification of the managers) and the use that must be made of the PSF's corporate capital.

#### Contacts

**Katia Scheidecker**  
 Partner  
 T: +352 26 48 42 35 09  
 scheidecker@mnks.com

**Gary Cywie**  
 Senior Manager  
 T: +352 26 48 42 35 31  
 cywie@mnks.com

**Noble & Scheidecker**  
 398, route d'Esch  
 L-1471 Luxembourg  
 T: +352 26 48 42 1  
 F: +352 26 48 42 35 00  
 www.mnks.com