

## LEGALINK

### INVESTMENT AND BUSINESS START UP IN LUXEMBOURG

#### (A) Legal system

1. What is the legal system (i.e. common law system, civil law system or both) in your country?

Luxembourg is a civil law jurisdiction with the legal system being essentially based on the French Code Napoleon which was established in Luxembourg during the period span from the end of the eighteenth century to the beginning of the nineteenth, when Luxembourg was a French department.

Today, Luxembourg law is embodied in a number of codes, primarily the Civil Code, the Penal Code, the Civil Procedure Code and the Labour Code. There are also numerous special laws relating to specific matters, such as the law of 10 August 1915 on commercial companies, as amended (hereafter the "Commercial Companies Law") and the law of 9 December 1967 regarding income tax, as amended (hereafter the "Income Tax Law").

Furthermore, Luxembourg legal system is influenced by its neighbours, i.e. France, Belgium and Germany, as well as by the European Union.

2. What are the major law courts in your country?

The major law courts in Luxembourg are the "*Cour de cassation*" (the Court of cassation), as it regards judicial matters, and the "*Cour administrative*" (the Administrative court), as it regards administrative matters.

3. What are the sources of laws (such as constitution, statute law and common law) in your country?

The major source of laws is statute laws adopted by the Luxembourg House of Representatives.

In addition, the Government, as well as the administrations, public agencies and public authorities may adopt regulations and circulars.

4. What is/are the official language(s) in your country?

The official languages in Luxembourg are French, German and Luxembourgish.

#### (B) Foreign investment

5. Are there any restrictions faced by a foreign individual or company when they want to invest in your country? Is an approval or permit required if a foreign individual or company wants to enter a certain industry?

In principle, there are no restrictions on foreign investments. However, some activities require to obtain a prior approval from the Luxembourg authorities. It is the case for regulated

professions (business license) and financial sector professionals, as well as investment funds, insurance companies, securitization vehicles...

6. Are there any exchange control or currency regulations in your country?

There are no exchange control or currency regulations in Luxembourg. In this connection, please note that Monetary policy is governed by the Central Bank of Luxembourg which has been integrated in the European System of Central Banks since the creation of Euro.

There are, however, anti-money laundering requirements that obliges customers to disclose their complete identification when entering into business relations, opening bank accounts or transferring more than EUR 15,000.-.

7. What grants or incentives are available to a foreign individual or company to encourage investment in your country?

There exist various grants or incentives available to a foreign individual or company that wishes to invest in Luxembourg, among which are:

- Capital subsidies and interest rate subsidies on tangible and intangible investments;
- Loans granted by the National Credit and Investment Corporation;
- Tax rebates for investments in companies located in Luxembourg;
- An initial eight-year corporate income tax reduction scheme for new undertakings, or existing undertakings introducing new productions in Luxembourg;
- A subsidy scheme for investments whose aim is to prevent or reduce emissions, prevent, reduce or recycle waste, or to implement a rational use of energy or of renewable sources of energy;
- Interest rebates on loans granted by licensed credit institutions;
- A temporary tax scheme to promote venture capital investments in the audio-visual sector;
- A capital grant and tax relief scheme to promote the economic development of certain specific areas of Luxembourg;
- A tax scheme to encourage investment in venture capital;
- Financial aid with respect to the hiring of older or long-term unemployed persons;
- Tax relief for hiring an unemployed person; and
- Deduction of relocation expenses for highly skilled workers recruited or seconded from abroad.

**(C) Business vehicles**

8. What is the most common form of business vehicle used by foreign investors in your country?

Please provide details on:

- i. Registration formalities;
- ii. Minimum (and maximum) share capital;
- iii. Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities);
- iv. Any restrictions on foreign shareholders;
- v. Management structure and any restrictions on foreign managers;
- vi. Directors' liability;
- vii. Parent company liability; and

viii. Reporting requirements (including filing of accounts).

The most common form of business vehicle used by foreign investors in Luxembourg is the public liability company (*société anonyme*).

- **Registration formalities**

The following formalities are required when a public liability company is set up:

- **Articles of incorporation:** company's articles of incorporation must be drawn up as a notarised deed. In this context, it must be pointed out that the notary will check if the conditions imposed by Luxembourg law are fulfilled, notably with respect to the minimum corporate capital required.

- **Registration:** The articles of incorporation should be registered within 15 days by a notary or within three months by the parties with the Registration and Domains Authority (*Administration de l'Enregistrement et des Domaines*).

- **Disclosure:** the articles of incorporation must be disclosed in full as follows:

First, copy of the documents duly registered and a form provided by the Register of Commerce and Companies are filed with the Register of Commerce and Companies.

Second, publication of the articles of incorporation in the *Mémorial* (Luxembourg official gazette), part C entitled: "List of companies and associations".

Furthermore, a business permit must be obtained from the Ministry of Middle Classes prior to the exercise of any commercial activity in a narrower sense. It should however be noted that companies which only hold stakes in other companies do not perform commercial transactions and are therefore not required to apply for a business permit.

- **Minimum (and maximum) share capital**

The minimum subscribed share capital for Luxembourg public limited companies is EUR 30,986.69,- (1/4 of which must be paid-up). There is no maximum share capital.

The shares may be in registered form or in bearer form if the whole capital has been paid up, which guarantees a certain anonymity to the holder of the shares.

- **Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities)**

Shares can be issued for considerations other than in cash, subject to specific conditions laid down by Luxembourg law (the shares must notably be paid up in full within five years and contributions other than in cash shall, prior to the incorporation or to the increase of capital of the company, in principle be reported upon by an approved statutory auditor (*réviseur d'entreprise agréé*)).

In any case, please note that only assets capable of economic assessment can be contributed to the share capital of Luxembourg public limited companies. As a consequence, shares can not be issued in consideration of an undertaking to supply services to the company.

- **Any restrictions on foreign shareholders**

Luxembourg law does not impose any restriction to foreign shareholders.

- **Management structure and any restrictions on foreign managers**

The public limited company may be managed by a board of directors (one director if there is only one shareholder and, at least, three directors if there are more than one shareholder) or by a management board and a supervisory board, and the day-to-day management may be delegated to a managing director. The director(s) must disclose his(their) names, address(es) and occupation(s).

There are no restrictions on foreign directors. However, it is advisable for the company to have at least one director residing in Luxembourg for the purpose of ensuring that the company is considered by foreign tax authorities as a Luxembourg resident for tax purposes.

- **Directors' liability**

In accordance with Luxembourg law, the directors shall be liable towards the company for the execution of their mandate and for any misconduct in the management of the company's affairs.

They shall be jointly and severally liable both towards the company and any third parties for damages resulting from the violation of the company law or the articles of association of the company.

They shall be discharged from such liability to the extent that they are not a party to the violation of the company law or the articles, that no misconduct is attributable to them, and that they have reported such violation to the first general meeting after they had acquired knowledge thereof.

- **Parent company liability**

To the extent that the shareholders do not participate to the management of the company and that they can as a consequence not be considered as *de facto* directors of this company, their liability is limited to the amount of their subscribed (not necessarily paid-up) capital.

In addition, founding shareholders face an extended liability regarding the authenticity of the corporate share capital, the commitments towards third parties, the fact that the initial share capital has to be paid-up up to 25%, the validity of the company and any false or missing statement in the articles of incorporation of the company.

- **Reporting requirements (including filing of accounts)**

In addition to the incorporation deed,

- any amendment to the articles of incorporation of the company,
  - decision regarding the transfer of the registered office of the company,
  - information about the appointment of directors, supervisory auditors, and their removal from office,
- shall be filed with the Register of Commerce and Companies and published in the *Mémorial* (Luxembourg official gazette), part C.

Furthermore, the duly approved annual accounts, the management report and the report of the person responsible for the inspection of the accounts of the company have to be filed with the Register of Commerce and Companies within one month since their approval and no later than seven months after the end of the financial year. The mention of the filing of annual

account has to be published within two months from the filing in the *Mémorial* (Luxembourg official gazette), part C.

**(D) Employment**

9. What are the main laws regulating employment relationships in your country?

In the Grand Duchy of Luxembourg, the laws regarding employment relationships have been codified by the law of 31 July 2006 which has entered into force on 1 September 2006 and was significantly amended on 30 April 2012. Since 1 January 2009, the Labour Code provides for an identical regime for manual and non-manual workers.

The Labour Code establishes a set of minimum rights and responsibilities in the employment relationship. As a result, article L.121-3 of the Labour Code provides that clauses that restrict the rights or increase the obligations of the employee are void.

Collective bargaining agreements which are declared generally binding by Grand Ducal Regulation are also important in the employment regulations.

10. Is a written contract of employment required in your country, and if so, must it contain any particular language? Are any agreements and/or implied terms likely to govern the employment relationship?

In accordance with article L.121-4 of the Labour Code, all employment contracts shall be evidenced in writing and signed, in principle, no later than on the first day of work. They shall be signed in two copies: one for the employer and one for the employee. In the event that no written employment contracts exist, the employee has the right to establish (by any means) the existence of the contract, as well as the terms governing employment relations. This right does not exist for the employer.

In the Grand Duchy of Luxembourg, there are three official languages: French, German and Luxembourgish. However, the Luxembourg legislation does not impose the use of a specific language in the drafting of the employment contracts. It is however recommended that the written contract be understandable by the employee as well as all the communications from the employer to the employees.

All employment contracts shall contain the essential terms provided by article L.121-4 (2) of the Labour Code (*i.e.* the name of the parties, the remuneration, the starting date, the place of work, the kind of work to perform, the usual daily working time, the notice period, the holidays, ...). Some provisions must also be expressly provided, in writing, to be applicable. This principle applies to trial period, non competition, non solicitation and intellectual property provisions.

Not all terms and conditions of an employment contract need to be expressly agreed. Some sources such as statutory provisions, collective bargaining agreements, work regulations, custom and practice may complement the employment contract (e.g.: the duties of care, confidentiality and loyalty, which apply to the employer as well as the employee).

11. Do foreign employees require work permits and/or residency permits if they work in your country? If so, how long does it take to obtain them and how much do they cost?

Pursuant to Law of 29 August 2008 on free movement of persons and immigration, there is no longer a distinction to be made between work permit and residence permit, and henceforth only one document, referred to as a residence authorization serves both purposes.

The type of residence authorization depends on the applicant's status.

- **Residence authorization for European Union (EU) and European Economic Area (EEA) nationals (except Bulgarian and Romanian)**

All nationals of EU Member States (except Bulgarian & Romanian), Swiss and EEA citizens may freely perform work in the Luxembourg territory. They only need a valid passport or national identity card.

For administrative purposes, they must declare their arrival within 8 days of entry into the country. Subsequently, if they wish to stay in Luxembourg for a period exceeding 3 months, they shall request within 3 months of arrival the issuance of a registration certificate, available at the town hall of their chosen place of residency. This certificate is given to all persons in possession of a national identity card who are engaged under an employment contract or who exercise an independent activity or have sufficient resources. After five years, those nationals can ask for a permanent residence permit ("*attestation de séjour permanent*").

- **Residence authorization for third-country nationals (non EU/EEA/Swiss) & Bulgarian and Romanian citizens**

Every third-country national who wishes to reside in Luxembourg for more than three months must apply for a temporary authorisation to stay ("*autorisation de séjour temporaire*") before entering the country. The application is to be sent to the Immigration Directorate of the Ministry of Foreign Affairs. The application needs to be submitted and favourably advised before the entry on the Luxembourg territory. An application submitted after arrival on the territory is inadmissible.

If the application for an authorisation to stay is favourably advised, the third-country national receives a « temporary authorisation to stay ». This temporary authorisation to stay is valid for a period of 90 days. During this time, the third-country national must :

- either request the visa to enter the Schengen area, if he/she is subject to visa obligation;
- or, if he/she is not subject to visa obligation, enter the territory of Luxembourg and declare his/her arrival at the municipality of the chosen place of residence.

Any non-EU/EEA/Swiss, Bulgarian and Romanian nationals who wish to set up residence in Luxembourg in order to work must before entering the country submit an application for a temporary residence certificate to the Immigration Directorate of the Ministry of Foreign Affairs, be in possession of a valid passport and request a visa type D, as the case may be, after having obtained the temporary residence certificate.

After entering Luxembourg, the third-country national must follow the procedure to obtain his/her residence permit ("*Titre de séjour*").

Within the three working days following the entry of the third-country national on Luxembourg territory, the holder of the temporary authorisation to stay must submit a declaration of arrival ("*Déclaration d'arrivée*") to the municipality ("*Administration communale*") of the chosen place of residence. A copy of the declaration will be issued to

him/her as receipt. The holding of this receipt and of the temporary authorisation to stay proves the lawfulness of the residence up to the issue of the residence permit.

After, the third-country national must take a medical examination with a general doctor established in Luxembourg. These results will be sent to the Ministry of Health who will inform the Immigration Directorate if the medical conditions are fulfilled in order to obtain a residence permit for Luxembourg.

Finally, the third-country national applies for the issue of the residence permit at the Immigration Directorate of the Ministry of Foreign Affairs. Depending on the category, there are specific conditions to be met to obtain the residence permit.

An employer who intends to employ a person must file a declaration of employment with the Employment office ("ADEM") irrespective of that person's nationality. If the job offer cannot be filled with a person registered with the ADEM within a 3 week deadline, the employer is allowed to conclude an employment contract with a person of his choice under certain conditions, including a non-EU national. The employer must submit an application on plain paper to the ADEM's director and request a certificate granting him the right to hire a third country national.

The residence authorization is valid for a period of one year, one profession and one business activity for any employer. At the latest two months before the expiry of the residence permit, the third-country national must apply for a renewal of his/her residence permit to the minister in charge of immigration. The application is to be sent to the Immigration Directorate of the Ministry of Foreign Affairs. It can be renewed for an initial two year period and subsequently for a three year period.

A residence permit costs EUR 50. The procedure takes between two and three months from the date of submission of the request.

12. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals) in your country?

Employers in the private or public sector who regularly employ 15 or more employees (including part-time employees and temporary employees) must set up a staff delegation. The size of the delegation varies according to the number of represented employees (e.g.: in a workforce of between 15 and 100 employees, there is one delegate for each group of 25 employees).

The general mission of the staff delegation is the protection and defence of employee's interests with respect to working conditions, employment security and social status. The staff delegation makes suggestions about improving working conditions and the employees' social situations. It also assists in bringing claims against the employer, mediates in disputes between the employer and employees, protects the working environment and prevents accidents. The employer must therefore provide certain information on security, health risks and protective or preventative measures to the staff delegation.

Management must ask the staff delegation's opinion on new part-time employment contracts, on interim work and on the existence, amendment and/or abrogation of complementary pension schemes.

In addition to the staff delegation, all companies employing at least 150 employees over a three year reference period must have set up a works council. The works council is composed of an equal number of employer and employee representatives. The number of representatives varies according to the number of employees.

The works council is involved in decision-making on:

- Introducing technical installations to monitor employees' behaviour and performance.
- Establishing and modifying general selection criteria for the purposes of recruitment, promotion, transfer and dismissal.
- Introducing or modifying measures concerning employees' health and safety.
- Establishing or modifying general criteria for employees' appraisals.
- Establishing or modifying internal regulations.
- Granting bonuses to employees for their suggestions concerning technical improvements.

The works council also has some information and consultation rights concerning decisions that will affect the company's financial position (for example, decisions on introducing, improving or transforming product installations or equipment). The employer must provide the works council with a written report on the company's economic and financial progress twice a year.

Depending on the facts, the works council has information, consultation and/or co-determination rights if a major transaction takes place. It must be informed about:

- The planned date of the transaction.
- The reason for the transaction.
- The changes it will make that affect employees.
- Whether a social plan is envisaged.

Employees' consent is not required for a transfer of the business. However, the seller and buyer must inform the employee representatives in detail about the planned transfer (Article L.127-6, Labour Code). If there are no employee representatives, the employer must inform the employees directly. These rules apply to both share and asset sales.

Under Article L.426-1 of the Labour Code, in public limited companies employing over 1000 employees for the last three years, and in public limited companies in which the state have a participation of at least 25%, the administrative or supervisory body should be composed of one third (1/3) of members representing the employees of the company. These members are designated by the staff delegation.

13. Are there any employment protection laws (such as minimum wage law and/or maximum working hours law) in your country?

#### - **Remuneration**

Luxembourg social law guarantees a minimum social wage to all employees based on their level of skill (as of 1 January 2013, gross monthly wage is for unskilled employees of EUR 1,874.19 and of EUR 2,249.03 for skilled employees).

In addition, all wages are subject to a salary indexation based on the average consumer price index.

- **Working time**

In Luxembourg, the general principle is a maximum of 40 hours per week and 8 hours per day (exceptions exist in certain branches). Sunday work is generally prohibited, although labour law recognizes certain derogations based on the type of workers, business, firms or occupations.

- **Holidays**

Besides 10 days public holidays (per calendar year) an employee, working on a full-time basis, is entitled to 25 days (business days) holiday per calendar year. Under certain circumstances, the employee is entitled to additional holiday (e.g. collective bargaining agreements, internal regulations or disabled employees).

If a public holiday falls on a Sunday, it must be replaced by a compensatory day off that employees can take within three months (Article L.232-3, Labour Code).

14. Is there any pension system in your country? Is it on a mandatory or voluntary basis? If so, please give details.

Both the employer and the employee must each contribute 8% of an employee's salary towards pension insurance. It is not compulsory for employers to provide access, or contribute, to supplementary pension schemes for their employees.

However, an employer can introduce one or several supplementary pension schemes for its employees. They can be either (Article 3, Law of 8 June 1999 on supplementary pension schemes, as subsequently amended):

- Internal schemes with determined pension promises, guaranteed by provisions made in the books of the company.
- External schemes in the form of pension funds or group insurances.

The employer is free to determine the:

- Form of the scheme.
- Conditions for employees to join the scheme.
- Financing of the scheme.
- Benefits and their conditions to be allocated.
- Rules for modifying the scheme or for its cancellation.

This information must be documented in a specific supplementary pension scheme regulation. This regulation must also contain rules that enable the employees to determine, at any time, the benefits they have acquired.

All employees who fulfill the conditions for participation in the scheme as set out in the scheme regulation automatically become members of the scheme. Employees' contributions as part of the financing of the scheme cannot be imposed on employees who already worked in the company before the introduction of the scheme.

Supplementary pension schemes are only common in some sectors, such as banking and insurance.

15. How is the termination of individual employment contracts regulated in your country?  
Under what circumstances is the dismissal of an employee unlawful?

Luxembourg law distinguishes with regard to the termination of individual employment between fixed-term employment contracts and open-ended employment contracts.

Fixed-term employment contracts may not be unilaterally terminated before the completion of their term, except during the trial period or in case of gross misconduct. However, they may at any time be terminated by mutual consent.

Open-ended employment contracts may be terminated when a mutual agreement is reached between parties, there is a voluntary resignation of the employee or the employer decides to dismiss the employee (with notice or without notice in case of gross misconduct).

It is therefore important to differentiate between two types of dismissal: “dismissal with notice” and “dismissal with immediate effect” (commonly called “dismissal for gross misconduct”).

- **Dismissal with notice**

“Dismissal with notice” is understood as the decision by the employer to terminate the employment relationship with an employee after expiry of a period called “notice”.

This notice period varies according to the employee’s length of service (e.g.: 2 months until 5 years of service). During the notice period, the employee must continue to perform his or her work, unless the employer exempts him or her from such obligation.

Several grounds may lead to dismissal with notice: the insufficient quality or quantity of the work provided by the employee, the employee’s behaviour or economic reasons (e.g. when the company has financial difficulties).

The reasons for a dismissal with notice must be supported by demonstrable and explicit facts.

The employer must however follow a certain procedure to carry out a dismissal. For the dismissal to be lawful, the employee must be notified in a written letter (registered post or hand delivered with signature of a confirmation of receipt). An employee who receives a dismissal letter has one month to ask his or her employer for the grounds of the dismissal. In a company employing over 150 employees, the employer must also invite the employee to an interview before making the decision to dismiss him or her.

Dismissed employees who have been in service for at least five years are entitled to a “departure allowance”, that is, a certain sum which is paid to them when the notice period ends and which varies according to their salary and length of service.

A dismissed employee who considers that his dismissal is unfair can bring his employer before a court. He or she has three months from the date of notification of the dismissal, or from receipt of the letter indicating the grounds for dismissal, to bring legal action. This period may be extended to one year if the dismissed employee sends his employer a letter of objection of the dismissal.

- **Dismissal with immediate effect**

“Dismissal with immediate effect” is understood as the employer’s decision to terminate the employment relationship with an employee who has committed serious misconduct. As its name indicates, this dismissal is effective immediately without the requirement for a notice period.

Gross misconduct is misconduct that makes it immediately and definitively impossible to maintain an employment relationship. The employer must pronounce the dismissal with immediate effect no later than one month after becoming aware of the fault. The employee must be notified of the dismissal in a written letter (registered post or hand delivered with signature of a confirmation of receipt). Furthermore, the explanatory letter must state precisely and in detail the misconduct of which the employee is accused. If this is not the case, the dismissal is unfair.

Following gross misconduct, the employer can initially also pronounce a forced suspension awaiting dismissal, that is, exempt the employee from being present at the workplace. It then has a period of eight days to send him or her letter of dismissal with immediate effect.

In the event of dismissal with immediate effect, the dismissed employee does not receive the departure allowance. Moreover, he or she cannot receive unemployment benefit. The court can however issue a special authorization to receive unemployment benefits provisionally if the dismissed employee intends to take action against the employer. This sample case is however subject to very specific conditions.

A dismissed employee who considers that his dismissal is unfair can bring his employer before the court. He or she has a period of three months from the date of notification of the dismissal to take action. This period may be extended to one year if the dismissed employee sends his employer a letter of objection of the dismissal.

In the event that the employer does not provide an adequately detailed explanation for the termination in the letter to the employee or if the grounds for the termination are not real and serious, the dismissal will be considered as unlawful by the court.

- **Special protection against dismissal**

Under certain circumstances, employees are protected against dismissal. This protection exists in the event of sickness (provided that the employee has fulfilled certain conditions), pregnancy, parental leave and for staff representatives. If the employer terminates the employment contract whilst the employee is protected, the dismissal will either be void or unlawful.

16. Are redundancies and mass layoffs regulated in your country? If so, please give details.

In Luxembourg, special procedure must be followed if an employer wishes to make collective redundancies for reasons that are not related to employees’ performance at work (Articles L.166-1 to L.166-9, Labour Code). This procedure applies to an employer who intends to make redundant at least seven employees within 30 days, or 15 employees within 90 days.

In these cases, the employer must inform the employee representatives in writing by providing certain information, for example:

- The reason for the business reorganisation and collective redundancies.

- The number and categories of employees affected.
- The period of time over which the redundancies will be made.
- The selection criteria for making employees redundant.
- Details of the method of calculating extra compensation for the affected employees.

The employee representatives can use this information to put forward constructive proposals during negotiations with the employer concerning a social plan. As the first point of the negotiations, all possibilities to avoid collective redundancies must be discussed, such as partial redundancy, reduction of working hours, professional training, temporary transfer of workers or early retirement plans. After this, financial compensation can be negotiated.

In addition, the employer must send a copy of the written information to Employment Office (ADEM), which forwards it to the Labour and Mines Inspectorate (*Inspection du Travail et des Mines*).

A social plan sets out the social measures agreed between the parties, for example, the employer granting financial assistance to the affected employees. The employer can discharge employees if he does not wish them to continue working during the notice period.

A copy of the signed social plan or a document setting out the parties' disagreement must be sent to the Development of Employment Agency, which will inform the Labour and Mines Inspectorate.

The minimum notice period that must be given to employees affected by collective redundancies is 75 days. This begins to run on the first or 15th day of the month.

For redundancies of less than seven employees, the general rules on dismissals apply. This means that the employer would have to justify with objective and serious reasons the redundancy by explaining the economical considerations that lead him to take the decision, if the employee asks for the reasons for his dismissal.

## **(E) Tax**

17. In relation to employees, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

The basis of Luxembourg employees taxation is territorial source principle, *i.e.* that Luxembourg tax liability applies to Luxembourg residents on their worldwide income and to Luxembourg non-residents on their Luxembourg source income (except if there are specific double tax treaty provisions providing for the contrary).

18. Under what circumstances are employees subject to taxation in your country?

If the salaried income they earn is a Luxembourg source income, *i.e.* paid by Luxembourg based employer in consideration for a job performance in Luxembourg (or deemed to be performed in Luxembourg).

19. What income tax or social security contributions must be paid by:

- i. Employees?

The income tax to be paid by the employee depends on his class, personal status (marital status, number of dependants ...) and his level of income.

Income tax rates are progressive. They vary from 0% up to 40%. A 7% surcharge for unemployment fund applies on the income tax due. This surcharge for employment amounts to 9% for taxpayers in tax class 1 or 1A with taxable annual income exceeding EUR 150,000.- (EUR 300,000.- for taxpayers in tax class 2).

Social security contributions amount to approximately 24% of an employee gross salary and are shared equally between employer and employee.

ii. Employers, in relation to their employees?

Social security contributions amount to approximately 24% of an employee gross salary and are shared equally between employer and employee (see point 19., i., above).

Please note that an employer acts as withholding agent for both income tax and social security contributions.

20. In relation to corporations, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

The basis of Luxembourg corporate taxation is territorial source principle, *i.e.* that Luxembourg tax liability applies to Luxembourg companies and foreign companies resident in Luxembourg (including Luxembourg branches of foreign companies) on their worldwide income and to foreign companies non-resident in Luxembourg on their Luxembourg source income (except if there are specific double tax treaty provisions providing for the contrary).

21. Under what circumstances are incorporations subject to taxation in your country?

Every incorporation of a Luxembourg company is subject to a registration duty of EUR 75.-.

22. What are the main taxes that potentially applicable to a corporation and what are their tax rates?

i. Corporate income tax

Luxembourg companies are subject to a corporate income tax at a rate of 20% for all income up to EUR 15,000.- and 21% for all income exceeding EUR 15,000.-.

In addition, a solidarity surcharge for employment fund is levied at a rate of 7%, which leads to an effective corporate income tax rate of 21.40% for income up to EUR 15,000.- and 22.47% for profits exceeding EUR 15,000.-.

Fully taxable companies having financial assets, transferable securities and cash deposits for more than 90% of their balance sheet are subject to a minimum flat corporate income tax of EUR 3,000.- (EUR 3,210.- with the 7% solidarity surcharge).

Other companies are also subject to a minimum advance corporate income tax depending on their balance sheet total of the year ended, as follows:

Balance sheet total	Minimum corporate income tax
Up to EUR 350,000.-	EUR 500.- (EUR 3,210.- with the 7% solidarity surcharge)

From EUR 350,001.- to EUR 2,000,000.-	EUR 1,500.- (EUR 1,605.- with the 7% solidarity surcharge)
From EUR 2,000,001.- to EUR 10,000,000.-	EUR 5,000.- (EUR 5,350.- with the 7% solidarity surcharge)
From EUR 10,000,001.- to EUR 15,000,000.-	EUR 10,000.- (EUR 10,700.- with the 7% solidarity surcharge)
From EUR 15,000,001.- to EUR 20,000,000.-	EUR 15,000.- (EUR 16,050.- with the 7% solidarity surcharge)
Above EUR 20,000,001.-	EUR 20,000.- (EUR 21,400.- with the 7% solidarity surcharge)

The minimum advance corporate income tax paid by Luxembourg companies constitutes an advance and is creditable against the corporate income tax to be paid by such Luxembourg companies. Please note that any excess is not refundable.

In the case where it would apply to a group of companies (*i.e.* in case of fiscal consolidation), the minimum advance corporate income tax is capped at EUR 20,000.- (EUR 21,400.- with the 7% solidarity surcharge) for the entire group.

ii. Municipal business tax

Luxembourg levies an annual municipal tax determined on the same basis than the corporate income tax and whose rate vary depending on the municipality in which the company is located.

Luxembourg City levies an annual municipal tax at a rate of 6.75%.

iii. Net worth tax

Companies are subject to an annual net worth tax of 0.5% on their total net assets.

iv. Value added tax

Luxembourg has implemented the provisions of the EU directives on value added tax in the law of 12 February 1979 on value added tax.

The standard value added tax rate in Luxembourg is 15%. Reduced rates of 3%, 6% and 12% apply to specified supplies of goods and services. Please note that most insurance, banking and financial services are exempt from value added tax.

23. Please explain how each of the following is taxed in your country:

i. Dividends paid to foreign corporate shareholders?

A withholding tax of 15% applies to dividends paid by a Luxembourg company. However, exemptions and/or reductions are possible under the participation exemption regime or the applicable double tax treaties.

The participation exemption regime applies to dividends paid by a Luxembourg fully taxable company (S.A., S.à.r.l. or S.C.A.) to (i) another Luxembourg fully taxable company (S.A., S.à.r.l. or S.C.A.) or (ii) a company resident in an EU member state and listed under Article 2 of the

directive 90/435/EEc on the taxation of parent companies and subsidiaries or a Luxembourg permanent establishment thereof.

In all cases (i.e. participation exemption regime or double tax treaties), the shareholder must hold, at least 10% of the share capital of the Luxembourg paying company, or the acquisition value of its shares must remain above the threshold of EUR 1,200,000.- during a minimum period of 12 months.

ii. Dividends received from foreign companies?

Any fully taxable Luxembourg company can also benefit from participation exemption regime in respect of dividends and capital gains received and realized on qualified shareholdings in eligible entities, i.e. the SOPARFI regime ("*Société de participation financière*" or Financial holding company).

A shareholding will qualify if:

- It amounts to at least 10% of the subsidiary's capital (or EUR1,200,000.- for dividends, EUR6,000,000.- for capital gains);
- It is held for a minimum of 12 months;
- The subsidiary is a Luxembourg resident limited company, EU resident company listed under Article 2 of the directive 90/435/EEc on the taxation of parent companies and subsidiaries or a non-resident company subject to income tax comparable to Luxembourg corporate income tax (a rate of at least 10.5%).

Please note that all dividends received on these three types of company enjoy automatic 50% exemption if they are not covered by the SOPARFI regime.

iii. Interest paid to foreign corporate shareholders?

Interests paid by a Luxembourg company are generally not subject to withholding tax, except in limited cases.

iv. Intellectual property (IP) royalties paid to foreign corporate shareholders?

Royalties paid by a Luxembourg company are generally not subject to withholding tax.

24. Are there any thin capitalization rules (i.e. restrictions on loans from foreign affiliates) in your country? If so, please give details.

There is no legislation dealing with thin capitalization. However the general principle of dealing at arm's length applies.

Thin capitalization is established when the financing of a company is assured by capital of 15% or less. Where thin capitalization is established and a loan is granted to a company by a company's shareholder, the tax authorities consider the excessive debts (over 85%) to be the company's capital. The surplus is considered as a contribution to the share capital and interests may be deemed non-deductible and treated as a dividend distribution potentially subject to a withholding tax of 15%.

Transfer pricing rules and the abuse of law theory can also apply, and provide the tax authorities with ways to limit excessive debt financing.

25. Are there any controlled foreign company rules (i.e. the profits of a foreign subsidiary must be imputed to a local parent company) in your country? If so, please give details.

While there are no controlled foreign company rules, the Luxembourg tax authorities can use the abuse of law theory to disregard actions performed by a taxpayer where the taxpayer has set up a company scheme with the exclusive aim of obtaining a tax reduction, and where the actual tax reduction is clearly unjustified. Tax is then re-assessed as if a straightforward legal structure had been chosen. However, due to the stringent requirements of this theory, it is rarely applied.

26. Are there any transfer pricing rules (i.e. restrictions on the pricing of transaction between a local entity and a foreign entity) in your country? If so, please give details.

Prices applied in intragroup transactions must be the same as those obtained on an arm's length basis between unrelated parties. The Luxembourg tax authorities may adjust prices accordingly on a relevant transaction between a Luxembourg resident company and a directly or indirectly related non-resident party. The Luxembourg tax authorities generally follow the Organization for Economic Co-operation and Development Model Convention (OECD) transfer prices guidelines.

27. How are imports and exports taxed in your country?

Within the EU, imports and exports are not subject to customs duties. Generally, value added tax is applied in the destination EU member state.

Imports from outside the EU are subject to customs duty and value added tax.

Exports outside the EU are not subject to customs duty or value added tax.

28. Is there a wide network of double tax treaties in your country? If so, please give details.

As of April 2013, Luxembourg has concluded 64 double tax treaties, all based on the OECD model.

## **(F) Competition**

29. Is there any competition law in your country? If so, please give details.

From 1 February 2012, competition in Luxembourg is governed by the law of 23 October 2011 on competition (the "2011 Law") which has abrogated the initial law of 17 May 2004 on competition. It should be noted that the material provisions of Luxembourg competition law on cartels and abuse of dominance remain unchanged.

Apart from the 2011 Law, the competition council takes a number of notes or of guidelines to inform companies and consumers about the way it intend to apply a number of particular rules which require additional information.

30. Are restrictive agreements and practices regulated by competition law in your country?

Any agreement between businesses, any decision by associations of undertakings as well as any concerted practice, the object of which is to prevent, restrict or distort competition in a market is prohibited and automatically null and void (article 3 of the 2011 Law).

For example, it is prohibited to:

- fix the buying or selling price or other conditions for transactions either directly or indirectly;
- restrict or control production, markets, technical development or investments;
- share out markets or sources of supply;
- apply unequal conditions to trading partners for equivalent services;
- make the conclusion of contracts subordinate to the acceptance by partners of the provision of additional services which by their nature or according to commercial practices have no link with the object of the contract.

Under certain conditions, agreements, decisions and concerted practices may be permitted if a fair share of the profits is paid out to its users or if they contribute to the improvement of technical or economic progress.

31. Is unilateral (or single-firm) conduct regulated by competition law in your country?

It is prohibited for one or more businesses to abusively exploit a dominant position in a market.

Such abusive practices include:

- imposing unfair buy or sell prices or any other unfair transaction terms either directly or indirectly;
- limiting production, markets or technical developments to the detriment of consumers.

32. Are mergers and acquisitions subject to merger control in your country?

Luxembourg does not have specific merger control legislation. However, EU regulations on this matter apply to Luxembourgish entities.

## **(G) Intellectual property**

33. Please outline the main intellectual property rights that are capable of protection in your country. In each case, please state:
- i. What is the nature of the right?
  - ii. How is it protected?
  - iii. How is it enforced?
  - iv. How long is it protected?

### **Patents**

- i. Nature of right

Notwithstanding international conventions to which Luxembourg is party (for instance the Paris Convention, the Patent Law Treaty, ...), patents are governed by the law of 20 July 1992, as amended.

To register a patent, the invention must meet the following criteria of patentability:

- the invention must be new: it should not be included in the state of the art;
- the invention must involve an inventive step: a person skilled in the field, using the state of the art, should not be able to easily develop the invention;
- the invention must have an industrial application: it should be a technical solution to a technical problem.

A patent grants its holder the right to prevent other people from using the invention claimed in the patent without the agreement of the owner which means that he can forbid any production, distributions or sale of their inventions by a third party without his prior consent.

## ii. Protection

The applicant can file a national patent application at the Intellectual Property Office of the Ministry of the Economy and Foreign Trade. An inventor who has filed a patent application in Luxembourg can extend the protection to other Member States of the European Union by exercising the priority right which he or she holds for 12 months from the date of filing the national patent.

The applicant may also submit a European patent application to the European Patent Office, covering up to 36 countries of the European continent. When granted, the European patent will have the same legal force in the designated countries that it covers as a national patent.

Lastly, the applicant can file an international patent application to the World Intellectual Property Organisation under the Patent Cooperation Treaty (PCT). The PCT is a worldwide agreement whose aim is to simplify the procedure for filing patent applications. Over 130 countries, including most industrialised countries, are signatories. By means of a single international application, the applicant can request a patent in all signatory countries.

## iii. Enforcement

Where a rights holder proves that it has actually suffered harm as a result of infringement, it may seek damages (moral and material) based on civil liability rules. To obtain damages, the plaintiff bears the burden of proving the infringement, the damage and the causal link between the infringement and the damage.

In the case of patents, any party entitled to institute infringement proceedings may, on request, be authorized by the president of the District Court to have the alleged counterfeit goods seized by a bailiff assisted by the designated expert(s).

Under Luxembourg law, the president of the court may, at the request of a rights holder, issue an injunction enjoining any person against whom there exists a serious presumption of infringement to cease provisionally the activity considered to constitute an infringement. When ordering the seizure or provisional cessation, the president may require from the plaintiff the payment of a security which must be deposited before the seizure can be carried out or before the provisional cessation measure can be executed. Urgency is always requested for preliminary injunctions.

Rights holders are also entitled to request from the court an account of profits from infringers in relation to the sale of counterfeit goods, as well as recovery or destruction of the counterfeit goods.

iv. Length of protection

Luxembourg patents are granted for a maximal period of 20 years from the date the request is submitted.

## **Trademarks**

i. Nature of right

Trademarks are protected in Luxembourg under the Benelux Convention on Intellectual Property adopted the 25 February 2005 and implemented in Luxembourg by the Law of 16 May 2006.

Trademarks may also be protected under the community trademark system (Council Regulation (EC) No 40/94 of 20 December 1993 on the community trademark, as amended).

Any sign that can be represented graphically may be registered as a trademark. A trademark may therefore consist of one or a combination of characters, letters, words (including slogans) or figures. A trademark may consist of designs, symbols, three-dimensional signs such as the shape or packaging of the product, sound marks such as musical or vocal sounds, scents or colours.

Ideas, concepts, sounds and scents cannot be registered as trademarks, but trade names and advertising slogans can.

The trademarks protection mainly grants to the holder of a trademark registration, provided such registration is rightful, valid and lawful and not challenged as well as made prior to any other identical registration covering the Benelux territory, the exclusive right to oppose any use, in the course of trade of the trademark in relation with goods or services for which this trademark was registered or a similar sign in relation with goods or services if a risk of association between the sign and the mark exists in the mind of the public.

ii. Protection

In the Benelux countries, national registration no longer exists, as the protection covers all three countries (Belgium, Netherlands and Luxembourg). The right to the Benelux trademark is granted upon first registration with the Benelux Office for Intellectual Property.

If the business activity extends across Europe, it is advisable for the applicant to file an application with the Office for Harmonisation in the Internal Market for the registration of a Community trademark. Community trademarks enjoy the same protection throughout all Member States of the European Union.

If an enterprise owns a trademark and wishes to obtain international protection, the Madrid Agreement and Protocol concerning the international registration of trademarks enables this trademark to be protected in all signatory countries via a single registration at one office, in one language, and upon payment of a single set of fees in a single currency (Swiss Franc).

International registration is administered by the World Intellectual Property Organisation. International registration has the same effect in all designated countries as a national procedure undertaken in each individual country. Applications to register an international trademark may only be made by the person who owns the trademark or who has at least filed the same application at national level.

### iii. Enforcement

Luxembourg's criminal legislation sets out penalties in cases of trademark infringement.

Article 184 of the Criminal Code provides prison sentences of between three months and three years against trademark infringers.

Article 191 of the Criminal Code provides prison sentences of between one and six months and/or a fine of between EUR 251 and EUR 5,000 for those who affix the name of a fake or incorrect manufacturer or a fake trade name on manufactured goods.

Where a rights holder proves that it has actually suffered harm as a result of infringement, it may seek damages (moral and material) based on civil liability rules. To obtain damages, the plaintiff bears the burden of proving the infringement, the damage and the causal link between the infringement and the damage.

### iv. Length of protection

Trademark registrations are made for 10 years and can be extended by 10 years periods without limit, by the Benelux Office for Intellectual Property.

## **Models and designs**

### i. Nature of right

An industrial design or model may apply to the appearance of a product as a whole or only a part thereof. It can consist of two-dimensional features such as the motifs, contours or colours of the product as well as of three-dimensional elements such as the product's shape or texture.

It is possible to register essentially any feature as an industrial design or model as long as it can relate purely to the visual appearance of the product and that is not dictated by its operation or the fact that it fits into another component or a more complex product.

The holder of a design, without prejudice to the potential application of the law of torts, has the exclusive right to oppose the use of a product in which the design is incorporated or to which it is applied and having an identical appearance in comparison to the design application with the Benelux Design Office, or which does not give the informed user an overall different impression, taking into account the designer's level of freedom in the development of the design.

### ii. Protection

There are two types of registration:

- a single registration applicable to a single design or model

- a multiple registration in the case of several designs or models intended to be applied to objects belonging to the same class under the international classification of industrial designs and models.

Registration of the design or model with the Benelux Office for Intellectual Property grants the exclusive right to the design or model in all the Benelux countries.

Beyond Benelux, it is possible to obtain uniform protection in the Member States of the European Union, through the Office for Harmonization in the Internal Market by filing an application for a registered Community design or model.

Protection is also offered by the non-registered Community design or model right, which is acquired following the disclosure of the design or model within the European Union. It is limited to 3 years and grants protection against the servile copy of the design.

If the applicant's market is outside the European Union, there is a procedure in place in order to allow for the application of an international industrial design registration (The Hague System). International registration is administered by the World Intellectual Property Organization.

### iii. Enforcement

The remedies and liabilities are the same as for trademarks (see above).

### iv. Length of protection

The maximum period of design or model protection is 25 years in the Member States of the European Union, with an initial 5-year duration, and the added option to renew it up to 4 times.

## **Copyright and related rights**

### i. Nature of right

All literary, scientific or artistic works (including computer programs and databases) are protected by copyright provided they are original enough and have a material form (ideas and concepts are excluded). They are protected in Luxembourg by the Law of 18 April 2001.

Third parties wishing to make use of the work must obtain a license from them.

Copyrights include:

- Economic rights: the right of reproduction and the right of communication to the public; and
- Moral rights: comprising the right of paternity (to be mentioned in connection with the work) and the right to have the respect of the work (to object to derogatory actions in relation to the work).

The law grants the author the exclusive right to authorize reproduction of his, her or its original artistic and literary works, of any type or form of expression, including photographs, databases and computer programs. The right of reproduction includes the right to oppose adaptation, arrangement, translation, integration in or extraction from a database, renting and

loaning of original or copies of the works, and communication to the public using any means, including wire and wireless transmission, by radio, satellite, cable or network.

Several exceptions to the author's copyrights are provided under certain conditions, for among other things short quotations, education purposes, private use, caching and parody.

A specificity of the Luxembourg law on copyright consist of letting the author the possibility to assign entirety or part of moral rights to the extent honor and reputation of this author are not wounded.

Similar rights, known as neighboring rights, protect performers and, to a certain extent, producers.

#### ii. Protection

There is no formal registration procedure in place to obtain copyright protection. Copyright arises automatically through the mere creation of the work. The creators automatically acquire rights over their works, allowing them to control the subsequent use of these by others. However, to be able to assert his, her or its rights, one will have to prove he, she or it is the copyright holder.

The work's date of creation may be proven by any means, in particular by:

- the i-DEPOT service: which protects an idea, concept, format, convention or a document at a stage prior to its creation. This on-line service is provided by the Benelux Office for Intellectual Property. It allows for showing proof of the creation date of a work to be furnished for all the Benelux countries, for 5 years;
- depositing a copy of the work with a recognized representative, for instance a notary, so that the date and time of the deposit may be registered;
- sending the work to the author's own address by post, ensuring not to open it on receipt. In this case, the postmark will serve as an official registration date for the work.

#### iii. Enforcement

The remedies and liabilities are the same as for trademarks (see above).

#### iv. Length of protection

Protection lasts the entire life of the author, and 70 years following the author's death, with rights being transferred to the inheritors and dependants.

### **(H) Marketing agreements**

34. Are marketing agreements regulated in your country? If so, please give brief details in respect of the following arrangements:

- i. Agency;
- ii. Distribution; and
- iii. Franchising

#### **Agency**

Agency agreements are regulated by the law of 3 June 1994 organizing relationships between independent commercial agents and their principals.

This law specifies the rights and obligations of the agent and of the principal, and regulates in particular the agent's remuneration, the execution and the termination of the agency agreement, non-compete clauses, and indemnifications to be paid to the agent for new clients he brought to the principal.

### **Distribution**

There is in Luxembourg no specific law or regulation governing distribution agreement.

### **Franchising**

There is in Luxembourg no specific law or regulation governing franchising. However, in this context, it is advisable to check that franchising agreements comply with legal provisions regarding competition.

## **(I) E-commerce**

35. Are there any laws regulating e-commerce (such as electronic signatures and distance selling) in your country? If so, please give brief details.

The law of 14 August 2000 on electronic commerce, as amended, partially implements several EU directives, notably directive 99/93/EC on electronic signatures, directive 97/7/EC on distance selling, directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the internal market, and directive 2002/65/EC on distance marketing.

The law of 14 August 2000 on electronic commerce, as amended, also regulates the sending of spam e-mails, liability of intermediary service providers and electronic payments.

The law of 10 November 2009, as amended, regulates electronic payments and electronic money institutions.

The law of 8 April 2011 introducing a consumer law in Luxembourg ("*Code de la consommation*") also regulates several aspects of e-commerce.

## **(J) Data protection**

36. Are there any data protection laws in your country? If so, please give brief details.

The processing and use of personal data in Luxembourg is regulated by the law of 2 August 2002 on the protection of individuals in relation to the processing of personal data ("*2002 Law*") which has implemented in Luxembourg the Directive 95/46/EC on data protection.

The 2002 Law created a new data protection authority, the *Commission nationale pour la protection des données* ("*CNPD*") which is an independent agency whose task is to regulate the

processing of personal data in Luxembourg and ensure compliance with data protection regulations.

The 2002 Law governs the processing and use of personal data. The law covers not only natural, but also moral persons. It contains specific provisions on the processing of medical data by health services, the processing of personal data for surveillance purposes and in the workplace.

The collection and processing of personal data must always be proportional to the objective pursued. The CNPD verifies this proportionality as well as the legitimacy of the motives for data processing.

As a general rule, a data controller, as defined by 2002 Law, must notify the CNPD of any personal data processing.

Certain types of data processing are however exempt from notification while others are subject to prior authorization. In certain cases, prior authorization can be requested using a simplified procedure.

The data controller must also inform each person concerned about the data processing procedures in place.

#### **(K) Product liability**

37. Are there any laws regulating product liability and product safety in your country? If so, please give brief details.

The law of 21 April 1989 on product liability regulates the civil liability of producer of defective products and the law of 31 July 2006 on the general security of products regulates the product safety in Luxembourg.

A claimant must establish his damage, the defective character of the product and a causal link between the alleged damage and the defective product. A civil action must be taken within three years of the damage occurring. If a product has been on the market for more than ten years, no claim can be made.

Producers must only place safe products on the market and provide consumers with the relevant information to enable them to assess the risks inherent in a product.

In addition, the Minister of Economy also has authority to control the general safety of consumer products. Failure to cure the defective characteristics of a product after notification by the Ministry of economy is punishable by fines and/or imprisonment.