

# Business Immigration in Luxembourg: overview

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## RELEVANT GOVERNMENTAL ENTITIES

### 1. What are the relevant government entities (agencies, departments, branches, bodies, and so on) relating to immigration in your jurisdiction?

#### Administration

The Ministry of Foreign and European Affairs (*Ministère des Affaires Étrangères et Européennes*), and more precisely its Directorate of Immigration, is responsible for analysing and processing the immigration requests and for issuing the approval or refusal for a residence and/or work permit.

The Luxembourg representatives in embassies or consulates in third countries are responsible for issuing passports and visas.

#### Enforcement

The Ministry of Foreign and European Affairs is responsible for enforcement.

#### Legislative

All laws and regulations on immigration matters are passed by the Luxembourg governmental bodies.

## SOURCES AND CONFLICTS OF LAW

### Sources of law

### 2. What are the principal sources of law relating to immigration in your jurisdiction?

Luxembourg favours the immigration of skilled applicants and the development of new business activities in Luxembourg.

The main source of immigration law is the Law of 29 August 2008 on freedom of movement and immigration (Immigration Law) (which amended the Immigration Act).

Since business-related immigration is considered a national priority, the Immigration Law is well adapted to business needs and reflects the ambition of the Luxembourg authorities to attract foreign talent and new business.

#### Domestic statutes, rules and regulations

The following are the principal domestic statutes, rules and regulations:

- Immigration Law.

- Grand Ducal regulation of 5 September 2008 laying down the criteria for resources and accommodation provided by the Immigration Law.
- Grand Ducal Regulation of 5 September 2008 on the statement of acceptance of responsibility for a foreigner under section 4 of the Immigration Law.
- Grand Ducal regulation of 5 September 2008 fixing the conditions and procedures for the issuance of a residence permit as an employee.
- Grand Ducal regulation of 26 September 2008 determining the minimum level of remuneration for a highly qualified worker in execution of the Immigration Law.
- Grand Ducal regulation of 14 November 2008 determining the granting of approval procedures for research organisations referred to in Article 65, paragraph (4) of the Immigration Law.
- Grand Ducal Regulation of 3 February 2009 concerning the medical examination of foreigners.

#### Case law

Luxembourg is a civil code country and case law is of minor importance.

#### International law and international treaties

The following are the principal international law and treaties relating to immigration in Luxembourg:

- EU regulations and directives.
- Regulation (EC) 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.
- Convention relating to the Status of Refugees of 28 July 1951.

#### Conflicts of law

### 3. What potential conflicts (if any) arise between the various sources of law?

Since national law regarding immigration is essentially based on EU regulations and directives, conflicts hardly ever arise.

Luxembourg, in accordance with applicable EU regulations, has made immigration easier for nationals of the EU, EEA and Swiss Confederation member states.



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Nationals of these states can legally reside and work in Luxembourg after obtaining specific authorisations before the commencement of their activity. However, third country nationals must obtain a valid residence permit before they can legally work and reside in Luxembourg.

Immigration for a period not exceeding three months triggers less formalities than long-term immigration (that is, for a period exceeding three months).

This article is therefore limited to issues relating to third country nationals.

## **BUSINESS IMMIGRATION**

### ***Un-sponsored business-related immigration***

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#### **4. What are the primary options available for unsponsored work and investment in your jurisdiction?**

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##### **Self-employment**

Third country nationals who wish to be self-employed can apply for a residence and work authorisation as an independent worker.

The applicant must satisfy the following requirements to obtain an independent worker visa:

- The applicant must:
  - prove that he or she has the appropriate qualities for the exercise of the intended activity;
  - prove that he or she has sufficient resources for the exercise of the intended activity in Luxembourg; and
  - obtain a trade authorisation (if applicable).
- The intended activity must serve the economic interest of Luxembourg.

The applicant must also prove that he or she has access to suitable accommodation. This requirement must be met once the applicant has arrived in Luxembourg on the basis of a temporary visa, which is afterwards converted into the actual visa for independent workers.

The visa is granted for a maximum period of three years and can only be extended once for another three years.

The processing time is not explicitly provided for by the Law of 29 August 2008 on freedom of movement and immigration (Immigration Law). There is no delay in obtaining a response from the Ministry. In practice, the processing time is between two and three months.

##### **Entrepreneurs**

The type of residence and/or work permit depends on the status the third country national intends to have in Luxembourg.

If he/she wishes to engage in an activity (such as setting up a business), he or she must obtain a residence and work permit as an independent worker (*see above, Self-employed*).

Otherwise, the person must apply for a residence permit for private reasons.

Visas for private reasons are granted by the Ministry if the person provides evidence that he/she can live on his or her own sufficient resources.

Visas for private reasons exclude any paid activities. Although a person cannot be employed in Luxembourg on a visa for private reasons, he or she can act as a director for his or her

own holding company, as long as this company does not perform any commercial activities.

##### **Investors**

The type of residence and/or work permit depends on the status the person from a third country intends to have in Luxembourg.

If he or she wishes to engage in an activity (such as setting up a business), he or she must obtain a residence and work permit as an independent worker (*see, above Self-employed*).

Otherwise the person must apply for a residence permit for private reasons (*see above, Entrepreneurs*).

##### **Business visitors**

Generally, business visitors who come to Luxembourg on a business trip do not have to request a prior authorisation.

The Immigration Law provides for the activities which a business visitor can undertake during his or her business trip. These activities include:

- Visiting business partners.
- Research.
- Networking.
- Negotiating and entering into contracts.
- Participating in trade fairs.
- Attending board or general meetings of companies.

If the business visitor wishes to undertake other activities during his/her business trip, he/she needs prior authorisation.

Third country nationals subject to a visa obligation who wish to stay in Luxembourg for less than 90 days over a period of 180 days for business, family or tourist visits must apply for a short-stay visa (visa C).

Visa applications must in principle be lodged at least 15 calendar days before the intended visit and cannot be lodged earlier than three months before the start of the intended visit.

Multiple-entry visa holders can submit the application before the expiry of the visa valid for a period of at least six months.

The applicant must submit a completed and signed Schengen visa application in person at either the:

- Luxembourg diplomatic mission or consulate in his country of residence.
- Embassy or consulate of the country in the Schengen area which represents Luxembourg for the issuance of visas.

The application must be accompanied by the following documents:

- Two recent and identical identity photos.
- A valid passport or a travel document accepted in the Schengen area, which is valid for at least three months after the expiry date of the requested visa.
- Supporting documents associated with the purpose of the journey such as:
  - an authenticated formal obligation (undertaking of financial responsibility) from a guarantor resident in Luxembourg;
  - an official letter of invitation for a business visit;
  - a hotel reservation; or
  - a return airline ticket.

- Proof of sufficient means of subsistence (such as bank account statements, cash, credit cards and so on).
- Proof of legal residence in the normal country of residence.
- Health insurance covering the travel period.

### **Sponsored business-related immigration**

## **5. What are the options available for sponsor-based employment in your jurisdiction?**

### **Types of sponsor-based employment visas**

The following are the types of sponsor-based employment visas available in Luxembourg.

**Visa for highly qualified workers (EU blue card).** The EU blue card provides highly qualified workers with a specific status and authorises them to pursue a highly qualified job.

A qualified job is a job of a worker who exercises a paid employment for which he possesses the required and specific skills, evidenced by high professional qualifications that are either sanctioned by a higher-education diploma, or by professional experience of a minimum of five years that is comparable with a higher-education diploma, and that are relevant to the profession or the sector specified in the employment contract (*Law of 29 August 2008 on freedom of movement and immigration (Immigration Law)*).

**Visa for transferred workers.** The Immigration Law allows third national employees to be transferred from their home company to a Luxembourg company on a temporary basis if the home company and the host are part of the same economic and social entity.

**Visa for seconded workers.** The Immigration Law allows third country nationals to be seconded temporarily to Luxembourg to the host company in the context of a transnational service.

A secondment occurs when the work relationship between the employee and the host company during the secondment is maintained (*Luxembourg Labour Code*).

**Visa for workers.** A residence permit to work can be granted to a third national employee.

### **General requirements**

**EU blue card.** To obtain an EU blue card, the applicant must:

- Have an employment contract for a highly qualified job (as defined by the Immigration Law) with a minimum duration of one year.
- Provide evidence that he/she possesses the relevant high professional qualifications for the activity/sector in the employment contract.
- Earn at least EUR69,858 (the current annual salary set by a Grand Ducal Regulation).

Luxembourg will give priority to requests of certain professions in the telecommunications and information sectors in which the government considers there is a shortage of qualified workforce, such as:

- Mathematicians.
- Actuaries and statisticians.
- Systems analysts.
- Software developers.
- Web and multimedia developers.

- Applications programmers and software and applications developers and analysts not classified elsewhere.

**Visa for transferred workers.** To obtain this visa, the applicant must prove that the contract between the transferred employee and the home company is of undetermined duration.

**Visa for seconded workers.** To obtain this visa, the applicant must prove that:

- The contract between the transferred employee and the home company is of undetermined duration.
- The start of this work contract is at least six months prior to the requested start date of the secondment.

**Visa for workers.** To obtain this visa, the worker must prove that:

- It is not prejudicial to the priority of employment enjoyed by nationals and EU nationals.
- The activity exercised serves the economic interests of the country.
- The applicant has the appropriate professional qualification for the exercise of the intended activity.
- The applicant is in possession of an employment contract for a vacancy declared by the Luxembourg Labour and Employment Administration.

### **Lengths of leave**

**EU blue card.** The visa is granted for a maximum period of three years

**Visa for transferred workers.** The visa is granted for one year only.

**Visa for seconded workers.** The visa of a seconded worker is valid for the period during which the services to be rendered on behalf of the company by whom he/she is seconded are to be provided.

**Visa for workers.** The visa is granted for one year and is valid for one sector and one profession, with any employer.

### **Extensions for each route**

**Visa for highly qualified workers.** Extendable once for a maximum of three years.

**Visa for transferred workers.** Extendable once for one other year.

**Visa for seconded workers.** The visa can be renewed under exceptional circumstances if the services must be continued over a longer period.

**Visa for workers.** The visa is renewable on request if the applicant can still meet the requirements (*see above, General requirements*) for a maximum of three years for any sector, any profession and any employer.

### **Requirements for sponsors**

## **6. What are the requirements for becoming a sponsor of employment-based migrants and what are the role and reporting duties of sponsors?**

The sponsor must be duly registered as an employee in Luxembourg and comply with all legal and social security standards applicable. There are no specific differences between sponsors for workers, seconded workers or highly qualified workers.

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## Requirements to become a sponsor

The sponsor must:

- Be registered as an employee with the Luxembourg authorities, either as a Luxembourg entity or in his own name
- Possess the necessary business licence required for his activities.

## Role of sponsors

The sponsor will need to make sure that the employee is duly registered with the Luxembourg social security and tax authorities, and that all tax and social security contributions are paid.

## Reporting duties of sponsors

The sponsor must:

- Comply with Luxembourg social security rules.
- Report to the work inspection on the identity of the seconded workers employed.

Provide a guarantee to be jointly liable with the sponsored employee to cover living expenses, including medical expenses and travel expenses to repatriate the person to his home country incurred by the Luxembourg state.

## Civil and criminal penalties for sponsors

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### 7. What are the types of civil and criminal penalties that sponsors may face for non-compliance with the rules?

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#### Civil penalties

A sponsor that does not comply with the rules may face:

- A ban on practising his or her professional activity.
- Temporary or permanent closure of business.

#### Criminal penalties

A sponsor employing an illegal immigrant is liable for:

- A criminal fine ranging from EUR500 to EUR125,000.
- Imprisonment of six months to five years.

The sponsor must verify whether the third country national employee holds the required visas and authorisations before that employee starts working.

## Common issues or concerns for business immigration

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### 8. What common issues or concerns may arise under business immigration in your jurisdiction?

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The main issues for business immigration are time constraints. This is because foreign individuals are looking to start working in Luxembourg straight away. However, they are often held up by the immigration formalities, which are very time consuming.

In addition, the time limitation for seconded workers always presents an initial problem, which needs to be worked out once the 24 months have passed (see *Question 5, Types of sponsor-based employment visas*).

Start-ups face traditional problems, including:

- Finding the right legal entity.
- Drafting the articles of association.

- Obtaining a trading name not yet given to anyone else.
- Registering with the tax authorities.
- Finding enough funding to start up and pay the registered capital.
- Obtaining the business permit and any further authorisations required by the financial services authority.
- Finding affordable office space.

## DEPENDANTS

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### 9. What persons qualify as dependants (for example, family members)? What are the general requirements and restrictions for bringing dependants into your jurisdiction for sponsored and unsponsored business-related immigration?

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#### Persons qualifying as dependants

The following are considered dependants (*Law of 29 August 2008 on freedom of movement and immigration (Immigration Law)*):

- Spouses.
- Partners with whom the third country national is in a registered civil partnership.
- Unmarried children of the third country national or their spouse or partner so long as the children are under the age of 18.

The Ministry can allow the following family members to enter Luxembourg as dependants (*Immigration Law*):

- The parents of the third country national or their spouse/partner if they are dependent on him/her and deprived of necessary family support in the country of origin.
- The adult unmarried children if they are objectively unable to meet their own needs because of health or studies.

#### General requirements and restrictions

**Un-sponsored business-related immigration.** Unmarried children under the age of 18 can only join the third country national if he/she or her/his partner or spouse either:

- Have full custody and charge of them.
- Have shared custody of them, provided that the other guardian has agreed to this.

**Sponsored business-related immigration.** The worker and seconded worker can only bring his family once he has resided on Luxembourg territory for a period of 12 months. This does not apply to any children under the age of 18 of whom they alone have custody.

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## SETTLEMENT AND CITIZENSHIP

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### 10. What is the general time frame and processes for obtaining permanent residence and citizenship in your jurisdiction for sponsored and unsponsored business-related immigration?

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#### General process and time frame for obtaining permanent residence

A person who has legally resided in Luxembourg for a period of five years without interruption can obtain a permanent residence permit (long-term residence permit).

Minor interruptions will have no impact on the eligibility to obtain a long-term resident permit, as long as the person remains registered with the Luxembourg authorities and has his centre of living in Luxembourg.

#### General process and time frame for obtaining citizenship

A person who has legally resided in Luxembourg for a period of seven years without interruption can apply for Luxembourg citizenship if he or she:

- Is aged 18 or over.
- Provides evidence that he/she has sufficient active and passive knowledge of French, German and Luxembourgish.
- Successfully passes an oral test in Luxembourgish.
- Has taken at least three courses on instruction to civic living in Luxembourg
- Has not been sentenced in Luxembourg or abroad for a criminal offence or imprisoned for more than a year.

Minor interruptions will have no impact on the eligibility to obtain the Luxembourgish citizenship, as long as the person remains registered with the Luxembourg authorities and has his centre of living in Luxembourg.

## PRESENT CLIMATE AND FUTURE LEGISLATION

### *Present climate and trends*

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### 11. What are the recent trends, both political and social, that have impacted your jurisdiction with regard to immigration policy and law?

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Luxembourg is an immigration-friendly environment. Most Luxembourgers have some immigration-related background in

their family. The population of Luxembourg has constantly been growing. In 100 years, it has almost doubled from about 260,000 in 1910 to over 500,000 in 2010. Today, the Grand Duchy has more than 563,000 inhabitants.

This exceptional population growth is largely due to immigration, which has always gone hand in hand with the country's economic development. Initially, the steel sector attracted many Italians and Portuguese while the tertiary sector attracted the French, Belgians and the British. The country's population now comprises nearly 46% non-Luxembourg nationals.

The largest foreign communities in Luxembourg are:

- Portuguese (16.4%).
- French (7%).
- Italian (3.5%).
- Belgian (3.3%).
- German (2.3%).

Luxembourg is looking to attract more qualified immigrants to stay competitive on an international scale. For this reason, Luxembourg's nationality law is currently being discussed.

### *Future legislation*

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### 12. Are there any anticipated changes in the immigration laws of your jurisdiction?

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Luxembourg's government has published the latest version of its nationality bill on 14 March 2016 which, if approved, could enter into law from 1 January 2017.

The law will make the acquisition of Luxembourg nationality easier and faster than in the past years, so that a five-year residency in Luxembourg will allow individuals to apply for nationality provided that a Luxembourgish language test is passed. In addition, people born in Luxembourg or their children will have easier access to the nationality than before.

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## ONLINE RESOURCES

### **Minsitry of Foreign and EU Affairs**

**W** [www.gouvernement.lu/maee](http://www.gouvernement.lu/maee)

**Description.** Website of the Ministry of Foreign and EU Affairs.

### **Law of 29 August 2008 on free movement of persons and immigration**

**W** [www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=2](http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=2)

**Description.** The amended Law of 29 August 2008 on free movement of persons and immigration.

### **Administrative guide of the Luxembourg state**

**W** [www.guichet.public.lu/home/fr/index.html](http://www.guichet.public.lu/home/fr/index.html)

**Description.** Administrative guide of the Luxembourg state.

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## Practical Law Contributor profiles

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**Professional qualifications.** Avocat à la Cour, Luxembourg (2003); Rechtsanwalt, Germany (2006); Solicitor, England and Wales (2010)

**Areas of practice.** Corporate and commercial law; corporate immigration; contracts; incorporations; business permits; labour law; mergers; commercial litigation.

**Languages.** Luxembourgish, German, English, French, Dutch, Portuguese, Russian, Hebrew, Spanish, Italian

#### Professional associations/memberships.

- Board member, Ars Legis International.
- Luxembourg exclusive member, Association of German speaking business lawyers  
(EuroCollectNet) (Luxembourg exclusive member).
- Association of business debt collection lawyers.
- International Bar Association.
- Vice President, DAV Luxembourg (Association of German lawyers in Luxembourg).
- DNRV – German Dutch Lawyers Association.
- DRJV – German Russian Lawyers Association.
- Honorary Judge, Higher Arbitration Court of the General Council of Jews in Germany (*Oberes Schieds und Verwaltungsgerichts des Zentralrats der Juden in Deutschland*).

#### Publications

- *Dispute Resolution Luxembourg, in Getting the Deal Through, 2016.*
- *The marketing and advertising of legal services in Luxembourg, in IBA Business Development, Globe Law and Business Ltd 2016.*
- *Trademark Law of the Benelux States, commentary of the Heidelberger Trademark Law Volume 1: Trademark Act and Trademark Law of Selected Foreign States, 3rd edition, 2014.*
- *Debt Collection in Luxembourg, in Outlines of Debt Collection in Europe, Eurocollectnet 2014, p. 97-102.*
- *The Acquisition of Real Estate in Luxembourg in: International Economic Letters: IWB; Magazine for the International Tax and Commercial Law; Instrument of the German Association for International Tax Law, No. 19(2012), p. 711-718.*
- *Understanding the Conditions and Jurisdiction of Israeli Constitutional Law in an International Context, 1997, www.hagalil.com/israel/verfassung/verfassung.html.*