

THE CORPORATE  
IMMIGRATION  
REVIEW

NINTH EDITION

Editor  
Chris Magrath

THE LAWREVIEWS

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THE LAWREVIEWS

# LUXEMBOURG

*Pierre Elvinger and Philippe Hoffmann*<sup>1</sup>

## I INTRODUCTION TO THE IMMIGRATION FRAMEWORK

For more than 50 years, Luxembourg has been a country of immigration. While initially immigration was mainly by Italian and Portuguese workers working in the industrial sectors, since the development of its financial centre Luxembourg has attracted nationals from countries all around the world. Luxembourg now has the highest proportion of foreign nationals in the European Union, accounting for 45.3 per cent of the total resident population.<sup>2</sup>

Aside from requests for international protection for political reasons, the nature of immigration in Luxembourg is essentially economic immigration. In fact, access to the labour market is a central aspect of the country's immigration policy.

### i Legislation and policy

The amended Law of 29 August 2008 on the Free Movement of Persons and Immigration (the Law) is the relevant law in Luxembourg for immigration issues, and is based, for most parts, on EU regulations. The Law was most importantly modified by the Law of 8 March 2017, among other things, implementing the Directives on seasonal workers (Directive 2014/36/EU) and intra-corporate transfer (ICT) (Directive 2014/66/EU).

The Law is supplemented by several Grand-Ducal regulations covering practical aspects.

The Law distinguishes between the entry and stay of EU citizens and the entry and stay of third-country nationals ('foreigners' under the Law), with a sub-distinction between stays of more or less than three months. The nationals of Member States of the European Economic Area (EEA) (including Norway, Iceland and Liechtenstein) and the Swiss Confederation are considered EU citizens for immigration purposes.

### *Entry and stay of EU citizens*

To enter the Luxembourg territory, an EU citizen must have a valid identity document or passport. A stay of more than three months by an EU citizen on Luxembourg territory requires:

- a* the existence of an employment relationship;
- b* registration as self-employed;
- c* sufficient resources for the EU citizen and his or her family members so as not to become a burden regarding social security and health insurance; or

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1 Pierre Elvinger is a partner and Philippe Hoffmann is a senior associate at Elvinger Hoss Prussen.

2 Eurostat, News Release No. 230/2015 of 18 December 2015.

- d* registration in a private or public institution with study as a main purpose or, in this context, vocational training, and for the EU citizen to have sufficient resources for himself or herself and his or her family members so as not to become a burden regarding social security and health insurance.

The EU citizen must register with the relevant documents at the municipality of his or her residence within the first three months of arrival on Luxembourg territory. He or she will receive a certificate of registration as an EU citizen.

Family members, if they are also European citizens, may come with the EU citizen or join him or her provided they register at the municipality. If they are third-country nationals, they have to apply for a residence card within the first three months of entering Luxembourg territory.

### ***Entry and stay of third-country nationals***

Third-country nationals who plan to enter Luxembourg territory must have a valid travel document (i.e., ID or passport) and, if required, a valid Schengen visa. The list of the countries whose nationals require a Schengen visa and those who are exempted is set by the amended Council Regulation (EC) No. 539/2001 of 15 March 2001.

For a stay of less than three months, third-country nationals require the valid documents mentioned above and make a declaration of arrival within three days of their arrival at the municipality where they are residing (except if they are residing in a hotel as a tourist). If during the stay they intend to take up employment or to work as an independent, they require prior work authorisation.

Third-country nationals are only allowed to stay on Luxembourg territory for a maximum of three months during a reference period of six months. For third-country nationals coming to Luxembourg on a short business trip, such a stay is allowed for less than three months per year (see Section I.iii). Holders of an ICT permit, have the right to work in Luxembourg for up to 90 days in a 180-day reference period while complying with the notification procedure (see Section IV).

For a stay of more than three months, the third-country national requires in principle a valid temporary residence authorisation, the application and granting of which must take place before entering Luxembourg territory.

The Law lists the categories of temporary residence authorisations that may be requested by a third-country national:

- a* employee referred to under Article 42 of the Law, highly qualified worker (European Blue Card), intra-corporate transferee, seconded employee or seasonal worker;
- b* independent;
- c* sportsperson;
- d* student, pupil, trainee or volunteer or au pair;
- e* researcher;
- f* family member;
- g* investor; or
- h* for other private or particular reasons.

After issue of said authorisation, third-country nationals have three months from the date of issue to enter Luxembourg territory or, if they require a Schengen visa, three months to apply for the visa. The visa also has a maximum validity of three months.

On entering Luxembourg territory, the third-country national is required to declare his or her arrival within three days of arrival at the municipality, stating where he or she will be residing. He or she will also have to take a medical examination, find appropriate accommodation and submit a residence permit request within the first three months of the declaration of arrival. The issued permit will contain the applicant's biometric data. The issued permit has a fixed term, which is determined according to the category of permit, and is renewable.

## **ii The immigration authorities**

The Ministry of Foreign and European Affairs (the Ministry), and more precisely its Directorate of Immigration, is responsible for processing immigration files. This department of the Ministry is in charge of analysing all immigration requests and attached documents and issuing the approval or refusal for the residence authorisation and an adequate permit. The Luxembourg representatives located in embassies or consulates established in third countries are in charge of the issue of passports and visas. These representatives are in contact with another Ministry department, the Luxembourg Passport and Visa Service.

The municipalities are also involved in the immigration procedure, as they have responsibility for certain administrative formalities that have to be observed upon entering Luxembourg territory (i.e., the issue of registration certificates and the certification of documents).

Finally, police agents and officers, agents in charge of controls at the airport and customs agents with responsibility for the control of persons on the territory of the Grand-Duchy of Luxembourg also intervene.

## **iii Exemptions and favoured industries**

In principle, EU citizens and their family members do not have to apply for prior work authorisation if they intend to work in Luxembourg (either as an employee or an independent). Also, the nationals of a Member State of the EEA (this including Norway, Iceland and Liechtenstein) and the Swiss Confederation need not apply for a prior work authorisation, as they are considered EU nationals, as explained above.

Third-country nationals (other than holders of an ICT permit) who intend to take up employment or to work as an independent during a stay of less than three months in Luxembourg require prior work authorisation, except:

- a* staff from fairground attractions, circuses and other travelling establishments;
- b* workers in the entertainment industry without regular employment;
- c* sportspeople (although their trainers must have work permits);
- d* invited researchers (other than holders of a 'residence authorisation as researcher' issued by another EU Member State, to whom specific regulation applies), conference speakers or university lecturers;
- e* persons who travel for business purposes (i.e., to visit business partners, to research and develop professional contacts, to negotiate and enter into a contract, to participate in trade shows, fairs or exhibitions, or to attend boards or general meetings of companies); and
- f* service providers in the same business group (excluding subcontractors).

Third-country nationals wishing to stay in Luxembourg for less than three months in a six-month reference period for a tourist or family visit (without undertaking work) do not

require preliminary authorisation to do so. They must, however, declare their arrival at the municipality of residence (except if they stay at a hotel as a tourist) and prove financial independence for their length of stay.

## **II INTERNATIONAL TREATY OBLIGATIONS**

As Luxembourg is a Member State of the EU, its primary and secondary legislation is applicable. EU law was transposed in the Law to provide the free movement of EU citizens in Luxembourg, with the right for them to work freely in Luxembourg like any other Luxembourg national, without discrimination.

Since the bilateral agreements of 1999 concluded between Switzerland and the EU, Swiss nationals have the same access to the employment market as EU citizens. Also, nationals of a Member State of the EEA can come to work in Luxembourg without having to apply for a work authorisation.

## **III THE YEAR IN REVIEW**

The Luxembourg government noted in 2015 a lack of qualified workforce in Luxembourg for following professions:

- a* mathematicians, actuaries and statisticians;
- b* systems analysts;
- c* software developers;
- d* web and multimedia developers;
- e* applications programmers;
- f* software and applications developers and analysts not elsewhere classified;
- g* database designers and administrators;
- h* systems administrators;
- i* computer network professionals; and
- j* database and network professionals not elsewhere classified.

For these professions, the salary threshold to qualify as a highly qualified worker continues to be set at 1.2 times the average gross annual salary in Luxembourg,<sup>3</sup> which is a derogation to the salary threshold usually to be met by highly qualified workers (see Section IV.i)

In addition to other minor changes, the Law was amended by the Law of 1 August 2018, implementing the provisions of Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil-exchange schemes or educational projects and au pairing into Luxembourg law. These new provisions relate to, inter alia, favourable mobility provisions for students and researchers holding a residence permit of a EU Member State and intending to study or conduct research in Luxembourg.

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3 The threshold of the derogation is set as of 28 March 2019 at €59,198.40 (annual gross salary).

Brexit and the related issues regarding right of stay of UK citizens in Luxembourg are currently a major concern, leading the Luxembourg lawmakers to provide for a legal framework applicable to UK citizens after the United Kingdom of Great Britain and Northern Ireland effectively left the European Union.

The law was amended by the law of 8 April 2019,<sup>4</sup> providing for two possible scenarios:

**i The Draft Withdrawal Agreement<sup>5</sup> is signed and enters into effect**

Pursuant to the law, UK citizens and their family members who have been validly residing in Luxembourg before the end of the transition period provided for in the current Draft Withdrawal Agreement (i.e., 31 December 2020) will have to apply for residence documents upon such date.

The residence documents will replace the certificate of registration or the valid residence permit, delivered to family members of UK citizens who are third-country nationals, previously delivered to them, and must be applied for at the Ministry within three months after the end of the transition period.

**ii Brexit without entering into effect of the Draft Withdrawal Agreement**

The certificate of registration will entitle UK citizens and their family members (who receive a residence permit if they are third-country nationals) to stay in Luxembourg for a duration of one year as from the date the United Kingdom effectively leaves the European Union. They will be allowed to pursue any salaried or independent activities during this period and must apply for a residence permit at the latest three months before the end of the one-year period.

## **IV EMPLOYER SPONSORSHIP**

**i Work permits**

The status of workers, highly qualified workers, workers on business continuity sites, ICT workers, secondees or seasonal workers differs, but the timescales, the accompaniment of family members and appeals are more or less the same for all the categories.

As explained above (see Section I.i), third-country nationals must apply for a prior temporary residence authorisation and, once in Luxembourg and after accomplishment of the various steps, submit a request for a residence permit. The work authorisation is included in the temporary residence authorisation and in the residence permit, so no separate request must be submitted. A work authorisation is only required if the stay in Luxembourg does not exceed 90 days in a one-year reference period, in which case no residence permit needs to be applied for by the worker.

On a general note, each worker to obtain a residence or work authorisation must:

- a* present a valid travel document;
- b* not be subject to the Schengen alert for the purpose of refusing entry and be reported to this effect in the Schengen Information System;
- c* not be prohibited to enter the Luxembourg territory;

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4 Published on 11 April 2019 in the Luxembourg official gazette (Mémorial A).

5 Officially the Draft agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as agreed at the negotiator's level on 14 November 2018.

- d* not be considered as being a threat to public policy, national security, public health, nor to the international relationships of Luxembourg, or a state that is party to an international treaty on the crossing of exterior borders, binding to Luxembourg;
- e* justify the object and conditions of his or her stay (this will be evidenced through the application based on the relevant worker category).

### **Workers**

A residence permit to work as an employee is granted to the third-country national by the Ministry if the following requirements are fulfilled:

- a* it is not prejudicial to the priority of employment enjoyed by some workers under Community provisions;
- b* the exercise of the activity serves the economic interests of the country;
- c* the third-country national has the required qualifications for the exercise of the activity; and
- d* the third-country national is in possession of an employment contract for a vacancy declared to the National Employment Administration (ADEM) under the forms and conditions as provided by the relevant applicable legislation.

These conditions are considered by the Ministry, the ADEM and a special committee.

The issued residence permit for a worker has an initial maximum validity of one year and is valid for a sole sector and one profession, with any employer.

The permit is renewable on request if the above conditions are still met, and it confers the right to a residence permit for a maximum three years for any sector and any profession, with any employer.

### **Workers on business continuity sites**

Companies established in a third country that cannot exercise their activities owing to a 'major event' will be allowed to temporarily continue their business in Luxembourg by sending their workers to an business continuity site established in Luxembourg. A business continuity site means any physical establishment of a public or private company, managed by it or by a third party, which temporarily ensures the upholding, if not the recovery, of its business and providing of services, after a major event occurs that prevents the normal course of its activities in the country of origin of such company (the home company). The Law does not contain a precise definition of 'major event'. Pursuant to the comments of the authors of the bill of law No. 6992, a major event can relate to geopolitical, IT-related or natural risks.

Only workers of national companies listed in the register of licensed companies kept by the Ministry may obtain a residence authorisation in the case of a major event. To be listed in this register, the home company must lodge an application with the Ministry containing following documents:

- a* a description of the business and the structure of the home company, as well as of its group (where applicable);
- b* presentation and evidence of the identity of the shareholders or members, direct or indirect, natural or legal persons, which have a qualifying holding in the home company, or, in the absence of a qualifying holding, the identity of the 20 major shareholders or members;



- c a valid scheme of business continuity of the home company, containing a detailed description of the configuration of the business continuity site established in Luxembourg;
- d if the business continuity site is managed by a third party, the valid agreement entered into between such third party and the home company;
- e the identity and the duties of the workers to be transferred if a major event occurs that prevents the normal exercise of the activities in the third country; and
- f the description of the work to be performed in Luxembourg.

A committee will review the application and issue an opinion on the repute of the home company.

The inscription in the register is valid for one year and may be renewed upon application of the licensed home company to be lodged at the latest two months before the end date of the validity of the inscription in the register.

If a major event occurs, the licensed home company lodges an application with the Ministry containing:

- a a description of the major event preventing the normal course of business in the third country of origin;
- b the list of workers to be transferred to Luxembourg together with the signed employment contracts; and
- c the description of the work to be performed in Luxembourg.

A residence permit for 'salaried worker' valid for a maximum of one year and renewable for another year may be delivered to the workers if the conditions are still met. The validity date of such residence permit may not exceed the validity date of the inscription in the register of the licensed home company.

### ***Highly qualified workers***

The Law defines highly qualified jobs as:

*the 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 sector specified in the employment contract.*

A residence permit to work as a highly qualified worker is granted to the third-country national by the Ministry if the following conditions are met:

- a the third-country national has a valid employment contract for a job as described above with a minimum duration of one year;
- b the third-country national presents a document certifying that he or she has the relevant high professional qualifications for the activity or sector mentioned in the employment contract, or that he or she fulfils the requirements for the regulated profession as mentioned in the employment contract; and

- c* the third-country national has earnings at least equal to the salary set by Grand-Ducal Regulation.<sup>6</sup>

The residence permit for highly qualified workers is called the EU Blue Card and gives highly qualified workers a particular status. It authorises the employee to undertake the specific activity he or she has been admitted for, and to do so for any employer.

After four years, the highly qualified worker benefits from equal treatment with nationals for highly qualified jobs (except for some public functions).

The EU Blue Card is granted for four years, or for the duration of the employment contract plus three months. It is renewable on request if the conditions are still met.

### ***ICT worker***

ICT means the temporary secondment for occupational or training purposes of a third-country national, who, at the time of application for an ICT permit, resides outside the territory of the Member States, from an undertaking established outside the territory of a Member State, and to which the third-country national is bound by an employment contract prior to and during the transfer, to an entity belonging to the undertaking or to the same group of undertakings that is established in Luxembourg, and, where applicable, the mobility between host entities established in one or more several second Member States.

Only managers (employees of a certain level), specialists (employees with specific professional knowledge) and trainee employees may benefit from the facilitated conditions on entry and the mobility provisions.

If Luxembourg is the first Member State to which the transferee is assigned from outside the EU, the Luxembourg host entity must:

- a* provide evidence that it and the entity established in a third country belong to the same undertaking or group of undertakings;
- b* provide evidence of employment of the transferee within the same undertaking or group of undertakings, from at least three to 12 uninterrupted months immediately preceding the date of the ICT in the case of managers and specialists, and from at least three to six uninterrupted months in the case of trainee employees;
- c* present an employment contract of the transferee and, if necessary, an assignment letter from the employing non-EU entity containing the following:
- details of the duration of the transfer and the location of the host entity or entities;
  - evidence that the third-country national is taking a position as a manager, specialist or trainee employee in the host entity or entities in Luxembourg;
  - the remuneration as well as other terms and conditions of employment granted during the ICT;
  - evidence that the transferee will be able to transfer back to an entity belonging to that undertaking or group of undertakings and established in a third country at the end of the ICT;
- d* provide evidence that the transferee has the professional qualifications and experience needed in the host entity to which he or she is to be transferred as manager or specialist or, in the case of a trainee employee, the university degree required;

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<sup>6</sup> The annual gross salary is set as of 14 March 2018 at €73,998.

- e* where applicable, present documentation certifying that the transferee fulfils the conditions concerned for Union citizens to exercise the regulated profession to which the application relates; and
- f* provide evidence of having, or, having applied for, sickness insurance.

In addition, a third-country national who applies to be admitted as a trainee employee is required to present a training agreement relating to the preparation for his or her future position within the undertaking or group of undertakings, including a description of the training programme, which demonstrates that the purpose of the stay is to train the trainee employee for career development purposes or to obtain training in business techniques or methods, its duration and the conditions under which the trainee employee is supervised during the programme.

Managers and specialists obtain a residence permit valid for either the duration of the ICT or a minimum of one year (whichever period is shorter prevails), with a maximum of three years. Trainee employees obtain a residence permit valid for the duration of the ICT, with a maximum of one year.

The ICT permits are renewable on request if the conditions are still met; however, the total duration of validity may not exceed three years for managers and specialists, and one year for trainee employees.

An ICT permit holder who obtained the ICT permit in another Member State to work for an entity established in that Member State is entitled to stay and work in Luxembourg for a Luxembourg based entity belonging to the same undertaking or group of undertakings for a period of up to 90 days in a 180-day period (short-term mobility). In the case of short-term mobility, the host entity of the first Member State (i.e., the Member State that first issued the ICT permit) has to notify the competent authorities of the first Member State and the Ministry of the intention of the intra-corporate transferee to work in an entity established in Luxembourg as soon as the intended mobility to Luxembourg is known.

The notification to the Ministry must include the transmission of following documents and information:

- a* evidence that the Luxembourg based entity and the undertaking established in a third country belong to the same undertaking or group of undertakings;
- b* the employment contract and, if necessary, the assignment letter, which were transmitted to the first Member State;
- c* where applicable, documentation certifying that the transferee fulfils the conditions concerned for EU citizens to exercise the regulated profession to which the application relates;
- d* a valid travel document; and
- e* where not specified in any of the preceding documents, the planned duration and dates of the mobility.

The short-term mobility may be initiated after the notification to the Ministry immediately or at any moment thereafter within the period of validity of the ICT permit.

Where an ICT permit holder, who obtained the ICT permit in another Member State, submits an application to stay and work for a period of more than 90 days in Luxembourg (long-term mobility):

- a* the host entity established in Luxembourg must transmit the following documents:

- evidence that the host entity and the undertaking established in a third country belong to the same undertaking or group of undertakings;
  - an employment contract and, if necessary, an assignment letter, meeting the same requirements than an employment contract or assignment letter submitted in the context of an application where Luxembourg is the first Member State;
  - where applicable, present documentation certifying that the transferee fulfils the conditions concerned for Union citizens to exercise the regulated profession to which the application relates; and
  - a valid travel document;
- b* the third-country national is not required to leave the territories of the Member States to submit the application and is not subject to a visa requirement;
- c* the third-country national is allowed to work until a decision on the application for long-term mobility has been taken by the Ministry, provided that:
- the time period provided for in case of short-term mobility and the period of validity of the ICT permit issued by the first Member State has not expired; and
  - the complete application has been submitted to the Ministry at least 20 days before the long-term mobility starts; and
- d* an application for long-term mobility may not be submitted at the same time as a notification for short-term mobility. Where the need for long-term mobility arises after the short-term mobility of the intra-corporate transferee has started, the application for long-term mobility must be submitted at least 20 days before the short-term mobility ends.

In the case of a positive decision on the application for long-term mobility, the third-country national will be issued with a 'mobile ICT' permit allowing the third-country national to stay and work in Luxembourg. The Ministry informs the competent authorities in the first Member State where a permit for 'mobile ICT' permit is issued.

A period of six months must elapse between the end of the maximum duration of an ICT and the filing of another application concerning the same third-country national.

### ***Secondments***

The Law indicates that a non-EU citizen can be seconded temporarily to Luxembourg to the host company in the context of a transnational service to be provided as defined by the Labour Code.

The Labour Code provides that the secondment of employees occurs when the work relationship between the employee and the home company during the secondment is maintained. The secondment can occur for a short time, during which the employee is sent to Luxembourg. The seconded employee is an employee who usually works abroad (i.e., not in Luxembourg) and is executing his or her work for a limited period in Luxembourg.

The Law requires that the work contract between the seconded employee and the home company not established in a Member State of the EU or the EEA or in the Swiss Confederation, is of an undetermined duration and that the start date of this work contract must be at least six months prior to the requested start date of the secondment.

If the home company is established in a Member State of the EU or the EEA or in the Swiss Confederation, or has a branch established therein through which it employs its workers, the work contract may be of determined duration and no seniority is required. Also no prior work authorisation is required in this case, subject to the seconded worker having

a residence permit delivered by the Member State of the home company and valid for the duration of the secondment. If the secondment is due to last longer than three months, the non-EU citizen will be issued a residence permit as a 'salaried worker of a Community service provider'.

In any case, the residence permit of a seconded employee is valid for the duration of the period during which the services to be rendered on behalf of the company by whom he or she is seconded are to be provided. The permit can be renewed under exceptional circumstances if these services have to be continued over a longer period.

### ***Seasonal workers***

A seasonal worker means a third-country national who retains his or her principal place of residence in a third country and stays legally and temporarily in Luxembourg to carry out an activity dependent upon the passing of the seasons, under one or more fixed-term employment contracts concluded directly between that third-country national and the employer established in Luxembourg.

The following activities are qualified as dependent upon the passing of the seasons pursuant to Luxembourg labour law:

- a* harvesting and grape-picking activities;
- b* monitoring and coaching of leisure and holiday activities;
- c* travel guide and tourist guide activities;
- d* supervision and maintenance activities for beaches, outdoor swimming pools and campsites;
- e* work in shops, hotels and restaurants that are only open for part of the year;
- f* work in shops, hotels and restaurants whose activities increase steadily and predictably owing to their seasonal nature; or
- g* aviation and passenger transport companies whose activities increase steadily and predictably owing to their seasonal nature.

A work authorisation and (where applicable) a short-term Schengen visa are delivered to a seasonal worker where the stay in Luxembourg does not last longer than 90 days if the worker:

- a* produces a valid employment contract to work as a seasonal worker for an employer established in Luxembourg;
- a* produces evidence that he or she will have appropriate accommodation or that it will be provided to him or her; and
- b* produces evidence that he or she has applied for or has sickness insurance.
- c* A residence authorisation will be delivered to the seasonal worker meeting the same requirements in the case of a stay of more than 90 days in Luxembourg. Once arrived in Luxembourg, the worker will obtain a residence permit valid for a maximum of five months in a 12-month reference period.

### ***Documentation, timescales, appeals and accompaniment of family members***

For prior residence authorisation and the residence permit, certain documents must be enclosed along with the motivation letter providing the reasons and legal grounds for the request. All documents must be in English, French or German. If this is not the case, a certified accurate translation made by a sworn authorised translator must be attached.

The following documents must be attached to each temporary residence authorisation request:

- a* a copy of all pages of the valid passport (including blank pages);
- b* an extract of any criminal record or an affidavit (or a certified accurate copy thereof); and
- c* a full curriculum vitae with a signature on each page;

The following documents are specifically required for some categories:

- a* a copy of the graduate and postgraduate qualifications;
- b* a copy of the employment contract, dated and signed by both parties (in the case of a secondment, a certified accurate copy of the employment contract entered into between the worker and the home company);
- c* the original current certificate issued by the ADEM (only required for workers referred to under Article 42 of the Law);
- d* a copy of the assignment letter, dated and signed by both the home company and the worker (in the case of a secondment);
- e* proof of a valid health insurance and an accident insurance for the duration of the secondment (in the case of a secondment);
- f* a copy of the service agreement, dated and signed by both the home company and the host company (in the case of a secondment); and
- g* a copy of a document providing a health insurance policy (in the case of a secondment).

Reference is made to the above explanations on requirements related to the categories of ICT and seasonal workers.

The following documents have to be enclosed with the residence permit request:

- a* a copy of the arrival declaration;
- b* a copy of the residence authorisation;
- c* proof of appropriate accommodation; and
- d* evidence of payment of the tax (€80 per permit issued).

In practice, the time frame for obtaining a temporary residence authorisation is between two and three months, and six to eight weeks for obtaining a residence permit.

The Law sets a maximum delay of 90 days for the issue of the response to the residence authorisation request.

The absence of a response from the Ministry within the set time frame must be taken as an implicit refusal.

Two types of appeals are possible against a refusal: an administrative appeal (optional), which is submitted to the Ministry, or an appeal before the administrative tribunal. After the response to the administrative appeal, it is still possible to appeal to the administrative court but only against the decision issued after the administrative appeal. The time limit for introducing an appeal is three months after the notification or the knowledge of the decision, or the implicit refusal decision.

Family members are allowed to accompany or join the employee under certain conditions. The Law provides that the following are considered as family members who can accompany or join the employee:

- a* the spouse;
- b* the partner with whom the employee is in a registered civil partnership in accordance with the terms of substance and form set by the amended Law of 9 July 2004 on the legal effects of certain partnerships; and

- c* unmarried children aged under 18 of the employee, or of his or her spouse or partner, as defined in (b), on the condition that they have custody and charge of them or, in the case of shared custody, provided that the other guardian has agreed.

A third-country national, regardless of the applicable immigration category, is entitled to be accompanied by his or her family members when coming to Luxembourg.

The Law provides that the Ministry may allow the following additional family members to accompany the third-country national after he or she has resided for 12 months on Luxembourg territory:

- a* the direct ascendants in the first degree of the employee, or of his spouse or partner, provided that the ascendants are dependent on him or her and that they are deprived of the necessary family support in the country of origin;
- b* the adult unmarried children of the employee, or of his spouse or partner, when they are objectively unable to meet their own needs because of their health; and
- c* the legal guardian or any other family member of a unaccompanied minor child, benefiting from international protection, if the latter has no direct ascendants or they cannot be found.

For an application for a residence authorisation request as a family member, the following documents must be enclosed:

- a* a certified accurate copy of all the pages of the passport (including blank pages);
- b* a birth certificate (or a certified accurate copy thereof);
- c* an extract of any criminal record or an affidavit (or a certified accurate copy thereof); and
- d* a certified accurate copy of the marriage certificate or registered civil partnership.

The documents to be submitted for a residence permit request are the same as those described above. In practice, the timescale for obtaining a residence authorisation is two to three months, and six to eight weeks for the residence permit.

In principle, a first permit for a family member is issued for one year and is renewable on request. The renewed permit then has, in principle, the same expiry date as that applicable to the person upon whom the family member depends, but in any case such a permit may not have a longer duration.

For the family members of highly qualified workers and holders of an ICT or mobile ICT permit, the expiry date of the residence permit is the same as that applicable in the case of the person upon whom they depend.

If the above-mentioned family members are not allowed to come to Luxembourg because one of the conditions is not fulfilled, or if other family members want to join the employee, an alternative way for them to come to Luxembourg is by introducing a residence request 'for private reasons'.

The Law provides that, after submission of the application, the Ministry must issue a response to such application no later than within six months in the case of family members of a highly qualified worker; 90 days in the case of family members of a holder of an ICT or mobile ICT permit; or nine months in the case of family members of other third-country nationals.

## **ii Labour market regulation**

Before signing an employment contract to hire a third-country national for any type of work permit, the Luxembourg company must make a declaration of the job vacancy at the ADEM, which must contain the employer's identity, the job description, the requested candidate profile, the work conditions and the salary offered, and it must be signed.

The vacancy will be posted on the intranet website of the ADEM for two months to enable Luxembourg citizens and other EU nationals to apply for the job. Indeed, Luxembourg citizens and EU nationals must be given priority as candidates. Within a reasonable period, the Luxembourg company may indicate to the ADEM that the vacancy is no longer open.

After a waiting period of three weeks, during which the ADEM may submit to the employer a suitable candidate for the declared position, the employer is authorised to request from the ADEM a certificate confirming the unavailability of a suitable candidate and attesting the employer's right to employ a person of his choice for the vacancy. This ADEM certificate is only required for workers referred to under Article 42 of the Law.

In the case of a secondment, an additional procedure has to be followed with the Inspectorate of Labour and Mines (ITM), which must be notified by the home company of the secondment of employees to Luxembourg. The ITM provides for an electronic platform on which the seconded workers are to be registered. Also, all required documents must be uploaded to such platform.

## **iii Rights and duties of sponsored employees**

Sponsored employees will be subject to Luxembourg labour law regulations.

If the sponsored employee intends to leave the country for more than six months during a one-year period (subject to the specific provisions applicable to ICT permit holders), he or she has to return the residence permit to the Ministry and make a declaration of departure at his or her municipality of residence. In practice, under certain conditions, an absence of 12 months is possible without having to return the permit and make a declaration of departure.

Under certain conditions, the employee can obtain a long-term residence permit after a five-year uninterrupted stay in Luxembourg. This long-term residence permit is granted for five years and is automatically renewable on demand.

For highly qualified workers who wish to obtain a long-term residence permit the conditions regarding the estimation of the five-year uninterrupted residency are less stringent, since years of residency spent in another EU country will also be considered provided that the two years immediately preceding submission of the request were spent on Luxembourg territory with a permit as a highly qualified worker.

## **V INVESTORS, SKILLED MIGRANTS AND ENTREPRENEURS**

The Law classifies skilled migrants under workers (highly qualified workers).

For third-country investors and entrepreneurs, the type of residence authorisation and residence permit depends on the status that the person intends to have in Luxembourg (for EU citizens, see Section I.i). If the person intends to engage in an activity (i.e., setting up a business), an authorisation and permit as an independent or investor may be requested. If the person does not intend to engage in an effective activity (i.e., a directly paid activity), an authorisation and permit for investor or private reasons may be requested.



**i Residence authorisation as an independent**

The Law provides that the third-country national can apply for a residence authorisation as an independent if the following requirements are met:

- a* he or she has the appropriate qualities for the exercise of the intended activity and, where applicable, for inclusion on professional registers; and provided that, where applicable, he or she fulfils the conditions to obtain a trade authorisation;
- b* he or she provides evidence that he or she has adequate resources for the exercise of the intended activity in Luxembourg; and
- c* the activity serves the economic interests of the country.

A person having a social mandate, without subordination relationship, that applies for a trade authorisation or for ministerial approval on behalf of a company or branch of a company, an association or group, or for the exercise of a craft, industrial, commercial or agricultural activity on Luxembourg territory, is considered to be an independent. The above-mentioned conditions are considered by the Ministry and by a special committee.

The residence permit issued for an independent is valid for a maximum of three years and is renewable on request if the conditions are still met.

**ii Investors**

The Law provides for four investment options for third-country nationals wishing to obtain a residence authorisation in Luxembourg solely based on their investments:

- a* investment of €500,000<sup>7</sup> in an existing Luxembourg-based company performing a commercial, industrial or a craft activity (in a sector as determined by the Grand-Ducal Regulation of 5 December 2017),<sup>8</sup> where the investor undertakes to maintain the investment and an equivalent level of employment for at least five years;
- b* investment of €500,000 to incorporate a company in Luxembourg to perform a commercial, industrial or a craft activity (in a sector as determined by the Grand-Ducal Regulation of 5 December 2017),<sup>9</sup> where the investor undertakes to create at least five positions collaboratively with the ADEM within three years of the incorporation of the company;
- c* investment of €3 million in a Luxembourg investment and management structure, existing or to be created, while maintaining an appropriate substance; and
- a* deposit of €20 million (in cash or financial instruments) at a Luxembourg bank, where the investor undertakes to maintain the investment for at least five years.

The requirement relating to employment under option (a) does not apply if the company is in distress. Investments of options (a) to (c) need to consist of at least 75 per cent equity, and the remaining 25 per cent may be borrowed for a period of at least three years, whereas

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7 The Luxembourg Chamber of Commerce noted that the €500,000 threshold ranks among the low average of investment-based immigration option as seen in countries such as Cyprus, Malta, Portugal or Canada.

8 Information and communication technologies; space technologies; environmental technologies; intelligent mobility technologies; health technologies; logistics, excluding simple road transport without any other activities that create economic added value; the industrial sector insofar as production or research and development will be located in Luxembourg; and the tourism sector for regional or national tourism infrastructure projects as well as hotel projects of a size of at least 25 guest rooms.

9 See footnote 8 above.

investments under option (d) must consist of 100 per cent equity. The investments may be made through an investment structure in which the applicant or his or her partner (either by marriage or civil partnership) is the beneficial owner.

Before applying for a residence authorisation for investors, the applicant must submit either the investment project to the Ministry of Economics (options (a) and (b)), or the proof of investment to the Ministry of Finance (options (c) and (d)). Both Ministries in either case issue an opinion that is notified to the applicant and the Ministry of Foreign and European Affairs. If several investors apply together in the context of the same investment project for the delivery of a residence authorisation for investors, each investor must meet the threshold requirements detailed above, except the requirements related to employment, which must be met by the project taken as a whole.

The residence authorisations for investors are only delivered once the investments have been paid in full. A residence permit for investors is issued for three years and renewable on request for three years after a favourable opinion was delivered by the Ministry that analysed the initial application.

Holders of a residence permit for investors that chose options (a) or (b) may apply for a trade authorisation.

### **iii Residence authorisation for private reasons**

A person who wants to emigrate to Luxembourg with no intention to work may apply for a residence authorisation and residence permit for private reasons. With this type of authorisation, the third-country national can exercise any unpaid activity, such as making investments (which do not meet the requirements detailed above) or participating in board meetings. The Law provides that, among other things, the Ministry may grant such authorisation to the third-country national who provides evidence that he or she can live on his or her own sufficient resources.

In practice, the conditions to be fulfilled to obtain an authorisation for private reasons are very carefully considered by the Ministry. While this decision lies within the discretion of the Ministry, it may be challenged before the Administrative Court.

A residence permit for private reasons is issued for a maximum of three years and is renewable on request if the requirements are still fulfilled.

## **VI OUTLOOK AND CONCLUSIONS**

Luxembourg has adopted efficient immigration legislation and has put into place measures to respond in a time-efficient way to the increasing corporate immigration by third-country nationals who want to work in Luxembourg.

The new provisions applicable upon Brexit should reassure UK citizens and their family members currently residing in Luxembourg in that they guarantee their right of residence and work in Luxembourg, regardless of whether the United Kingdom of Great Britain and Northern Ireland leave the European Union with or without entering into the Draft Withdrawal Agreement.

## ABOUT THE AUTHORS

### **PIERRE ELVINGER**

*Elvinger Hoss Prussen*

Pierre Elvinger's practice is concentrated on commercial, civil and employment litigation. In addition to litigation, he advises on commercial, civil, urban, environmental and employment law.

He is *maître en droit* and became a member of the Luxembourg Bar in 1991, and was a member of the Council of the Luxembourg Bar. He has been a partner at Elvinger Hoss Prussen since 1996.

He studied tax law at the Institut für Steuerrecht at the University of Cologne and presented a national report to the Congress of the International Fiscal Association in London in 1991 on the tax treatment of losses.

Mr Elvinger is a founding member and, as of January 2012, president of, the Employment Law Specialists Association incorporated in June 2007, which, in February 2008, organised a conference on the transfer of undertakings, where he appeared as a speaker. He is the co-author of an article published in the *Annales du Droit Luxembourgeois* in 2004 entitled 'Le domicile en droit du travail et en droit social'.

He is fluent in Luxembourgish, French, English and German.

### **PHILIPPE HOFFMANN**

*Elvinger Hoss Prussen*

Philippe Hoffmann became a member of the Luxembourg Bar in 2010 and joined Elvinger Hoss Prussen in the same year.

He holds a master's degree in European law from the Université Catholique de Louvain-la-Neuve (Belgium). He is fluent in Luxembourgish, French, English and German.

### **ELVINGER HOSS PRUSSEN**

2 Place Winston Churchill  
Luxembourg 1340  
Tel: +352 44 66 44 0  
Fax: +352 44 22 55  
pierreelvinger@elvingerhoss.lu  
www.elvingerhoss.lu



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