

Doing business in Luxembourg: overview

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A Q&A guide to doing business in Luxembourg.

This Q&A gives an overview of key recent developments affecting doing business in Luxembourg as well as an introduction to the legal system; foreign investment, including restrictions, currency regulations and incentives; and business vehicles and their relevant restrictions and liabilities. The article also summarises the laws regulating employment relationships, including redundancies and mass layoffs, and provides short overviews on competition law; data protection; and product liability and safety. In addition, there are comprehensive summaries on taxation and tax residency; and intellectual property rights over patents, trade marks, registered and unregistered designs.

To compare answers across multiple jurisdictions, visit the *Doing business in... Country Q&A Tool*.

This article is part of the global guide to doing business worldwide. For a full list of contents, please visit global.practicallaw.com/dbi-guide.

Overview

Legal system

Foreign investment

Business vehicles

Employment

- Laws, contracts and permits

- EU and EFTA

- Non-EU citizens

- Termination and redundancy

- General rules on dismissals

- Mandatory limitations on dismissal

- Remedies

- Collective redundancy procedure

Tax

- Taxes on employment

- Business vehicles

- Tax residents

Dividends, interest and IP royalties
Groups, affiliates and related parties
Customs duties
Double tax treaties

Competition

Intellectual property

Marketing agreements

E-commerce

Advertising

Data protection

Product liability

Contributor profiles

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Overview

1. What are the key recent developments affecting doing business in your jurisdiction?

COVID-19

Legal measures have been taken in Luxembourg due to the unprecedented circumstances that have resulted from the 2019 novel coronavirus disease (COVID-19). Although it is too early to assess the full impact on business in Luxembourg, the Luxembourg Government has been trying to cushion the impact of the crisis on Luxembourg business as far as possible.

In March 2020, the Luxembourg Government presented a EUR8.8 billion stabilisation package to help Luxembourg businesses cope with the consequences of the COVID-19 crisis. This package comprises approximately twenty measures, including state guarantees for loans, direct financial support, short-term work, family leave and tax related measures.

These measures are intended to support SMEs and larger companies, start-ups and the self-employed. The objective is to help businesses to meet their immediate liquidity needs, face cash flow difficulties, obtain bank loans through state guarantees, and maintain employment.

Other developments

There have also been other developments that have recently affected doing business in Luxembourg.

In the course of the withdrawal of the UK from the EU, several British insurance and reinsurance companies have chosen to establish an entity in Luxembourg. Other companies may also follow this example. The outcome of the negotiations at the end of the transition period will determine to what extent Luxembourg business is affected by the UK leaving the EU.

On 1 March 2019, the law establishing a Luxembourg register of beneficial owners (RBE Act), which transposed Article 30 of the Fourth EU Anti-Money Laundering Directive ((EU) 2015/849). The RBE Act applies to entities registered with the Luxembourg Trade and Companies Register, including civil and commercial companies, branches of foreign companies, Luxembourg common investment funds, and other types of investment funds such as the UCITS, SICAR, RAIF and SIF. There is, nevertheless, an exception for companies whose securities are admitted to trading on a qualifying regulated market (qualifying listed entities). The information to be provided includes the ultimate beneficial owner's first and last name, nationality, date and place of birth, country of residence and national identification or registration number, and the nature and scope of the interest held in the entity. Qualifying listed entities are only required to provide the name of the market on which their securities are traded.

On 21 March 2020, Luxembourg's Parliament adopted the bill transposing the 5th Anti-money laundering Directive (*Directive 2018/843*) into Luxembourg law. In particular, it prevents risks deriving from virtual currencies and limits the use of prepaid cards as well as reinforces and harmonises the treatment of high-risk countries in respect of due diligence obligations imposed on professionals.

Bill No 7216B that will implement the EU framework relating to the creation of a register of trusts in Luxembourg will be voted on soon.

Under the Act of 1 August 2019, the Shareholder Act of 24 May 2011 was amended setting out a number of shareholders' rights and aiming to increase long-term shareholder engagement, transposing the Shareholders' Rights Directive II ((EU) 2017/828) (SRD II) into Luxembourg law.

Two other European initiatives will affect doing business in Luxembourg:

- Directive 2019/1151 of 20 June 2019 amending Directive (EU) 2017/1132 on certain aspects of company law (codification).
- Directive 2019/2121 which amends the provisions of Directive (EU) 2017/1132 on cross-border mergers and creates harmonised rules on cross-border.

Bill 6539 of 26 February 2013 on business continuity and the modernisation of bankruptcy law, which is supposed to bring certain changes to Luxembourg insolvency legislation has not been adopted yet. The bill is structured around four guiding principles of prevention, recovery, dissuasion and support. The Preventive Restructuring Frameworks Directive ((EU) 2019/1023) was adopted and must be transposed into Luxembourg law by 17 July 2021. It is expected that the future amendments of Bill 6539 will take into account the requirements of this Directive. The coming months will show if this will be accelerated due to COVID-19.

Luxembourg has implemented the Anti-Tax Avoidance Directive ((EU) 2016/1164).

On 25 March 2020, Luxembourg implemented Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (DAC 6). That law targets certain types of arrangements including those involving certain cross-border deductible payments.

On 30 March 2020, the Luxembourg Finance Minister introduced a bill aimed at implementing EU recommended preventive measures in respect of interest or royalties due or paid to related enterprises established in certain blacklisted countries or territories.

Legal system

2. What is the legal system based on (for example, civil law, common law or a mixture of both)?

Luxembourg has a civil law system based on the Napoleonic Code, which in turn is based on Roman law. Neighbouring countries such as France, Belgium and Germany as well as the EU influence legislative developments in Luxembourg.

Companies are governed by the Act of 10 August 1915, as amended (Companies Act), which draws heavily on Belgian corporate law. The Companies Act was reformed in 2016 to modernise Luxembourg corporate law, and a consolidated version of the Act was published in December 2017, following the renumbering of its articles by way of a Grand Ducal Regulation of 5 December 2017.

Foreign investment

3. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

There are no restrictions on foreign investment. However, in 2019 the EU has already established a framework for the screening of foreign direct investments.

On 25 March 2020, the Commission issued new guidance on foreign investment screening in response to the current COVID-19 crisis. The aim is to preserve EU companies and critical assets, notably in areas such as health, medical research, biotechnology and infrastructures that are essential for security and public order.

Currently, Luxembourg Parliament is examining the proposal of Bill No 7578 of 7 May 2020, which will establish a legal basis for a screening mechanism of foreign investments in Luxembourg.

4. Are there any restrictions on doing business with certain countries or jurisdictions?

Luxembourg is a member state of the EU and various international organisations and complies with the rules they impose.

5. Are there any exchange control or currency regulations?

There are no exchange control or currency regulations. However, under the anti-money laundering rules contained in Article 2(15) of the Act of 12 November 2004 on the fight against money laundering and terrorist financing (Anti-Money-Laundering-Act), identification requirements must be fulfilled when entering into business relations, opening bank accounts or transferring more than EUR10,000.

6. What grants or incentives are available to investors?

Luxembourg offers a wide range of measures to ensure that newly created companies get off to a good start, including:

- Financial support, which may take the form of government grants or medium or long-term loans from the National Credit and Investment Company (*Société nationale de crédit et d'investissement*) (SNCI).
- A favourable tax environment.
- Land made available at favourable rates in industrial zones.
- Business and innovation centres.

Luxembourg also has specialised institutions and a good international network of foreign trade advisors to assist potential investors, including:

- Luxembourg Trade & Invest, the dedicated agency for the economic promotion of Luxembourg.

- Luxembourg Trade and Investment Offices (LTIOs), responsible for promoting foreign trade and prospecting for new investors.
- The Luxembourg Chamber of Commerce, which offers many services to Luxembourg companies and potential investors.
- *Luxembourg for Finance*, which aims to make the financial sector better known to professional parties, potential investors and the media abroad.
- The SNCI, which is a public lender specialising in medium- and long-term financing for Luxembourg-based companies.
- The *Luxembourg Export Credit Agency (Office du Ducroire)*, which supports Luxembourg companies in relation to foreign trade.

Business vehicles

7. What are the most common forms of business vehicle used in your jurisdiction?

Luxembourg law recognises the following eight types of companies, each of which has legal personality distinct from its members:

- Public limited-liability company (*société anonyme*) (SA).
- Private limited-liability company (*société à responsabilité limitée*) (SàRL).
- Simplified joint stock company (*société par actions simplifiée*) (SAS).
- Simplified private limited-liability company (*société à responsabilité limitée simplifiée*) (SàRL-S).
- Limited partnership with share capital (*société en commandite par actions*) (SCA).
- General partnership (*société en nom collectif*) (SENC).
- Standard limited partnership (*société en commandite simple*) (SECS).
- Co-operative company (*société coopérative*) (SC).

Luxembourg also recognises the special limited partnership (*société en commandite spéciale*) (SCSp), which does not have legal personality. Luxembourg has implemented EU legislation allowing for the incorporation of a *Societas Europaea* (SE).

The choice of corporate form depends on both economic considerations and legal considerations. The most common types of legal entities in Luxembourg are the SA and SàRL. The main difference between the two is that the SàRL cannot raise funds from the public through the issuance of shares (although it can issue bonds).

The common law concept of a trust does not exist under Luxembourg law. However, Luxembourg recognises trusts that are validly created in foreign jurisdictions.

8. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, what are the main registration and reporting requirements?

Registration and formation

A public limited-liability company (SA) and a private limited-liability company (SàRL) are formed as soon as their articles of incorporation are executed, but the articles are only enforceable against third parties as from their publication. The articles must be drawn up before a Luxembourg civil law notary.

Article 420-15 of the Companies Act sets out the minimum information that the articles of incorporation of an SA must contain.

The incorporation of an SA and SàRL requires the following steps:

- Checking the availability of the company's proposed name with the Trade and Companies Register (*Registre de Commerce et des Sociétés*) (RCS).
- Opening a bank account for the company, where the minimum share capital must be deposited.
- Obtaining confirmation from the bank, addressed to the notary, that the necessary share capital is available to incorporate the company.
- Gathering anti-money laundering declarations from the company's ultimate beneficial owners.
- Drafting the company's articles of incorporation (with a mandatory translation into German or French).
- Incorporating the company before a Luxembourg notary.
- Releasing the company's share capital on receipt by the bank of confirmation from the notary that the company has been incorporated.
- Registering by the notary of the company's articles of incorporation with the Indirect Tax Administration (*Administration de l'enregistrement et des domaines*) within 15 days from signature.
- Electronic filing of the company's articles of incorporation by the notary with the RCS within one month following signature.
- Publishing of the articles in the electronic compendium of companies and associations (*Recueil électronique des sociétés et associations*) (RESA) (www.rcsl.lu) on the filing date or a date within 15 days of filing selected by the applicant when applying to file.

Depending on the type of business to be conducted by the company, it may also be subject to other legislation, specific requirements and supervision by certain regulatory authorities.

Reporting requirements

Businesses must file their accounting and financial information online with the RCS in accordance with the Act of 19 December 2002 on the Trade and Companies Register and the accounting and annual accounts of companies.

The shareholders' general meeting of a public limited-liability company (SA) must approve the annual accounts, the management report and the report of the auditor (*commissaire aux comptes*) or statutory auditor (*réviseur d'entreprises*) within six months from the end of the company's financial year.

The annual financial statements must be filed within one month after their approval, that is, within seven months from the end of the financial year.

The filing fee for annual financial statements is EUR20 if filed before the deadline. The fee progressively increases to EUR500 in the event of a filing delay of five months or more.

In the context of the COVID-19 crisis, according to Bill No 7541, shareholders general meetings can be held until 30 September 2020 and financial statements can be filed until 31 October 2020.

Share capital

The minimum share capital for SAs is EUR30,000. The share capital must be subscribed in its entirety and at least one-quarter of each share must be paid up on incorporation. There is no maximum share capital. The minimum share capital for SàRLs is EUR12,000.

Non-cash consideration

Shares can be issued in return for contributions other than cash, subject to certain conditions. However, the subscribed capital can only be formed of assets capable of being valued in monetary terms. For example, an undertaking to perform work or supply services cannot form part of the assets. In a SA, contributions other than cash must be paid-up within five years after incorporation and are subject to a valuation report drawn up and issued by an auditor (*réviseur d'entreprise*) to a Luxembourg notary.

Rights attaching to shares

Restrictions on rights attaching to shares. Founder's shares or similar securities can be created in addition to shares that represent capital. Preferred voting and non-voting shares can also be issued, subject to certain conditions. The rights and restrictions attaching to shares must be specified in the articles.

Automatic rights attaching to shares. All shareholders have rights to:

- Attend and vote at shareholders' meetings (except where voting rights are suspended).
- Receive information about the company.
- Protection against dilution in the event of a capital increase in cash (pre-emptive rights to subscribe to new shares in SàRLs exist only if explicitly provided).

- Participate in the profits of the company, through dividends or liquidation proceeds.

In addition, shareholders holding together one-tenth or one-twelfth of the share capital have additional rights provided in the Companies Act and in the Act of 24 May 2011 on shareholders rights in listed companies (as amended).

Minority shareholders may have additional rights under the company's articles of incorporation.

9. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, outline the management structure and key liability issues.

Management structure

Although the Act of 25 August 2006 introduced the possibility for public limited-liability companies to opt for a two-tier board structure, the one-tier board structure remains by far the preferred option in Luxembourg.

In the one-tier system, the company is managed exclusively by a board invested with the broadest powers to act in the name and on behalf of the company. Directors are appointed by the general meeting of shareholders, for a term set by the general meeting of up to six years (this limitation only applies to SAs). Directors can be re-elected and removed from office at any time by the general meeting.

In the two-tier system, the company is managed by two bodies, a management board, entrusted with day-to-day management of the company, and a supervisory board.

The supervisory board's responsibilities include the appointment and permanent supervision of the management board members as well as the inspection of all company transactions. No person can be a member of both the management board and the supervisory board at the same time. Members of the supervisory board can be held liable to the company and third parties, in accordance with the law. However, there is no specific guidance on the supervisory board's members' exercise of their powers.

Management restrictions

Any individual appointed to serve as a company director must have full legal capacity to act. The Companies Act does not contain any requirements on the age, gender, nationality, residence or domicile of directors. However, there are several general requirements:

- Directors who personally contributed to the company's bankruptcy through gross negligence can be banned from holding any management position for a period of one to 20 years.
- Companies with social endeavours or companies that are engaged in a regulatory activity require a business licence, meaning that directors must satisfy specific conditions and display a certain level of professional integrity.

- A company director cannot simultaneously be a civil servant (except with a specific authorisation) or hold any public office as a member of the Luxembourg Government.

The company must have its place of central administration at its registered office in Luxembourg, which means that meetings of the board of directors and shareholders' meetings must be held at the company's registered office.

A legal entity can serve as a director of an SA but must appoint an individual (natural person) to represent it on the board.

On 20 March 2020, a grand ducal regulation was published introducing a number of measures to facilitate board and shareholder meetings during the state of emergency declared due to the COVID-19 crisis. Luxembourg-based companies can organise virtual shareholder meetings, without the shareholder's physical presence, even if the company's articles of association do not provide for this possibility. They may also hold board meetings, even if the articles provide otherwise, without the board member's physical presence being required by circular resolutions; or by video conference or other means of communication allowing the board member to be identified.

According to Bill 7566 it will be possible to also hold such virtual meetings after the state of emergency if they have been convened before the end of the state of emergency at the end of June 2020. This measure may be extended beyond the date of 30 June 2020.

Directors' and officers' liability

Liability for business transactions. The business manager is liable to the company for mismanagement. Mismanagement consists of managerial mistakes that would not have been committed by a reasonably prudent and normally diligent business manager and that could easily have been avoided. Managers are jointly and severally liable to the company and third parties, including individual shareholders, for violation of Luxembourg corporate law or the articles of incorporation.

Liability in the event of bankruptcy. Bankruptcy is not in itself a punishable offence. However, the Commercial Code provides for the liability of a manager who contributed to the insolvency of the company through gross negligence.

During the state of emergency due to the COVID-19 crisis, in the event of a cessation of payments resulting from insufficient liquidity and loss of creditworthiness, the one-month deadline by which the directors of the company must declare its bankruptcy is suspended.

Civil liability. In the event of an error committed by a business manager, the injured party (generally a person that has no contractual relationship with the company) can take legal action against the manager personally based on Article 1382 of the Civil Code. However, in practice the injured party usually brings a case against the company, which usually has more resources.

Criminal liability. Company managers can be held criminally liable if they personally commit fraudulent acts such as abuses of trust, frauds, or violations of the commercial companies legislation or fair trade practices, and so on.

Parent company liability

The parent entity of a commercial company can be ordered to fully pay up shares for which it has subscribed. It can also be exposed to liability if it acts as a de facto manager or if creditors can successfully demonstrate that the

parent company and the bankrupt company should be considered to be the same party, in particular due to a commingling of assets.

Employment

Laws, contracts and permits

10. What are the main laws regulating employment relationships?

Employment relationships (both individual and collective) are mainly governed by the provisions of the Luxembourg Labour Code (Labour Code).

The Labour Code contains mandatory rules that apply to all employment contracts governed by Luxembourg law and to foreign employees working in Luxembourg (for example, in relation to minimum wages, working time, duration of annual leave, and so on). The parties can only derogate from these provisions in the employee's favour, and any clause that aims to restrict the rights of the employee is deemed void.

11. Is a written contract of employment required? If so, what main terms must be included in it? Do any implied terms and/or collective agreements apply to the employment relationship?

Although Luxembourg labour law recognises the validity of an oral contract, it is strongly recommended to conclude a contract in writing, detailing the nature and conditions of the relationship. If no written contract has been signed, the employee can use any means to prove the existence and the content of the contract. However, the Labour Code does not allow this right to the employer.

All written employment contracts must include the following information:

- The identity of the parties.
- The effective start date of employment.
- The place of work or, in the absence of a fixed place of work, a mention of the fact that the employee may be employed at various locations and/or, more specifically, abroad or at the employer's private residence.
- The nature of the job with, if appropriate, a description of the employee's tasks and functions, without prejudice to any subsequent allocation of tasks.

- The duration of the employee's usual daily or weekly working time.
- The employee's usual work schedule.
- The base salary and the index in effect, additional benefits and bonuses, as well as the frequency of payment.
- The duration of paid annual leave.
- The notice period.
- The duration of the trial period (if any).
- Reference to the applicable collective bargaining agreement (if any).
- Reference to the existence and nature of a supplementary pension scheme (if any).
- Any additional clauses or derogations.

A fixed-term employment contract must include the following additional information:

- The reason for which the contract is established.
- The end date of the contract or, if the contract does not stipulate an end date, the minimum duration of employment.
- For a replacement contract, the name of the employee being replaced.
- A renewal clause (if any).

12. Do foreign employees require work permits and/or residency permits?

EU and EFTA

Nationals of EU member states, the European Economic Area (EEA) and Switzerland benefit from freedom of movement and are allowed to work in Luxembourg without a work permit or visa.

Citizens from these countries can stay in Luxembourg for up to three months. For a stay of more than three months, they must either:

- Perform an economic activity.
- Be registered as a student with an approved public or private educational institute.
- Be able to prove that they have sufficient means to support themselves and their family.

After having legally resided in Luxembourg for an uninterrupted period of five years, nationals of an EU member state and members of their family living with them who are also EU citizens can request permanent residence in Luxembourg by submitting a permanent residence permit application to the Immigration Directorate of the Ministry for Foreign and European Affairs.

British citizens will continue to remain considered as EU citizens during the transition period as foreseen by the withdrawal agreement concluded between the UK and the EU (ending 31 December 2020).

Non-EU citizens

Luxembourg immigration rules apply to nationals from non-EU countries.

Before applying for a visa, a third-country national must apply for a temporary authorisation to stay. The authorisation is valid for 90 days.

Non-EU nationals who are not subject to visa requirements can enter Luxembourg with their authorisation to stay and a valid passport. Non-EU nationals subject to a visa requirement must submit a long-stay visa (visa D) application and present their temporary authorisation to stay. A type D visa costs between EUR35 and EUR50 and is required for either:

- A stay of more than three months (a type D visa allows a stay of between 90 days and one year).
- A stay of less than three months to conduct a paid activity in Luxembourg.

The declaration of arrival together with the temporary authorisation to stay constitute a valid work permit and authorisation to stay until a residence permit is issued.

Non-EU workers must apply for a residence permit with the Immigration Directorate of the Ministry for Foreign and European Affairs within three months of their entry into Luxembourg. A medical examination is required for the application. It usually takes two to three months to obtain a residence permit.

A residence permit takes the form of a chip card containing biometric data, including the work permit. The first residence permit for a salaried worker is valid for a maximum of one year, for a single profession and sector. As from the first renewal, the residence permit is renewable for a maximum period of three years and gives its holder access to any sector and profession.

Non-EU nationals who are "highly qualified workers" can apply for a specific residence permit called an "EU Blue card".

To be qualified as a "highly qualified worker", a non-EU national must satisfy the following conditions:

- Have an employment contract for a minimum period of one year for highly qualified work.
- Have an offer for a remuneration at least equivalent to:
 - 150% of the amount of the Luxembourg average gross annual salary;
 - 120% of the amount of the Luxembourg average gross annual salary for a particular type of necessary work (for example, mathematicians, system analysts, and software developers);

- Possess a document showing the high professional qualification required.

The EU Blue card is valid for four years or, if the employment contract has a validity period of less than four years, for the duration of the employment contract. During the first two years, the EU Blue card is only valid for specific professions in specific sector.

Non-EU nationals who have lawfully resided in Luxembourg for an uninterrupted period of at least five years can apply for long-term resident status.

Termination and redundancy

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

Management representation. Public limited-liability companies (SAs) incorporated under Luxembourg law must be managed by a board of directors or supervisory board consisting of at least one-third employees if the company has employed 1,000 people or more over the past three years, or the company has benefitted from state investment.

Consultation. Employees are represented by employee representatives and the works council.

Employee representative(s). Companies employing at least 15 employees for a period of 12 consecutive months or more must have employee representatives. The representatives have a duty to protect the employees' interests and must be consulted on, or informed of, among other things, the:

- Structure of the business and its activities.
- Organisation of work and employment conditions.

The employee representatives must also be provided, at least once a year, with a business activity report if the company employed less than 150 people during the 12-month period preceding the first day of posting of the notice of elections.

In addition, in the event of a transfer of the undertaking, the transferor and the transferee must inform the employee representatives (or the works council) of the:

- Proposed date of the transfer.
- Reasons for the transfer.
- Legal, economic and social implications of the transfer.

- Measures being considered with regard to the employees.

14. How is the termination of individual employment contracts regulated?

General rules on dismissals

The termination formalities for employment contracts vary depending on whether the contract is fixed-term or open-ended.

A fixed-term contract can only be terminated before expiry of its term for gross misconduct by one of the parties (except during the trial period, (*see below*)).

Open-ended employment contracts concluded for an indefinite period can be terminated as follows.

During the trial period, the parties can terminate the employment contract without compensation. Neither the employer nor the employee need to indicate the reason for termination. The terminating party must respect a notice period that depends on the duration of the trial period, as stipulated in the employment contract (or determined by collective agreement where applicable).

After the trial period, an employer that dismisses an employee for reasons other than serious misconduct must grant a notice period and, if the employee has been employed by the employer for five years or more, severance pay. If the business employs at least 150 people, it must conduct a pre-dismissal interview with the employee. Businesses with at least 15 employees must also notify the Economic Committee (*Comité de conjuncture*) of each dismissal for reasons unrelated to the employee's person. To be valid, the notice of dismissal must be sent by registered mail or hand delivered, with an acknowledgement of receipt by the employee.

The employer must respect the following notice periods:

- For seniority of less than five years: two months.
- For seniority between five and ten years: four months.
- For seniority in excess of ten years: six months.

An employer can dismiss an employee with immediate effect if the employee has engaged in misconduct that renders continuation of the parties' relationship definitively and immediately impossible. The dismissal of an employee without notice for serious misconduct must take place, as a general rule, within one month following the date on which the employer first learns of the misconduct. For this type of dismissal, the employer does not need to provide a severance package.

An employee does not have to state the reasons for their departure in the resignation letter or afterwards. The notice period required in the event of resignation by the employee is half that applicable in the case of dismissal by the

employer (*see above*), except in the case of resignation with immediate effect due to serious misconduct by the employer.

Mandatory limitations on dismissal

The following employees, among others, enjoy special protection against termination of their employment:

- Pregnant women (provided the pregnancy has been medically confirmed), both during the pregnancy and for a maximum period of 12 weeks following the birth of the child.
- Employees on parental leave.
- Sick or injured employees, to a certain extent.
- Employee representatives and alternates.

Remedies

Employees can apply to the court for damages or annulment, depending on the breach, if any of these rules are not complied with, such as where:

- There was a failure by the employer to provide the employee with detailed reasons for their dismissal, as required by law.
- There was a lack of valid grounds for the dismissal (that is, the reasons were not real or serious enough).
- The dismissed employee benefitted from statutory protection against dismissal.

15. Are redundancies and mass layoffs regulated?

Collective redundancy procedure

For the collective redundancy procedure to be applicable, the layoffs must:

- Be based on economic grounds rather than reasons inherent to the employees.
- Affect at least seven employees over a period of 30 days or 15 employees over a period of 90 days.

All other terminations of employment contracts by the employer for reasons that have nothing to do with the employee's person, such as negotiated voluntary departures, early retirement, and special invalidity schemes, are treated as redundancies. However, the collective redundancy procedure only applies where the overall terminations are composed of at least four dismissals.

In the event of a collective redundancy, the employer must:

- Inform the employee representatives or, if the business regularly employs less than 15 people, the employees directly and the trade union that signed the collective bargaining agreement, if any.
- Inform the National Employment Office (*Agence pour le développement de l'emploi*).
- Negotiate a redundancy plan with the employee representatives.
- Implement the redundancy plan, if any.
- Liaise with the Economic Committee (*Comité de conjoncture*) to obtain the tax exemption for voluntary departures and severance pay.

The length of the notice period is extended in the event of a collective redundancy, as follows:

- Employees with less than five years' seniority: 75 days' notice (which can be extended to 90 days by the Ministry of Employment).
- Employees with seniority between five and ten years: four months' notice.
- Employees with ten years' seniority or more: six months' notice.

Tax

Taxes on employment

16. In what circumstances is an employee taxed in your jurisdiction and what criteria are used?

Employees who are residents of Luxembourg for tax purposes are subject to tax on their worldwide income. An individual is a tax resident of Luxembourg when they have their tax domicile or habitual place of residence in Luxembourg. A tax domicile requires the individual to have a dwelling at their disposal in Luxembourg (as an owner, tenant, and so on) that they intend to use and keep. The habitual place of residence requires predominant physical presence (not a temporary stay) and is considered to be in Luxembourg when the individual stays in Luxembourg for more than six consecutive months.

An individual is considered a non-tax resident of Luxembourg if they have neither their tax domicile nor habitual place of residence in Luxembourg and if they have Luxembourg-sourced income within the meaning of Article 156 of the Income Tax Law. Employment income is deemed to have its source in Luxembourg if:

- The employment is or was exercised in Luxembourg,

- The employment is or was promoted (*mis en valeur*) in Luxembourg, unless the employee works for a wholesaler, an industrial enterprise or a transport enterprise and can prove that their Luxembourg remuneration is subject to a foreign income tax corresponding to the Luxembourg income tax on such employment income.

The bilateral tax treaties concluded by Luxembourg are generally in line with Article 15 of the OECD Model Convention, so that the remuneration of a non-resident employee is taxable only in their country of residence unless the employment is exercised in Luxembourg, in which case the remuneration derived in Luxembourg can be taxed in Luxembourg. However, income from employment in Luxembourg is taxable in the employee's country of residence if the 183-day rule is met.

17. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?

Tax resident employees

The income tax rates vary from 0% to 42%, plus a 7% to 9% unemployment fund contribution. A maximum rate of 45.78% applies to taxable income in excess of EUR200,004 for a single employee filing individually.

Luxembourg essentially takes into account the marital status of the employee and the existence of dependent children in determining the applicable income tax regime and conditions. A tax resident may have to make tax pre-payments.

An income tax return must be filed annually (except in certain cases) by 31 March of the year following that to which the income relates. It is usually possible to obtain an extension. Due to the COVID-19 crisis, the deadline for the submission of the income tax return for the year 2019 has been extended until 30 June 2020 (instead of 31 March 2020).

The tax due is payable no later than one month from receipt of the assessment.

In Luxembourg, both employers and employees are subject to social security contributions, but the employer is responsible for both:

- Withholding both contributions as well as a dependency contribution.
- Remitting all contributions as well as satisfying the filing requirement with the *Centre Commun de la Sécurité Sociale* (CCSS) each month.

The employer's contribution ranges from 12.045% and 14.985% of the gross monthly remuneration capped at EUR10,709.97, whereas the employee's contribution is between 10.8% and 11.05% calculated on the same basis. The dependency contribution is equal to 1.4% of the employee's monthly gross remuneration, which is not subject to a cap.

In the event of extra-territorial activities, the applicable social security system may be determined with reference to a bilateral social security agreement or EU Regulations.

Non-tax resident employees

The tax rates and unemployment fund contribution rates applicable to taxable income are the same for all employees, regardless of whether they are a tax resident of Luxembourg.

The tax regime applicable to a non-tax resident essentially depends on the marital status of the employee and the existence of dependent children, and specific conditions may need to be met. A non-tax resident may need to make tax pre-payments.

Non-tax resident employees are subject to similar income tax return filing rules as tax resident employees. However, there are exceptions. Due to the COVID-19 pandemic, the deadline for the submission of the income tax return for the year 2019 has been extended until 30 June 2020 (instead of 31 March 2020).

The tax due is payable no later than one month from receipt of the assessment.

Social security contributions and the dependency contribution for a non-resident employee are calculated, collected and paid as for employees who are residents of Luxembourg. They are subject to the same filing requirement as resident employees.

Non-resident employees may be subject to a bilateral social security agreement or EU Regulations.

Employers

The employer must perform the following actions:

- Withhold tax from the remuneration paid to its employees.
- File a return (generally monthly).
- Remit the withheld tax.
- Provide a salary and withholding certificate annually.

Business vehicles

18. When is a business vehicle subject to tax in your jurisdiction?

Tax resident business

A collective entity (*organisme à caractère collectif*) is a tax resident of Luxembourg if it has its registered office or place of central administration in Luxembourg (business vehicles that are transparent for tax purposes are not covered here).

Non-tax resident business

In general, a non-tax resident collective entity is subject to tax in Luxembourg on its business income realised directly or indirectly by a permanent establishment or a permanent representative in Luxembourg (subject to certain exceptions). However, a non-tax resident collective entity may be subject to tax in Luxembourg in other cases as well (for example capital gains on the disposal of shares in a Luxembourg collective entity in certain circumstances).

However, reliefs may apply.

19. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction (including tax rates)?

Tax residents

Tax resident collective entities are subject to the following taxes:

- Corporate income tax (CIT).
- Municipal business tax (MBT).
- A contribution to the unemployment fund.
- Net wealth tax (NWT).

CIT applies to worldwide taxable income whereas MBT is territorial in scope. The taxable income for CIT purposes is the starting point used to calculate the MBT and, in specific cases, adjustments may need to be made.

In the absence of any statutory limitation or exclusion (for example, interest limitation rule, anti-hybrid rule), expenses (including financing expenses or depreciations) are deductible for CIT and MBT purposes if they:

- Correspond to actual services rendered.
- Are genuinely incurred in the course of the business ("*les dépenses provoquées exclusivement par l'entreprise*").
- Satisfy the arm's length principle.
- Are not in economic connection with tax exempt income.

On 30 March 2020, the Luxembourg finance minister introduced a bill aimed at implementing EU recommended preventive measures in respect of interest or royalties due or paid to related enterprises established in blacklisted

countries or territories as per the EU list of non-co-operative jurisdictions for tax purposes. The new rules will deny the tax deductibility of interest and royalties due or paid to certain entities in countries or territories such as the Cayman Islands (recently added to the list), unless it can be proven that the transaction to which the interest or royalties relate is carried out for valid commercial reasons reflecting economic reality.

For the tax year 2020, the top CIT rate is 17% when the taxable income exceeds EUR200,000.

The MBT depends on the rate applied by the municipality where the collective entity is established (for Luxembourg-City the rate is 6.75%). Therefore, the combined tax rate in Luxembourg-City is 24.94%, considering 7% contribution to the unemployment fund, 17% CIT and 6.75% MBT.

A 0.5% NWT applies to the unitary value (*valeur unitaire*) (determined as of 1 January) of the collective entity, which essentially corresponds to the difference between the fair market value of its assets (in general) and its liabilities. The unitary value exceeding EUR500 million is subject to a NWT rate of 0.05%. Certain assets can be excluded from the calculation basis (such as qualifying shares and intellectual property rights and tax treaty exclusions). Liabilities in connection with excluded assets are not deductible. Net wealth tax relief is available under certain conditions and within certain limits. A minimum net wealth tax is due in certain cases.

Non-tax residents

Non-tax resident collective entities are subject to CIT and MBT in Luxembourg on their Luxembourg-source income. They are subject to the same CIT and MBT rates as tax resident collective entities. Net wealth tax applies to non-tax resident collective entities. However, they are not subject to the minimum net wealth tax.

A tax resident or non-tax resident collective entity may have to make tax pre-payments.

Due to the COVID-19 crisis, the Luxembourg direct tax authorities have announced that cancellation of pre-payments on CIT and MBT for the first and/or second quarters of 2020 is available under conditions. Although pre-payments on NWT are not covered by this measure.

A tax resident or non-tax resident collective entity must file CIT, MBT and NWT returns. The deadline for filing those returns is 31 May of the year following the financial year closing on 31 December (specific rules apply if the financial year does not close on 31 December). An extension may be granted on request. Due to the COVID-19 crisis, the deadline for the submission of those tax returns for the year 2019 has been extended until 30 June 2020 (instead of 31 May 2020).

The tax due is payable no later than one month from receipt of the assessment.

Due to the COVID-19 crisis, the Luxembourg direct tax authorities have announced that a four-month, interest-free extension for the payment of CIT, MBT and NWT, for taxes due after 29 February 2020 is available under certain conditions, although the extension does not apply to payroll tax. A tax-resident (or non-tax resident) collective entity can be a person subject to VAT, which involves satisfying specific rules (for example, in relation to the filing of returns or remittance of tax). The standard VAT rate is 17%.

Dividends, interest and IP royalties

20. How are the following taxed:

- Dividends paid to foreign corporate shareholders?
- Dividends received from foreign companies?
- Interest paid to foreign corporate shareholders?
- Intellectual property (IP) royalties paid to foreign corporate shareholders?

Dividends paid

Dividends distributed by a tax-resident collective entity to foreign corporate shareholders are in principle subject to a 15% withholding tax. Withholding tax relief may be available under a tax treaty or national law.

An exemption from withholding tax is available if the recipient of the dividend is either a:

- Collective entity as referred to by Article 2 of Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (Parent-Subsidiary Directive) or a permanent establishment of such an entity.
- Fully taxable capital company (*société de capitaux*) resident in Luxembourg or a permanent establishment of such a company.
- Collective entity that is fully taxable to a tax comparable to Luxembourg corporate income tax and resident in a country with which Luxembourg has concluded a tax treaty or the Luxembourg permanent establishment of such an entity.
- Switzerland-resident capital company subject to Swiss corporate tax that does not benefit from an exemption in Switzerland.
- Capital company or a co-operative company resident in the EEA other than an EU member state and fully taxable to a tax comparable to Luxembourg corporate income tax.
- Permanent establishment of a capital company or a co-operative company resident in the EEA other than an EU member state.
- The recipient must also, at the time the dividend is made available, hold or commit to hold, directly or through a tax transparent entity, for an uninterrupted period of at least 12 months a shareholding in the capital of the distributing entity of at least either:
 - 10%.
 - EUR1.2 million in acquisition value.

There is also a specific anti-abuse provision with a defined scope.

Dividends received

Dividends received from a direct shareholding in a subsidiary, or through a tax-transparent entity, by a fully taxable collective entity or a fully taxable capital company that is a tax resident of Luxembourg or a Luxembourg permanent establishment (in certain cases) are exempt from CIT and MBT if the following all apply:

- At the date the dividends are made available the recipient holds or commits to hold the shareholding for an uninterrupted period of at least 12 months.
- During that period, the shareholding in the distributing company does not fall below 10% or the acquisition value of the shareholding does not fall below EUR1.2 million.
- The distributing company is either a:
 - collective entity as referred to by Article 2 of the Parent-Subsidiary Directive;
 - fully taxable Luxembourg-resident capital company; or
 - a non-resident capital company fully taxable to a tax comparable to Luxembourg corporate income tax (the Luxembourg tax authorities generally require that the foreign tax be levied at a rate of at least 8.5%, for the tax year 2020, and be applied to a similar tax base).

There is an "anti-hybrid instrument" intra-EU provision and a specific anti-abuse rule with a defined scope.

A 50% exemption is available under certain conditions.

If dividends received are tax exempt, expenses with a "direct economic connection" to the dividends in a given year are not tax deductible, except to the extent they exceed the amount of the dividends. There are rules on write-downs in connection with the distribution of an exempt dividend.

Interest paid

In principle, no withholding tax is due on interest paid by a tax-resident collective entity to a foreign corporate shareholder. However, a 15% withholding tax applies in certain cases, such as:

- Interest recharacterised as dividends.
- Interest constituting a hidden dividend.
- Profit allocation received as a result of investment in a business referred to in Article 14 of the Income Tax Law by a silent partner whose remuneration is a percentage of the business's profits.
- Interest on a profit-participating bond or similar security, under specific conditions.

A 20% withholding tax applies to interest paid by a paying agent based in Luxembourg to or for the benefit of an individual beneficial owner who is a resident of Luxembourg.

Tax treaty or domestic relief may be available.

IP royalties paid

Generally, no withholding tax is due on royalties. Tax treaty relief may be available.

Groups, affiliates and related parties

21. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

In the absence of specific legal provisions, the thin capitalisation rules follow the arm's-length and abuse of law principles in terms of equity funding.

Administrative practice requires equity funding of at least 15% for a loan granted directly or indirectly by related persons to finance the acquisition of a shareholding or investment in real estate by a tax-resident collective entity (or third-party loan guaranteed by related persons for financing purposes).

For tax years starting on 1 January 2019, the interest limitation rule introduced by the law of 21 December 2018 implementing the Anti-Tax Avoidance Directive ((EU) 2016/1164) can impact the deductibility of interest on either related or unrelated financing.

See also [Question 23](#).

22. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

Other than the potential application of a general anti-abuse rule, for tax years starting from 1 January 2019 there are specific controlled foreign company (CFC) rules further to the Anti-Tax Avoidance Directive, for which guidance has recently been issued.

Provided that certain conditions are met, the undistributed net income of a CFC derived from non-genuine arrangements set up essentially in order to obtain a tax advantage is to be included in the net income of a Luxembourg resident-parent company.

23. Are there any transfer pricing rules?

Luxembourg follows the arm's-length principle as interpreted by the OECD (*Articles 56, 56bis and 164.3, Income Tax Law*).

Taxpayers must be able to justify the arm's-length price applied and provide a business rationale for transactions.

A circular on the tax treatment of companies engaged in intra-group financing focuses on, among other issues, the equity at risk and substance requirements. Another circular deals with transactions with associated companies located in non-co-operative countries and territories for tax purposes.

An advance pricing agreement can be requested. A country-by-country report may be required.

There are procedures at international level that can be used to settle disputes.

Customs duties

24. How are imports and exports taxed?

In general, the import of goods into the customs territory of the EU is subject to customs duties, although certain exceptions can apply. Within the EU, goods are subject to VAT rules.

The export of goods outside the customs territory of the EU is not subject to customs duties.

Double tax treaties

25. Is there a wide network of double tax treaties?

Luxembourg has entered into 83 bilateral tax treaties (including with the US, Canada, UK, France, Spain, Italy, China, Hong Kong and Germany).

Luxembourg approved the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Multilateral Instrument) (MLI) in 2019.

Competition

26. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority

Monopolies and restraints on trade are governed by:

- EU competition laws.
- The Luxembourg Competition Act of 23 October 2011, as amended (Competition Act).

The Competition Act empowers the Competition Council (*Conseil de la Concurrence*) as the sole competition authority in Luxembourg. The Competition Council website (<https://concurrence.public.lu/fr.html>) contains information about the Council's decisions and the applicable rules. The site is only available in French but does provide an English translation of the Competition Act.

Luxembourg law does not provide for criminal sanctions for competition law violations, but certain provisions of the Luxembourg Criminal Code may be applicable to such offences.

The current Competition Act will soon be replaced by a new one as a bill No 7479, transposing the Directive (EU) 2019/1 to empower the competition authorities of the member states to be more effective enforcers and to ensure the proper functioning of the internal market, is pending. This bill provides the opportunity to adapt and modernise the functioning and procedures applicable to the Luxembourg competition authority. This is especially relevant in relation to cross-border co-operation with other member states' competition authorities. The bill will also enable the competition authority to gain more independence by becoming a public entity and will be renamed "l'Autorité de concurrence du Grand-Duché de Luxembourg".

In relation to the bill, the following rules on restrictive agreements and practices and unilateral conduct are unlikely to change.

Restrictive agreements and practices

The Competition Act prohibits certain anti-competitive practices including price-fixing and concerted practices.

Under Article 2 of the Competition Act, the price of goods, products and services must be freely determined by the market. However, in certain circumstances, such as where the structure of the market prevents price competition, prices or margins may be fixed by means of a Grand Ducal regulation.

Article 3 of the Competition Act prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices that have as their object or effect the prevention, realisation or distortion of competition on the market.

Article 4 of the Competition Act provides for a number of exceptions to Article 3.

Unilateral conduct

Article 5 of the Competition Act prohibits abuse of a dominant position on the market by one or more undertakings.

27. Are mergers and acquisitions subject to merger control?

Luxembourg does not have merger control legislation, and the Competition Act contains no specific provisions on mergers. There is no prior merger control procedure under Luxembourg law.

However, Article 3 of the Competition Act prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices that have as their object or effect the prevention, restriction or distortion of competition. In addition, mergers and acquisitions and the behaviour of the parties involved may also be subject to control after the fact by the Competition Council under Article 5 of the Competition Act.

In its 2016 *Utopia* decision, the Competition Council confirmed its authority, through reliance on the provisions prohibiting abuse of a dominant position at the national and EU level, to exercise after the fact control of concentrations that strengthen an existing dominant position. This decision reignited the debate among specialists on the need for Luxembourg merger control rules. Ultimately, the Minister of the Economy confirmed in 2016 that the government does not intend to introduce such rules.

Sector-specific rules can apply, for example, to credit institutions under the Financial Sector Act of 5 April 1993.

Intellectual property

28. Outline the main IP rights in your jurisdiction.

Patents

Definition and legal requirements. A patent is an industrial property right granted by the Ministry of the Economy. It is intended to protect new inventions capable of industrial application. Since the entry into force of

the amendments to the Act of 20 July 1992 introduced by the Act of 7 April 2006, biotech inventions also qualify for patent protection.

To be patentable, an invention must:

- Be new (that is, not be included in the state of the art).
- Involve an inventive step (meaning a person skilled in the field, using the state of the art, would not be able to easily develop the invention).
- Have an industrial application (that is, be a technical solution to a technical problem).
- Not be expressly excluded from patent protection.

A patent grants an exclusive right to its holder or beneficiary to exploit the invention and protects the holder against the production, distribution or sale of the invention by a third party without their prior consent.

Registration. The applicant must submit an application for a national patent to the Intellectual Property Office (*Office de la propriété intellectuelle*) (OPI) at the Ministry of the Economy (*Ministère de l'Economie*). Information about the application process can be found at <https://guichet.public.lu/en/entreprises/gestion-juridique-comptabilite/propriete-intellectuelle/propriete-industrielle/brevet.html>.

An inventor who files a patent application in Luxembourg can also file an application in other EU member states, and benefits from a 12-month right of priority as from the filing date of the Luxembourg application.

The applicant can also apply to the European Patent Office (EPO) for a European patent covering up to 38 countries on the European continent. A European patent is a bundling of national patents and serves the purpose of simplifying the application process when wanting to obtain protection in several European countries. In the designated countries, a European patent has the same legal status as a national patent.

The applicant can also apply for an international patent with the World Intellectual Property Organisation (WIPO) under the Patent Cooperation Treaty 1970 (PCT).

Enforcement and remedies. The owner of a patent or, if the owner fails to act, any other person with a licence to use the patent can take action for infringement. If there is sufficient proof, the Luxembourg District Court will issue an injunction intended to put a stop to the infringement. It can also order the confiscation or destruction of goods and award damages.

Length of protection. In return for disclosing the invention, the state grants the inventor sole rights to use it for a maximum period of 20 years from the date of filing of the patent.

Trade marks

Definition and legal requirements. A trade mark is a distinctive sign that enables customers to distinguish a particular undertaking's products and services from those of a competitor.

A trade mark refers to the identity of a product or service and can take various forms. A trade mark can be constituted by any graphic representation that serves to distinguish the products or services of a business from those of a competitor. The following types of trade marks are recognised, among others:

- Word trade marks.
- Figurative trade marks.
- Trade marks combining figurative and word elements.
- Three-dimensional trade marks.

A trade mark bestows on its holder an exclusive right to exploit the trade mark in countries where the trade mark is registered. The holder can prevent third parties who did not obtain consent from using a sign in the course of trade that:

- Could confuse the public as to the origin of the goods and services in question due to its identity or similarity with the prior trade mark as well as the identity or similarity of the goods and services in question.
- Is identical with, or similar to, the prior trade mark in relation to goods or services, irrespective of whether these are similar to those for which the trade mark is registered, where the prior trade mark has a reputation and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark.

Protection. Trade marks are protected in Luxembourg by:

- Regulation (EU) 2017/1001 on the European Union trade mark
- The Benelux Convention on Intellectual Property of 25 February 2005, implemented in Luxembourg by the Act of 16 May 2006.

In the Benelux region, national registration no longer exists, and trade mark protection extends to all three countries. A trade mark can be registered with the national trade mark office in the relevant Benelux country or with the Benelux Office for Intellectual Property (BOIP), based in The Hague. In Luxembourg, the national office is the Intellectual Property Division of the Ministry of the Economy, which provides information about the application procedure on its website (www.innovation.public.lu).

In addition, if a company's business extends throughout Europe, it is possible to apply for an EU trade mark, which affords full protection throughout the EU. The standard fee to register an EU trade mark, valid for three classes, is between EUR900 and EUR1,050.

Enforcement and remedies. If the holder of an earlier Benelux trade mark believes that a recently filed trade mark infringes its rights, it can initiate an opposition procedure before the BOIP.

On 17 December 2016, the Luxembourg legislature ratified two protocols signed in May and December 2014 amending the Benelux Convention on Intellectual Property.

The major amendments introduced by these protocols are as follows:

- The Benelux Court of Justice has exclusive jurisdiction to hear appeals against decisions issued by the BOIP as from 1 June 2018.

- An administrative procedure for revocation or a declaration of invalidity has been introduced before the BOIP for Benelux trade marks and international trade marks designating the Benelux, for specific grounds listed in the Benelux Convention.

The holder of a trade mark can also consider:

- Proceedings on the merits before the Luxembourg District Court to obtain, or example:
 - the cessation of the infringement;
 - damages for infringement of its rights, provided it can prove actual harm;
 - destruction of the infringing goods or their recall or definitive removal from trade;
 - the disclosure of information regarding the origin and distribution channels of the infringing goods;
 - confiscation of the profits from unauthorised use of the trade mark.
- Summary proceedings before the president of the Luxembourg District Court to request, for example, an injunction and possibly a penalty to prevent infringement.

Length of protection and renewability. In general, a trade mark is registered for a certain class of goods or services for a period of ten years from the date of filing, renewable indefinitely.

Registered designs

Definition. A drawing or design refers to the visual and aesthetic appearance of a product, such as its shape, layout or texture, and in general any ornamental aspect that does not result from functional considerations. Drawings are two-dimensional representations whereas designs are three-dimensional representations or objects. A registered drawing or design can provide appropriate protection where the visual aspect of the product forms an integral part of its image.

To be eligible for registration, the drawing or design must:

- Have the appearance of an industrial or handicraft product or part thereof.
- Be new.
- Have an individual character resulting from the lines, contours, colours, shape, texture or materials of the product itself or its ornamentation.

It is possible to register as an industrial drawing or design any characteristic that is linked solely to the visual aspect of the product rather than to its functionality or to the fact that it can be fitted or matched to another product of a more complex nature.

Purely decorative objects that do not serve a useful purpose and immaterial ideas are excluded from protection.

The owner of a registered design has an exclusive right over its use in products in which the design is incorporated, including designs which are similar or appear identical to the registered design.

Registration. There are two types of registration:

- Simple design application (for registration of a single drawing or design).
- Multiple design application (for several drawings or designs that apply to objects in the same class under the International Classification for Industrial Designs).

A drawing or design can be protected in one or more countries at the same time. In the Benelux, national registration no longer exists, and protection covers all three countries. Registering a simple drawing or design costs EUR150 plus EUR42 for adding characteristic features.

It is also possible to obtain protection outside the Benelux, in all EU countries. The fee for a single application to the European Intellectual Property Office is EUR350.

If the applicant intends to market its product outside the EU, it must register the creation with the World Intellectual Property Organisation (WIPO). Fees vary depending on the countries where the design is to be protected.

Enforcement and remedies. The holder of a design can bring either:

- Proceedings on the merits before the Luxembourg District Court to obtain, for example:
 - the cessation of the infringement;
 - damages for infringement of its rights, provided it can prove actual harm;
 - destruction of the infringing goods or their recall or definitive removal from trade;
 - the disclosure of information regarding the origin and distribution channels of the infringing goods;
 - confiscation of the profits from unauthorised use of the design.
- Summary proceedings before the president of the Luxembourg District Court, for example to request an injunction and possibly a penalty to prevent infringement.

Length of protection and renewability. The maximum period of protection is 25 years in the EU, with an initial five-year duration as from the date of filing, and the added option to renew it up to four times.

Unregistered designs

Definition and legal requirements. Regulation (EC) 6/2002 on Community designs (Community Designs Regulation) grants a limited protection to unregistered designs. The holder of an unregistered design has the right to prevent the unauthorised use of the design, but only if the contested use results from the copying of the protected design. Registration of a design is therefore still recommended.

Enforcement and remedies. The remedies and are the same as for registered designs.

Length of protection. An unregistered design is protected for three years as from the date the design was first made available to the public within the EU.

Copyright

Definition and legal requirements. Copyright and related rights in Luxembourg are governed by the Act of 18 April 2001 on copyright, related rights and databases, as amended (Copyright Act).

Copyright refers to the rights granted to the creator of an original literary or artistic work.

All creators of original works are automatically protected by copyright. The copyright holder has an exclusive right and can oppose the amendment or alternation of its work as well as the reproduction, disclosure or communication to the public of the work without its consent.

However, certain exceptions apply. In this regard, the Copyright Act was amended by the law of 3 April 2020 transposing the Directive (EU) 2017/1564 that provides for additional permitted uses of certain works for the benefit of persons who are blind, visually impaired or otherwise print-disabled.

Further amendments of the Copyright Act are soon to be expected as the following EU directives need to be transposed into national law by 7 June 2021:

- Directive (EU) 2019/789 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes.
- Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market (the Digital Copyright Directive Directive (EU) which is aimed, amongst other things, at providing a framework for the use of protected content in relation with online content-sharing services (for example, Facebook, Youtube and Spotify).

Protection. Protection arises automatically, without registration being required, as from the time the work is created. To be protected by copyright, the literary, scientific or artistic work, including computer programmes and databases, must have a sufficiently original character, and a concrete shape (thus excluding ideas or concepts). Proof of the date of creation of the work can be provided by any means necessary.

Enforcement and remedies. The civil remedies available are similar to those for trade marks and designs. Criminal sanctions (such as fines or a prison term) are also available to the extent that the copyright infringement is committed in the course of trade with malicious or fraudulent intent. The same is true for putting into circulation the work of an author without authorisation. Such copyright infringement constitutes the criminal offence of counterfeiting and is sanctioned with a monetary fine of up to EUR250,000. Additional sanctions can also be imposed, such as confiscation or destruction of the counterfeit goods or, in the event of repeated infringement, imprisonment of up to two years.

Length of protection and renewability. The protection is valid throughout the creator's life plus another 70 years from their death, thereby benefitting the creator's heirs and beneficiaries. The right holder can transfer all or a portion of the rights, for example by granting a licence to use the work.

Trade secrets

Definition and legal requirements. Although trade secrets and confidential information are not considered to be intellectual property as such, Luxembourg law provides for a similar protection. The Luxembourg Act of 26 June 2019 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (Trade Secret Act) transposes the Trade Secrets Directive ((EU) 2016/943). The

protection offered by this law is particularly interesting for companies holding information that has a significant commercial value but does not meet the conditions to be protected by intellectual property or that simply needs to preserve its confidential nature by voluntarily avoiding its registration.

All kind of information can benefit from trade secret protection without any registration being required provided that the following cumulative requirements are met:

- The information cannot be generally known among or readily accessible to persons normally dealing with such information.
- The information has a commercial value due to its secret character.
- The lawful holder of the information took appropriate measures depending on the circumstances to protect its secret character.

Protection. Once the information is protected, the acquisition, use or disclosure of that information without the consent of the trade secret holder will generally be considered as unlawful.

However, in some exceptional cases, the acquisition of the information under protection is allowed. To benefit from such exception, the trade secret must have been acquired under specific circumstances, such as, for instance, an independent discovery or creation or the study or disassembly of a product publicly or lawfully available (that is, typically reverse engineering).

Enforcement and remedies. The holder of a trade secret has a number of proceedings and remedies at its disposal laid down in the Trade Secret Act. The latter can bring either:

- Proceedings on the merits before the Luxembourg District Court to obtain:
 - the cessation or prohibition of use/disclosure of the trade secret;
 - the prohibition to produce, offer or sell the infringing goods, as well as to import, export or stock them;
 - destruction of the infringing goods or their recall or definitive removal from trade;
 - destruction of all or part of all kind of documents, objects, electronic files containing or mainly consisting of the trade secret;
 - damages for infringement of its rights, provided it can prove actual harm
- Summary proceedings before the President of the Luxembourg District Court in order to impose provisional and protective measures against the infringer (for example, seizure of the suspected infringing goods).

However, Article 5 of the Trade Secret Act provides for derogations under which such proceedings will be deemed ineffective. For example, where the alleged acquisition, use or disclosure is linked to the exercise of the fundamental right to freedom of expression and information or was necessary to reveal a wrongdoing or illegal activity.

Length of protection. Trade secret protection is not limited in time and may continue as long as the secret is not publicly revealed. However, the trade secret holder has to introduce the above proceedings within two years from the discovery of the unlawful acquisition, use or disclosure.

Other

Other IP rights covered by the Copyright Act of 18 April 2001 include protection for:

- Software.
- Databases.
- Domain names.
- Related rights for performers, producers of sound recordings and broadcasting organisations.

Marketing agreements

29. Are marketing agreements regulated?

Agency

The Luxembourg Act of 3 June 1994 transposes Directive 86/653/EEC on self-employed commercial agents (Self-employed Agents Directive) and regulates the contractual relationship between agents and principals.

Distribution

There is no specific legislation on distribution agreements. However, there is some case law on this subject. For example, the Luxembourg Court of Appeal has held that the marketing of products in one's own name and for one's own behalf is an essential aspect of a distribution agreement, which distinguishes it from an agency agreement (*Luxembourg Court of Appeal, 6 July 2011, No. 35365*).

The Act of 24 July 2014 on vertical distribution agreements in the automobile industry regulates agreements between suppliers and distributors.

Franchising

There is no specific legislation on franchising, but Luxembourg case law does provide a definition (*Luxembourg District Court, 9 March 1990, No. 37928*)

E-commerce

30. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

The main piece of legislation is the Act of 14 August 2000 on electronic commerce (eCommerce Act) which partially implements:

- Directive 99/93/EC on electronic signatures.
- Directive 97/7/EC on the protection of consumers in respect of distance contracts.
- Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.
- Directive 2002/65/EC on distance marketing.

The eCommerce Act also regulates the sending of unsolicited commercial communications and the liability of online intermediaries that provide "mere conduit", "caching" or "hosting" services.

In a business-to-consumer context, the eCommerce Act is complemented by the Luxembourg Consumer Code, as amended, which sets out further requirements for concluding an electronic contract.

In relation to electronic payment systems, Luxembourg has implemented Directive 2007/64/EC on payment services in the internal market by the Act of 10 November 2009, as amended. This Act was amended by the:

- Act of 20 May 2011, which transposed into national law Directive 2009/110/EC on the taking up, pursuit and supervision of the business of electronic money institutions.
- Act of 10 July 2018, which transposed into national law Directive 2015/2366/EU on payment services in the internal market and repealing Directive 2007/64/EC.

Luxembourg has also implemented Directive 2008/8/EC on the place of supply of services, by the Act of 26 May 2014 amending the Act of 12 February 1979 on value added tax.

Luxembourg is one of the first EU member states to provide a statutory framework for the dematerialisation of documents under the Act of 25 July 2015 on electronic archiving, as amended, and its executing Grand Ducal Regulations of 25 July 2015, as amended.

Advertising

31. Outline the regulation of advertising in your jurisdiction.

In a business-to-business and business-to-consumer context:

- Chapter IV (Commercial Communications) of the eCommerce Act, as amended, imposes an obligation of transparency in relation to commercial communications and sets out restrictions on unsolicited commercial communications.
- Chapter II of the Act of 23 December 2016 prohibits misleading advertising and restricts comparative advertising.
- The Act of 27 July 1991 on electronic media contains specific provisions relating to radio and television advertising.

In a business-to-consumer context, Articles L.224-4 and 5 (advertising in relation to consumer credits) and Articles L.226-5 and 6 (advertising in relation to mortgages) of the Luxembourg Consumer Code, as modified, apply.

Data protection

32. Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

Any processing of personal data is governed by the General Data Protection Regulation (GDPR), which applies directly in Luxembourg since 25 May 2018. The GDPR is nevertheless implemented and complemented by Luxembourg legislation that was adopted and published on 1 August 2018. The content of the legislation extends to rules on the functioning and enforcement powers of the Luxembourg National Commission for Data Protection and on the following types of processing:

- Processing of sensitive data, including health data in particular.
- Processing for journalistic purposes.
- Processing for scientific and historical research and for statistical purposes.
- Processing for monitoring in a working relationship.

To the extent that the processing of personal data takes place in the e-communications sector, these rules are complemented by specific rules set out in the Act of 30 May 2005 on ePrivacy, as amended. In the future the Act may be replaced by the pending EU ePrivacy Regulation which will apply directly in Luxembourg.

Product liability

33. How is product liability and product safety regulated?

Product liability is governed by the Product Liability Act of 21 April 1989, as amended. According to this Act, a claimant must establish:

- The damage.
- The defective character of the product.
- A causal link between the two.

A civil action must be brought within three years from the date on which the claimant became aware, or should reasonably have become aware, of the:

- Damage.
- Defect.
- Identity of the producer.

If the concerned defective product has been on the market for more than ten years, no claim can be brought unless legal proceedings have already been introduced.

The General Product Safety Act of 31 July 2006 provides that producers must place only safe products on the market and must provide consumers with the relevant information to enable them to assess the risks inherent in a product. Violations of this legislation can be subject to a criminal fine ranging from EUR251 to EUR25,000. The Luxembourg Institute for Standardisation, Accreditation, Security and Quality of Products and Services (ILNAS) has authority to monitor the general safety of consumer products under this Act.

Other legislation applies to specific sectors.

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Areas of practice. Cross-border corporate transactions; mergers and acquisitions; joint ventures and international corporate restructurings; corporate finance; corporate governance.

Languages. English, Dutch, French, German

Professional associations/memberships. International Bar Association (IBA); European Private Equity and Venture Capital Association (ECVA); Duke Alumni Association.

Publications. Frequent writer and speaker. Published various books and articles include:

- "The Shareholders Rights & Activism – Edition 3" (The Law Reviews, 2018)
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Areas of practice. International tax law; tax aspects of investment funds; private equity; real estate; M&A and structured finance transactions; taxation of intellectual property; tax advice to high net-worth individuals.

Languages. French, English, German

Professional associations/memberships. International Fiscal Association (IFA); American Bar Association (ABA);

Publications. Author of numerous publications. Regularly holds training seminars for Kluwer on taxation aspects of structured finance transactions. Frequently gives presentations at conferences, for example on cross-border real estate investments in Europe or international tax issues in cross-border corporate finance and capital markets.

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Areas of practice. IP; trade practices; e-commerce; e-archiving, data protection; IT outsourcing; IP portfolio structuring.

Languages. English, Dutch, French, German, Luxembourgish

Professional associations/memberships. Luxembourg association of IT professionals (APSI); International Association for the Protection of Intellectual Property (AIPPI); French-Luxembourg organisation of archiving professionals (FedIsa)

Publications. Author of numerous publications and is regularly speaking at conferences and seminars. Leads a regular IP/IT-dedicated section in the Luxembourg business journal *Agefi*.

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Areas of practice. Arbitration; corporate disputes; litigation; insolvency; Luxembourg and European labour law.

Languages. French, English; good knowledge of Spanish

Professional associations/memberships. *Comité Français de l'Arbitrage* (CFA), *t Association pour la Protection des Données au Luxembourg* (APDL); Think Tank de Arbitrage

Publications. A regular speaker at international courses and workshops and a contributor to numerous publications on litigation and arbitration in Luxembourg

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