



ICLG

The International Comparative Legal Guide to:

Corporate Immigration 2018

5th Edition

A practical cross-border insight into corporate immigration law

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Luxembourg

Moyal & Simon

Joram Moyal



1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

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

In addition, the following laws and regulations apply:

- Law of 8 March 2017 on Luxembourgish Nationality.
- The Labour Code.
- Grand Ducal regulation of 5 September 2008 laying down the criteria for resources and accommodation provided by the Immigration Law.
- Grand Ducal Regulation of 5 September 2008 on the statement of acceptance of responsibility for a foreigner under section 4 of the Immigration Law.
- Grand Ducal regulation of 5 September 2008 fixing the conditions and procedures for the issuance of a residence permit as an employee.
- Grand Ducal regulation of 26 September 2008 determining the minimum level of remuneration for a highly qualified worker in execution of the Immigration Law.
- Grand Ducal regulation of 14 November 2008 determining the granting of approval procedures for research organisations referred to in Article 65, paragraph (4) of the Immigration Law.
- Grand Ducal Regulation of 3 February 2009 concerning the medical examination of foreigners.

EU-related regulations such as, but not limited to, the Visa Code (Regulation 810/2009), the Schengen Borders Code and the Regulations on the Coordination of Social Security Systems (883/2004 and 987/200) are binding on Luxembourg.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

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

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

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Luxembourg is part of the European Union, which guarantees freedom of movement to EU citizens.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Business visitors who come to Luxembourg on a business trip do not have to get a work or residence permit.

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

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

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

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

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

The application must be accompanied by the following documents:

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

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

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

The maximum period for which business visitors can enter Luxembourg is 90 days over an 180-day period.

2.3 What activities are business visitors able to undertake?

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

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

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

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

No, not without a prior authorisation.

2.5 Can business visitors receive short-term training?

This is not recognised by the law, only the activities carried out in question 2.3 are allowed.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

Luxembourg is a very multinational environment, thus it is rare for employers not to employ foreign nationals. Controls are mainly done by the Work Inspectorate (*Inspection du Travail et des Mines*) and the Ministry of Foreign Affairs.

3.2 What are the rules on the prevention of illegal working?

The employer is responsible for making sure that his employees are authorised to work, and must make sure that they carry their work permit with them during work.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

Employers who illegally employ foreign nationals without a work permit may face criminal and civil sanctions. Criminal sanctions can be (1) personal and (2) corporate. In a worst case scenario they could lead up to the forced liquidation of the company.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

No. There is no system of registration for hiring foreign nationals.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

With regard to seconded workers, employers have to:

- Report the identity of the workers employed to the work inspection.
- Provide a guarantee to be jointly liable with the sponsored employee to cover living expenses, including medical expenses, and travel expenses to repatriate the person to his home country incurred by the Luxembourg State.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

No, employers are not required to up-skill local workers.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

No, employers are not required to pay government charges or fees which contribute to the training or up-skilling of local workers.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

The work inspection will routinely check any employer and their compliance with the labour law and immigration rules.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

No. However, highly skilled professionals can obtain a work permit without having to undergo a labour market test.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

No. Highly skilled professionals may, under the condition of a job offer, be of any sector, as long as the applicant fulfils the conditions of a highly skilled professional.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

No, there are no annual quotas for employment-related work permits and visas.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

No, there are no restrictions.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No. However, the ministry may refuse to grant a work permit if it is clear that the candidate will not be able to cope with the job missing these language skills.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Yes, passing a medical examination is a condition of receiving the final residence permit. The medical examination will be done in Luxembourg by accredited doctors after a preliminary permit is granted. Please note that medical examinations are standard for taking any employment in Luxembourg, foreign national or not.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Any person living in Luxembourg must have health insurance. Third-country nationals will be required to provide proof of a private health insurance before entering the country. Employees working in Luxembourg will then have to pay into the state social health and pension insurance (*Caisse Commune de la Sécurité Sociale*). Under some conditions, seconded workers that stay on the payroll of their posting employer may be exempted from the state insurance if they provide proof of sufficient healthcare cover.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Under certain conditions, yes. However, the employee needs, in any case, to remain employed by their original employer.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

Highly skilled individuals would generally acquire a permit under the EU Blue card scheme (Law of 29 August 2008 on the freedom of movement and immigration (Immigration Law)).

(a) To obtain an EU blue card, the applicant must:

- Have had an employment contract for a highly qualified job (as defined by the Immigration Law) with a minimum duration of one year.
 - Provide evidence that he/she possesses the relevant high professional qualifications for the activity/sector in the employment contract.
 - Earn at least 69,858 euros (the current annual salary set by a Grand-Ducal Regulation).
- (b) Luxembourg will give priority to requests from certain professions in the telecommunications and information sectors in which the government considers there is a shortage of qualified workforce, such as:
- Mathematicians.
 - Actuaries and statisticians.
 - Systems analysts.
 - Software developers.
 - Web and multimedia developers.
 - Applications programmers and software and applications developers and analysts not classified elsewhere.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into your jurisdiction?

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

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

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

The intended activity has to serve the economic interest of Luxembourg.

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

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

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

In addition, there is the possibility for quality investors to obtain a work and resident permit in Luxembourg.

Here a residence permit will be granted to any investors from any third-country nation:

- who will invest at least 500,000 euros in an existing company, having its registered office in the Grand Duchy of Luxembourg, while committing to maintain the investment for at least five years;
- who will invest at least 500,000 euros in a company to be created, having its registered Head Office in the Grand Duchy of Luxembourg, and having a commercial or artisanal activity

with the commitment to create at least five jobs to be filled in collaboration with ADEM (Unemployment Agency) within three years of the creation of the company;

- who will invest at least three million euros in an existing or future investment and management structure with its registered Head Office in the Grand Duchy of Luxembourg and maintaining locally an appropriate structure; or
- who will invest at least 20 million euros in the form of a deposit in a Luxembourgish financial institution with the commitment to maintain this investment for a minimum period of five years.

Real estate investments are excluded from the eligibility criteria.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Under the new ICT Card, temporary permits may be granted for trainees in the framework of an exchange within a group of companies.

Other non-economic purposes permits are granted to sportsmen, au pairs, students and researchers.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform temporary work?

The law of 8 March 2017 introduced the possibility for foreign workers to get a residence and work permit for seasonal work. The applicant must fulfil all the conditions of entry and stay as any other foreign worker. In addition, the activity must be considered as a seasonal activity as established by article 122-1 paragraph (2) point 2 of the Labour Code.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

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

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

The notion of a group of companies is not unheard of under Luxembourg law, and is referred to in different laws and circulars, especially in labour law, accounting law or in the law dated 2 September 2011 regarding business licences.

It is generally accepted that for immigration purposes, a company belongs to a group of companies if it belongs to an economic entity formed of a set of companies which are either companies controlled by the same company, or the controlling company itself. Controlling

a company means having the power to appoint the majority of its directors.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

Luxembourg has implemented Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (ICT).

This category includes managers, specialists and trainee employees who are temporarily seconded for occupational or training purposes by an employer established outside of the EU and to which the third-country national is bound by a work contract prior to and during the transfer, to an entity belonging to the employer or to the same group in Luxembourg.

To obtain this visa the applicant must prove that:

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

8.4 What is the process for obtaining a work permit for an intra-company group employee?

The request must be filed – before the arrival of the applicant in Luxembourg – with the Ministry of Foreign Affairs.

To obtain this permit the applicant must prove that:

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

The applicant must prove that they are employed by the same group of companies.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

There are no special requirements regarding the obtainment of a visa under the intra-company transfer category in comparison to a standard business Schengen Visa.

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

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

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

The application must be accompanied by the following documents:

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

- an official letter of invitation for a business visit;
- a hotel reservation; or
- a return airline ticket.
- Proof of sufficient means of subsistence (such as bank account statements, cash, credit cards and so on).
- Proof of legal residence in the normal country of residence.
- Health insurance covering the travel period.

8.6 How long does the process of obtaining the work permit and initial visa take?

The delay provided by the national legislation for the issuance of authorisations of stay is set to three months as a maximum. Usually processing times are quicker. Times may vary, however. In the summer season, July/August or during the winter break, the administration can often take a full three months to respond.

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

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

Depending on the country/embassy involved, acquiring an appointment to lodge the application might be difficult.

8.7 How long are visas under the “initial” category valid for, and can they be extended?

Please refer to question 8.5.

8.8 Can employees coming under the intra-company transfer route apply for permanent residence?

No. The maximum period to be transferred to Luxembourg is three years.

8.9 What are the main government fees associated with this type of visa?

Governmental fees are 80 euros per application.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

New hires of non-EU foreigners may be typically employed as a direct hire, having to pass the labour market test or as highly qualified professionals under the EU Blue Card Scheme.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

An employer will need to register the job offering with the Luxembourg unemployment agency (ADEM) first before being allowed to hire a third-country national. If no one has applied for the job within three weeks, the employer is free to employ the third-country national.

9.3 Are there any exemptions to carrying out a resident labour market test?

The labour market test is not required for highly skilled professionals applying for a EU Blue Card.

9.4 What is the process for obtaining a work permit for a new hire?

After successful approval of the labour market test, the application will be filed with the ministry.

9.5 What is the process for the employee to obtain a visa as a new hire?

See question 8.5.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

See question 8.6.

9.7 How long are initial visas for new hires granted for and can they be extended?

See question 8.5.

9.8 Is labour market testing required when the employee extends their residence?

No, labour market testing is only required for the initial hire.

9.9 Can employees coming as new hires apply for permanent residence?

No, permanent residency will only be granted after five years.

9.10 What are the main government fees associated with this type of visa?

The main government fees associated with this type of visa is 80 euros.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

There is no particular set of conditions.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Yes, registration with the municipal authorities is required for any Luxembourg resident.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

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

- Spouses (also same-sex marriages or partnerships).
- Partners with whom the third-national is in a registered civil partnership.
- Unmarried children of the third-national or his spouse or partner so long as the children are under the age of 18.

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

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

Unmarried children under the age of 18 can only join the third-country national if he/she or her/his partner or spouse either:

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

11.2 Do civil/unmarried or same-sex partners qualify as family members?

Unmarried/unregistered partners do not qualify as family members.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Yes, spouses and partners have access to the labour market when admitted as dependants.

11.4 Do children have access to the labour market?

Yes, as long as they are allowed to work under the labour code regulations.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

To have legally resided in Luxembourg for at least five years.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Yes, by switching the type of the residence permit and fulfilling its conditions.

13 Bars to Admission

13.1 What are the main bars to admission for work?

There are no foreigner-related bars to admission for work which would also not apply to other Luxembourg residents and which either concern the qualifications for certain professions (lawyers, doctors, accountants) or nationality for certain sectors (judges, notaries, police).

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Depending on the criminal conviction, a work permission or visa may be refused.



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Joram was recommended in the EMEA edition of *The Legal 500* directory as follows:

Team head Joram Moyal has a 'high level of industry knowledge'. He advises corporates and private equity firms on M&A, and also handles general corporate governance and strategic matters.

Joram qualified with both German law exams from the University of Trier, giving him access to the legal profession in 2001. In between his exams he worked at the Portuguese Constitutional Court in Lisbon. He started working in Luxembourg in 2001 and was admitted to the Luxembourg Bar as an *Avocat à la Cour* in 2003. In 2006 he registered as a *Rechtsanwalt* in Germany and through his studies at the reputable College of Law qualified as a Solicitor in England & Wales in 2010.

Joram specialises in corporate law, M&A and banking. In addition, he defends cases of civil and administrative law in court and covers labour law, immigration law and debt collection matters.

Before joining M&S as a founding partner Joram was a sole practitioner for his own firm, working in the corporate department for a well-established Luxembourg business law firm for several years, worked as legal counsel of a Luxembourg trust company and managed a boutique law firm specialising in corporate and tax law.

Joram has represented Fortune 500 companies and private clients with respect to M&A transactions. He also advised international businesses on, *inter alia*, corporate restructuring, partnerships, internal financing, international sale of shares, and acquired significant experience in commercial litigation and cases of labour and immigration law.

Joram is a *pro bono* member of the Arbitration Court of the German Central Council of Jewish Communities and a tutor for an NGO defending the rights of mentally handicapped people.

He is a board member of *Ars Legis*, a network of German-speaking business lawyers and a Luxembourg representative of EuroCollectNet, an association of European business lawyers specialising in cross-border debt collection.

Joram speaks English, French, German, Dutch, Portuguese, Russian, Luxembourgish and some Hebrew and Italian.



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