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Recent developments in Luxembourg's immigration regulations: new opportunities for investors and global companies

On 8 February 2017, the Luxembourg Parliament voted a new law on immigration (hereafter the "**Law**") which will enter into force in the coming weeks.

The main objective of the Law is to implement directive 2014/36/UE on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers and directive 2014/66/UE on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

The implementation of these two directives introduces two new categories of residence permits in Luxembourg (a residence permit for seasonal workers and a residence permit in case of temporary intra-company transfers), next to two other newly created categories of residence permits which have been introduced in Luxembourg, a residence permit for investors and a residence permit within the framework of a business continuity plan for non EU-companies.

Moreover, the Law also provides for various substantial amendments to the currently applicable immigration provisions which aim at increasing Luxembourg's attractiveness as a host country for foreign talents.

I. Introduction of four new immigration categories

Immigration represents a major pillar of Luxembourg's economy which has always relied on foreign workforce in order to cover its rising needs in manpower due to its steady economic development over the last decades. Its dynamic economy makes Luxembourg not only a global hub for finance, insurance and banking activities but it has also made it attractive to numerous investors and highly skilled employees over the last years.

The new immigration provisions are the answers to several requirements, including the diversification of the local economy and the will to continue attracting certain categories of migrants to encourage further investments in Luxembourg in order to diversify the national economy.

A) Residence permit for investors

The most important development and innovation of the Law, mostly from an economic point of view, is undeniably the creation of a residence permit for investors which aims at diversifying the national economy and encouraging entrepreneurship in Luxembourg whilst at the same time boosting the financial industry.

A third country national interested in investing in Luxembourg may opt for one of the following investment plans in order to be granted a residence permit as an investor:

- Invest at least EUR 500.000.- in an existing Luxembourg company (with commercial, industrial or craft activities) and commit to maintaining the existing jobs for five years, except if the company is in difficulties at the time of purchase in which case, the aforementioned employment condition is not applicable; or
- Invest at least EUR 500.000.- in a new Luxembourg company (with commercial, industrial or craft activities) and commit to creating at least five jobs in the next three years (the vacancies have to be filled in collaboration with the Luxembourg Employment Agency); or
- Invest at least EUR 3.000.000.- in an existing or new investment/management structure which has its registered office in Luxembourg and has proven appropriate substance (the latter condition is appreciated with respect to the activity of the structure, the office space configuration, the financial, human and technical resources needed, the number of jobs and the contractual relations with the professionals of the financial sector). Furthermore, the investment and management structure has to employ at least two persons and have appropriate accounting and governance rules; or
- Deposit at least EUR 20.000.000.- (either in cash or via financial instruments held with one single financial institution) with a financial institution established in Luxembourg and maintain this investment for at least five years.

For all of these options, investments relating directly or indirectly to real estate are prohibited and investments must be made prior to the delivery of the temporary authorisation to stay.

Concerning the first three options, the investments have to be composed of at least 75% of the applicant's own funds whilst the remaining 25% may be borrowed for a period of three years at least. The last option excludes any loan.

The residence permit for investors will be valid for an initial period of three years, subject to renewal.

B) Business continuity plans of non EU-companies

The new immigration provisions foresee that should a serious incident appear in a third-country, the relevant foreign company may temporarily and on very short notice send employees to Luxembourg in order to ensure business continuity.

Prior to exercising the option to use Luxembourg as a so-called “back-up center”, the relevant entity must have undergone a prior registration process in Luxembourg. The registration, which is valid for one year, is subject to the fulfillment of certain prerequisites such as, for example, a description of the business continuity plan, the identity and functions of the employees to be transferred in case of a major incident as well as a description of their tasks in Luxembourg.

Should the serious incident appear in the non-EU home country, the relevant entity must file an application with the Ministry of Foreign and European Affairs in Luxembourg and include a description of the serious incident, a list of the employees to be transferred and a description of the work to be performed in Luxembourg.

If all the applicable conditions are successfully fulfilled, the relevant employees will each be granted a residence permit as a salaried worker which will be valid for one year, under the condition that the above-mentioned registration remains valid.

C) Residence permit for temporary intra-company transfers (ICT)

The objective of directive 2014/66/UE as implemented into national law is to facilitate the mobility of intra-company transferees within the European Union and to reduce the administrative burden associated with work assignments in different European Union Member States.

The implementation of this directive aims for temporary transfers to bring along new skills and knowledge, innovation and enhanced economic opportunities to the country whilst at the same time enabling multinational groups to tap their human resources best.

The residence permit for temporary intra-group transfers should allow a third country national who has entered into an employment contract with an undertaking established outside the territory of the European Union to be temporarily seconded for occupational or training purposes to a group entity which is established in the European Union and should, where applicable, facilitate the mobility between host entities established in one or several other European Union Member States.

The holder of a valid ICT permit issued by a Member State is in principle allowed, under certain conditions, to enter, to stay and to work in one or more other Member States in accordance with the provisions governing short-term and long-term mobility.

D) Residence permit for seasonal workers

With the implementation of directive 2014/36/UE, Luxembourg has introduced the possibility to apply for a residence permit as a seasonal worker in Luxembourg.

The residence permit as a seasonal worker will allow a given employee to legally reside and exercise seasonal work in Luxembourg for a maximum period of five months over a reference period of one year whilst maintaining his/her main residence in a third country. The eligible sectors are specified by an underlying Grand-Ducal regulation.

In order to apply for this new category of residence permit, an applicant will need to submit to the immigration authorities, amongst others, a fixed-term employment contract signed with an entity based in Luxembourg for an activity which qualifies as seasonal work, evidence of adequate housing as well as proof that the applicant is covered by health insurance.

II. Amendments to the former immigration provisions

The amendments brought to the previously applicable immigration provisions should also encourage economic diversity and further promote immigration of skilled workers to Luxembourg.

With the introduction of the highly-qualified residence permit (“European Blue Card”) in 2011, Luxembourg has known over the last years a steady rise in applications for residence permits. So far, the European Blue Card was only valid for a period of two years, subject to renewal. With the aim of encouraging highly-skilled employees to stay in Luxembourg for a longer term and in order to simplify the administrative process, the Law has extended the validity of the European Blue Card from two to a maximum of four years.

Moreover, students who have completed their university studies in Luxembourg may, under certain conditions, apply for a residence permit as self-employed persons or employees after their graduation. Although this possibility already existed under the former immigration provisions, the major innovation consists in the fact that the Law now allows the application for such residence permits to be made from Luxembourg, whereas applications for all residence permits must usually be made from abroad.

Furthermore, prior to the adoption of the Law, a waiting period normally applied to family members before they were allowed to apply for a residence permit as family members and to join their non-EU family member in Luxembourg; the Law has (at least in certain cases) removed this condition of a one year prior residence on the Luxembourg territory, although certain limited exceptions remain.



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