

BUSINESS PERMITS IN LUXEMBOURG

Luxembourg's Commercial Code (Code de Commerce) describes any person who carries out commercial transactions, either as a main or as an ancillary activity, as a trader (commerçant). A commercial transaction is understood to be a transaction in the context of the circulation of wealth with the intention of making a profit. It is a series of acts involving intermediaries (retailers, wholesalers, etc.), and possibly also involving processing, between the two extremes: the producer of the raw material and the end consumer. This distinguishes a commercial transaction from consumption and from transactions with no commercial motive.

Various economic sectors are involved, such as manufacturing, wholesaling, retailing, banking, transport and other services with commercial emphasis. The following description of the permits required to set up a business in Luxembourg gives a comprehensive overlook of the activities whose actors are reflected in the composition of the Chamber of Commerce of Luxembourg or "CCL" whereas the information relating to skilled craft trades (artisanat) given in this brochure is more concise (for more precise information on that behalf go to www.cdm.lu, the website of the Chamber of Skilled Trade (Chambre des Métiers).

Any Luxembourg national or foreign national may be a trader, except in the event of disqualification or in the cases of incompatibility provided for by law.

Under Luxembourg law, the capacity of "trader" has three fundamental consequences:

- disputes between traders are handled in accordance with a special procedure before the Commercial Court (Tribunal de Commerce),
- only traders may be declared bankrupt. A declaration of bankruptcy entails traders being deprived of the right to administer or alienate their property as well as a collective procedure for liquidation of their enterprise by judicial means,
- a set of special provisions apply to traders' economic activities: rules relating to evidence, advertising, accounts, competition, etc.

Traders may perform their activities in one of two distinct forms: as sole traders, which is most suitable for small ventures, and as business companies, of which there are six different forms. Under Luxembourg statutes both partnerships and corporations are regarded as companies (sociétés), i.e. separate legal entities from its members created in order to make a profit. In addition, foreign companies may create a branch in Luxembourg without its own separate legal personality, or even arrange for orders to be collected by a foreign representative sent to Luxembourg on a temporary basis without having any official address in the country.

Business permits

Luxembourg's 1868 Constitution and the principles on which it is based guarantee freedom of trade and industry and the freedom for every Luxembourg national to set up a business. Under the Treaty on European Union, this right is also granted to nationals of European Union Member States and nationals of European Economic Area countries.

Nonetheless, the conditions for entry into various commercial activities, that of skilled craftsman (artisan), trader (commerçant) and manufacturer (industriel) have been laid down by Luxembourg law. Although independent intellectual activities are not considered "commercial" activities, Luxembourg legislators have however considered it appropriate to regulate entry into certain liberal professions.

For which commercial activities and professions is a business permit required?

The Act of 28 December 1988 (generally referred to as the Act or the law governing the setting up of a business), as amended, which regulates the skilled craftsman, the trader and the manufacturer as well as certain liberal professions, is the framework for the performance of all these activities and the practice of these professions. Under this Act, entry is subject to prior governmental authorisation in writing, provided that the activities in question are performed from a Luxembourg establishment on a permanent basis. The treaty founding the European Community laid down the general principle of freedom to set up business within the Common Market and the principle of the free provision of services. Under European law, a distinction is made on the basis of a concept of time. An EU national who pursues a business activity on a continuous basis in a Member State other than his State of origin comes under the provision of the law of establishment whereas the concept of the free provision of services is based on activity performed on a strictly occasional basis. It is clear that Luxembourg legislators wished to regulate entry into trade and certain liberal professions if performed on the territory of Luxembourg in a permanent and regular manner.

Luxembourg legislators significantly changed the law in 2004, though confirming that they would maintain the requirements for entry into business and make such entry subject to prior authorisation under strict conditions. This was a choice shared by the representatives of employers' associations. The legislators thus also wished to make it clear that they did not intend to join those who were calling for liberalisation at any price or be influenced by those calling for protectionism at all costs.

The law applies first to skilled craft trades, a detailed list of which is contained in the Regulation of 4 February 2005 which also sets out the fields of activities of the businesses covered.

INFO LEAFLET / SETTING UP A BUSINESS

As regards manufacturers, Luxembourg legislators have so far refrained from giving a precise definition of these economic players. However, there is no doubt that manufacturing encompasses all economic activities involved in producing and transforming wealth, except farming. Though it cannot be confused with the skilled craft trades in that it uses collective human labour and technical capital where, by contrast, the skilled craft trades still perform mainly manual activities without automation.

Commercial activities in a narrower sense, i.e. trade, include the retail commercial sector, the wholesale sector, and all the intermediaries involved in the circulation of wealth between producers and consumers, including the provision of business services, provided that they are performed in order to make a profit. It would be hard to imagine an activity - even right at the limits of trade - that is not covered by the law governing setting up a business. It should however be noted that companies, which only hold stakes in other companies, i.e. "holding companies", do not perform commercial transactions and a business permit is therefore not required.

Notwithstanding the above, Luxembourg legislators have regularly specified certain commercial activities which, due to the significance and type of activities performed, need a special framework, either within the law governing setting up a business or under a special law. This is true inter alia for travel agents, estate agents and transport (haulage) contractors, under certain conditions.

Under the Act of 3 June 1994 governing relationships between independent sales agents and their principals, independent sales agents are simply traders subject to ordinary law as regards setting up a business. Sales representatives who are employees do not need a specific permit. They must however perform their activity under the auspices of the business permit issued to their employer. It is therefore advisable for such representatives to have proof from their employer that they are authorised to act in this way and proof of the fact that they have been hired.

Lastly, the provision of those intellectual services, i.e. liberal professions, that the Luxembourgish legislator contemplates as being relatively close to business also require a business permit beforehand. The law governing setting up a business gives an exhaustive list of such professions. The administrative authorities (governmental agencies) may not therefore create new professions themselves, as this right is reserved for the legislators. Thus, intellectual services which are not included in this list and, due to the nature of said services, are not covered by the concept of commercial services, may be provided without any prior authorisation.

What about occasional activities?

Nationals of European Union Member States or European Economic Area countries who, without having set up a business in Luxembourg, come here occasionally to collect orders or offer business services, are not required to obtain a permit from the Luxembourg authorities.

Skilled craft tradesmen or women and manufacturers are however required to prove to the Ministry of Middle Classes (Ministère des Classes Moyennes) that they are legally authorised to practice their business in their country of origin. The ministry will issue them with a certificate called an "ad hoc certificate" under the Act governing setting up a business.

Foreigners, nationals of countries that are not European Union Member States or European Economic Area countries, people who are stateless or who have no specific nationality who come here occasionally and temporarily to collect orders or provide services that fall within the scope of the businesses referred to in the law governing setting up a business are required to have a business permit.

What is the procedure for obtaining a business permit?

Applicants should send an application for a business permit to the Ministry of Middle Classes which is responsible for all matters relating to trade, manufacturing, the skilled craft trades and the liberal professions that fall within the scope of the law. Decisions are made following the consultation of an administrative committee in charge of examining whether the conditions as regards qualifications and professional good standing have been met.

Applications should be made on a form which may be obtained from the Ministry, from the Chamber of Commerce's "Business Information Center" (Espace Entreprises) or downloaded from www.mcm.public.lu. Stamp duty of EUR 24 is payable on each application. The tax stamp required may be obtained from the Registration and Domains Authority (Administration de l'Enregistrement) or the Business Information Center (Espace Entreprises). The sum of EUR 24 may also be transferred to the Registration Authority's postal cheque account at CCP IBAN LU 47 1111 0087 9262 0000, specifying "Administrative fee for business permit" (droit de chancellerie pour autorisation de commerce). In this case, a copy of the transfer order should be enclosed.

An affidavit as regards any previous performance as a company agent in a Luxembourg company or the holding of shares / interests in a domestic company during the last three years preceding the request must be enclosed with the application. The form provided for this purpose may be obtained from the Ministry, from the Chamber of Commerce's "Business Information Center" (Espace Entreprises) or downloaded from www.mcm.public.lu.

Applicants who do not live in Luxembourg or who have lived there for less than five years must submit a recent certificate of non-bankruptcy and a copy of their personal criminal record (extrait du casier judiciaire). The certificate of non-bankruptcy is a sworn statement (déclaration sous serment) given under oath before a notary public. Applicants may choose the notary.

INFO LEAFLET / SETTING UP A BUSINESS

If the application is being made on behalf of a company, the company's charter (statuts) or draft charter (projet des statuts) should be enclosed. It has to be stressed that in Luxembourg the Memorandum of Association (Articles of Incorporation) and the Articles of Association (or by-laws) are consolidated in a single document, called « les statuts », hereinafter the charter. As a consequence, the whole charter is filed, and no document remains private.

If the application is being made on behalf of a branch, a copy of the parent company's charter should be enclosed along with a copy of the decision to appoint the person in charge of managing the branch. If the application is being made in a person's own name (sole trader), a copy of the applicant's identity papers should be enclosed.

Applicants must enclose documents as evidence of any required professional qualifications. Otherwise, applicants who work or have worked in the past in Luxembourg may give proof of the professional experience required by means of a certificate of registration with Luxembourg's social security authority. Applicants who have worked abroad should submit an EC certificate relating to these activities, to be issued either by a Chamber of Commerce for a business activity, or by the relevant national authority. If degree qualifications or similar are to be submitted, certified copies should be enclosed. Documents should be submitted in German or French.

Business permits may be collected from the Social Security Centre (Centre Commun de la Sécurité Sociale) (www.ccss.lu). Business permits for public companies are sent by post. Permits are issued in the form of a card which must be shown on request.

The nature of the business and the governmental authorisation number must be shown on the company's stationary, their e-mails, websites, estimates, invoices, site hoardings, and in shop fronts and windows of business premises.

In the event that the Ministry refuses to grant a permit or the permit is withdrawn, an appeal may be lodged with the Administrative Court within one month as from notification of the decision.

A new permit is required in the event of changes to or extensions of the objects of the company to which the permit was issued and changes in the agents of the company where the permit was granted on the basis of their qualifications. If the latter leave the company, a provisional permit, valid for six months, may be granted to enable the company to hire a qualified person who meets the legal conditions.

The relevant Ministry should be notified of any changes in a company's name or legal form as well as any change in the business headquarters' location within one month at the latest.

INFO LEAFLET / SETTING UP A BUSINESS

Authorisation to open a branch is granted on application, but with certain restrictions for the skilled craft trades sector.

What activities are covered by a business permit?

Business permits for commercial undertakings allow "trade" (commerce) to be carried out, except for permits for specially regulated commercial activities where the name of the specific activity is given on the permit. This is also the case for the skilled craft trades and manufacturing where the permit states exactly which activity has been authorised.

A business permit specifying "trade" is granted for all general commercial activities, that is activities which, in the view of the legislators, do not require specific skills but only detailed knowledge of company management. The existence of various lines of business is thus not important for the requirements of granting a business permit, except for specially regulated activities. The holder of a business permit for trade in general may therefore perform all business activities at the same regulatory level: a shoe salesman may thus also sell books or cars and vice versa. The only activities excluded are those subject to additional conditions or those governed by a special law. Individual permits are thus required for each of these activities (see Section 2.3.2. below).

A business permit is strictly personal. Therefore, for the requirements of setting up a business, the activities subject to authorisation must be performed under the responsibility of the person who has been duly authorised to do this, that is the person whose qualifications were the basis for the business permit, i.e. the "qualified manager". The sole trader must therefore hold a business permit issued in his name. If it is a company, it is generally a member of the board (director) or an officer who holds the qualification, i.e. the "qualified manager".

The "qualified manager" thus defined is therefore responsible for personally and regularly managing the company on a day-to-day basis from a fixed place of business, as regards the company's business purpose. As a result, the "qualified manager" has to be able to fulfil these obligations. The fact that this person's effective residence is distant from the business would thus have a damaging effect on the business permit. The permanent presence of another party, even if such person is authorised to commit the company, cannot make up for the absence of this "qualified manager".

In theory, a permit is granted for an indefinite period of time. However, it will become invalid either if it is not used for more than two years as from the date it was granted or if activity is terminated voluntarily during the same period. An application for a permit may be rejected and permits may be withdrawn if there are serious grounds to do so.

A business permit granted to a trader or to a skilled craft tradesman or woman includes the right to perform the activities that have been authorised at fairs and markets. However, business permits are required for traders who wish to limit their activities solely to fairs and markets and who therefore will not necessarily have a permanent establishment in Luxembourg. It should be stressed that peddling goods is prohibited in Luxembourg, that is the sale or offer of goods sold door-to-door, except for door-to-door sales of certain food products by bakers, representatives for companies selling drinks, grocers and milk product salesmen or women. Soliciting orders from individuals in this way is also prohibited. Peddling food is therefore limited to only fairs and markets, subject to the above.

Furthermore, a business permit granted to a skilled craft tradesman or woman also includes the right to trade in related products. For traders, the business permit also includes the possibility of carrying out the normal operations included in sales on the articles that are the subject of the authorised trading, such as assuring the maintenance of the goods sold, with the exception of repairs normally performed by skilled craft tradesmen or -women.

Conditions under which business permits are granted

Applicants for business permits must provide guarantees of their professional good standing and must have certain qualifications which will depend on the type of activity to be performed.

Commercial companies have to apply for business permits in the same way as individuals, with the relevant conditions having to be met in the person of a “qualified manager” (company agent). The provisions also apply to branches of foreign companies.

What are the requirements as regards good standing?

The professional good standing (honorabilité) of applicants is assessed on the basis of their criminal record and information obtained from an administrative investigation. What is required is not the highest level of good standing possible but good standing closely linked to business conduct, such that only breaches of business conduct will be penalised. For example, the good standing of fraudulent bankrupts or individuals who knowingly write bad cheques would be affected.

Under Luxembourg statutes, good standing is required of the individual or entity who or which makes the application. If it is a company, the “qualified manager” of the company will have to meet the conditions imposed on those who wish to trade on their own account.

The authorities could also require the condition relating to good standing to be fulfilled by the holder of the majority of the company's shares / interests or individuals capable of exerting significant influence on the management of the company. Thus, well-known dishonest businessmen or women would not be able to use one of their employees as a front, while they held the real power behind the scenes, either by having a majority of shares or by being members of the Board of Directors or the Board of Officers, or both at the same time, thereby leaving the so-called "qualified manager" with no power.

Furthermore, applicants involved in a bankruptcy or court-ordered liquidation without their good standing being affected may be granted a new business permit provided that they undergo intensive training in company management provided by the relevant professional body.

What are the requirements as regards professional skills?

Basic qualifications are required as a condition for entry into all the businesses covered by the law governing setting up a business. However, there are some exceptions to this: no qualifications are required for manufacturing activities, except for industrial construction companies. No qualifications are required for people working at fairs and owners of machines who hire them out professionally.

Skilled craftsmen or women performing a so-called main craft must have a master craftsman diploma (brevet de maîtrise) or a university degree in engineering for that sector. This is also the case for businessmen or women in industrial construction. The Ministry, after consulting an administrative committee and the Chamber of Trade (Chambre des Métiers), may acknowledge that an applicant without the above-mentioned qualifications may have sufficient professional experience either for all or part of a trade on the basis of supporting documents acknowledged as the equivalent of such qualifications.

Where an enterprise involves skilled craft trades or where an industrial construction company is operated by a company, the condition relating to qualification must be met by the person who is in charge of the technical operation of the company, i.e. the "qualified technical manager".

Skilled craftsmen or women performing a so-called secondary craft only need a certificate of skills (certificat d'aptitude technique et pratique) that provides evidence of their professional skills on the basis of a period of training or training course as laid down by Luxembourg regulations. This training course may not last longer than three years.

Skills required depending on the activity or profession

Which skills are required to perform a general business activity?

A business permit specifying "trade" (commerce) is granted for all general business activities provided that the applicant has in-depth knowledge of company management.

The Regulation of 27 September 2004 lays down the conditions for traders to be qualified as regards company management. These conditions are the following, alternatively:

- having completed an initial training course,
- having completed an intensive training course,
- having supporting documents (showing qualifications) acknowledged as the equivalent,
- having completed a period of training not exceeding three years.

Initial training course

Having completed an initial training course means having a university degree or higher qualification showing the successful completion of a complete cycle of three years of studies in economic sciences or business management or in business law.

Intensive training course

Having completed an intensive training course means having passed a final examination in the intensive training course organised by the Chamber of Commerce. At the end of the training course, for which no prior qualification is required, trainees must be able to do the following:

- be aware of the legal conditions to be met and the procedures to be carried out to set up a business,
- have an overview of the various legal forms of businesses,
- identify a clientele and assess a market in terms of figures,
- develop a business concept,
- understand accounting,
- analyse a balance sheet and a profit and loss statement,
- assess financial requirements,
- identify various sources of financing,
- have a better understanding of tax matters,
- calculate income tax,
- be familiar with recruitment procedures,
- be familiar with the basic aspects of employment law.

INFO LEAFLET / SETTING UP A BUSINESS

In order to be able to take the examination, trainees must have attended the training courses.

Equivalent qualifications

The following are considered the equivalent of the qualification in business management:

- the proof of having passed an examination after a business management training course given in an EU Member State by an institution or training body that is recognised in this Member State, and whose length and content is similar,
- or having a Luxembourgish master craftsman diploma (brevet de maîtrise),
- or a master craftsman diploma issued by a training body that is authorised in an EU Member State provided it includes similar training in business management,
- or already having a business permit.

Training on the job

The completion of a period of training on the job is shown by proof of the effective performance in an EU Member State of an activity that is commercial:

- for three consecutive years either on a self-employed basis (sole trader) or as a company executive (dirigeant) ;
- for two consecutive years either as a sole trader or as a company executive, where applicants can prove that they have received, for the relevant profession, training for which a certificate recognised by the National Education Ministry (Ministère de l'Education Nationale or "MEN") is awarded,
- or for three consecutive years as an employee, where applicants can prove that they received, for the relevant profession, training for which a certificate recognised by MEN is awarded.

Any person who has held the following duties is considered as having performed the activity of a company executive:

- the duty of company director or company officer or branch manager,
- the task of a deputy to the sole trader or to the company agents, if this position entails responsibilities similar to that of a sole trader or company agents,
- the task of a manager with duties that are typical of the profession and at the head of at least one division of the company.

Proof that the condition relating to a period of training has been met may be provided as follows:

INFO LEAFLET / SETTING UP A BUSINESS

- a certificate issued by the relevant authority or body in the country of origin,
- membership of a professional pension scheme for at least three consecutive years,
- or by an employee's certificate, showing the time of membership, certified by the Social Security Centre (Centre Commun de la Sécurité Sociale).

What skills are required to perform a regulated business activity or an activity subject to special requirements?

Certain business activities are specially regulated. The Act of 28 December 1988, as amended, contains a list of activities for which a specific professional skill and/or additional conditions are required, in addition to knowledge of business administration. Other business activities are regulated by special laws.

These are mainly the following ones:

- estate agents (agents immobiliers)
- condominium managers (administrateurs de biens-syndics)
- real estate developers (promoteurs immobiliers)
- large retail premises (grandes surfaces commerciales);
- licensed or unlicensed bars / pubs or restaurants or accommodations (débits de boissons alcooliques ou non alcooliques, restaurants et hôtels)
- transport of goods with a motor vehicle weighing more than 3.5 tons and transport of more than 9 people (transport de marchandises et transport de personnes)
- travel agents (agents de voyages),
- management of professional training bodies (gestion d'organismes de formation continue),
- interim recruitment (entreprise de travail intérimaire),
- security and surveillance activities (activités de surveillance et de gardiennage),
- financial and insurance sector (secteur financier et des assurances)

Estate agents

Estate agents are business agents who generally act as intermediaries in legal transactions involving real estate. This activity as an intermediary is generally carried out as a broker, in the sense that estate agents bring together two people with a view to entering into an agreement relating to the transfer of real estate.

Article 10 of the Act of 28 December 1988, as amended, governing setting up a business lays down additional conditions which people who wish to become estate agents have to meet.

They have to pass an aptitude test. On the date of publication, the details of this test still had to be laid down by regulation. In the meantime, the Chamber of Commerce's training institute (Institut de Formation de la Chambre de Commerce or "IFCC") gives classes and organises examinations at the end of training courses on the basis of and in accordance with the provisions of the law governing setting up a business, before amendment.

Lastly, estate agents have to be able to show that they are insured against the financial consequences of professional legal liability for professional commitments.

Condominium managers

Condominium managers for jointly-owned estate as understood in the Act of 16 May 1975 on jointly-owned estate, as amended, are the agents authorised to represent a joint owners' association – the condominium – which is a legal entity. Under the provisions of said law, the function of condominium manager is similar to that of a legal trustee. For the details of the legal framework for managing agents, please consult the above-mentioned law.

Once again, Article 10 of the Act of 28 December 1988 governing setting up a business lays down the additional conditions which people who wish to enter this profession have to meet.

They have to pass an aptitude test. On the date of publication, the details of this test still had to be laid down by regulation. In the meantime, the Chamber of Commerce's training institute (Institut de Formation de la Chambre de Commerce or "IFCC") gives classes and organises examinations at the end of training courses on the basis of and in accordance with the provisions of the law governing setting up a business, before amendment.

In addition, condominium managers have to show that they have a financial guarantee of at least EUR 10,000 that covers the risk in relation to the repayment of funds, bills or securities entrusted to them, provided by a commitment of a duly approved or authorised collective guarantee body, a credit institution or an insurance company.

Lastly, condominium managers have to be able to show that they are insured against the financial consequences of professional legal liability for professional commitments.

However, all these provisions do not apply to the following:

- to owners who, on a non-professional basis, perform the activity of condominium manager as regards estate to which they have legal title or

INFO LEAFLET / SETTING UP A BUSINESS

- individuals of their choice who replace them in these duties on a non-professional basis;
- individuals acting on behalf of their spouse, of relatives entitled to inherit (parents en ordre successible) or on behalf of protected adults (majeurs protégés) or minors, under the conditions and in accordance with the rules provided for in Titles X and XI of the Civil Code;
 - individuals performing the duties of condominium manager provided for by the Act of 16 May 1975, as amended, governing the status of condominiums which contain no more than nine lots for use as housing, of which at least one of these lots belongs to the proposed condominium manager.

Real estate developers

There is no legal definition of a real estate developer in Luxembourg. However, it is accepted that an individual or legal entity who or which undertakes to build or find a building or part of a building and who or which, for this purpose, takes the initiative and takes care of most of the transaction should be considered as a developer. In addition, a distinction is made between developers whose services are limited to acting as intermediaries between the professionals and the new property owner, on one side and developers who are also responsible for the actual construction of the property on the other. It is thus important to stress that it is the initiative that is taken by developers which is the key point which distinguishes them from architects or contractors, who only become involved at the request of a real estate developer or of a future property owner.

Once again, Article 10 of the Act of 28 December 1988, as amended, governing setting up a business lays down the additional conditions which people who wish to enter this profession have to meet.

They have to pass an aptitude test. On the date of publication, the details of this test still had to be laid down by regulation. In the meantime, the Chamber of Commerce's training institute (Institut de Formation de la Chambre de Commerce or "IFCC") gives classes and organises examinations at the end of training courses on the basis of and in accordance with the provisions of the law governing setting up a business, before amendment.

Lastly, property developers have to be able to show that they are insured against the financial consequences of professional legal liability for professional commitments.

Large retail premises

Special authorisation by the Ministry of the Middle Classes is required for single or grouped retail sales areas, whether specialised or not, exceeding a surface area of 400 square metres. Sales area means the constructed surface area (surface bâtie), measured inside the outside walls, excluding any areas reserved for sanitary

INFO LEAFLET / SETTING UP A BUSINESS

installations, offices, production areas and areas for storing reserves provided that they are clearly separated by a permanent partition (cloisonnement en dur) and provided that the areas for storing reserves and production areas are not accessible to the public.

This special authorisation is mandatory for the creation, extension, takeover, transfer or change of one or more of the main commercial lines of business of a commercial surface area in which the sales area exceeds 400 square metres. It is also required in the event of the re-use, for retail trade, of a supermarket made available following an authorisation of transfer. For proposals relating to the extension of an existing commercial surface area, the limit of 400 square meters refers to the overall sales area after extension.

Special authorisation may be refused if the proposal risks upsetting the balance in one or more of the main commercial lines of business involved at national, regional or local level.

The authorisation will become invalid if the proposal is not carried out or if the site has not been started within two years as from the date it was granted. The law specifies what is meant by starting a site.

For proposals relating to creating, extending, taking over or transferring a sales area of less than 2,000 square metres, and to change one or several main commercial lines of business, an ordinary application may be made to the Ministry of Middle Classes.

For proposals where the sales area exceeds 2,000 square metres, the applicant must submit a market survey, except in the case of a takeover which does not entail any change in one or several main commercial lines of business for duly authorised surface areas.

A Luxembourg regulation lays down the form and content of an application for special authorisation and the market survey.

As regards the other details, please consult Article 12 of the Act of 28 December 1988, as amended, governing setting up a business. For more information, please contact the Luxembourg Traders Association (Confédération Luxembourgeoise du Commerce or "clc") (www.clc.lu) or the Luxembourg Chamber of Commerce, Business Creation and Development Department (Département création et développement des entreprises), Large Retail Premises Service (Service grandes surfaces) (www.cc.lu).

Hotel, restaurant and pub / bar sector

In order to operate a bar / pub, a restaurant or a hotel in Luxembourg a business permit issued by the Ministry of Middle Classes is required, in accordance with the requirements of the Act of 28 December 1988, as amended. Before issuing a business permit for this sector, the ministry will check whether the applicant meets the conditions of good standing and professional qualifications.

The professional qualifications required vary depending on whether the establishment involved is a bar / pub, a bar / pub together with an establishment offering accommodation with fewer than 10 rooms, a restaurant or a hotel.

- a) Bars/pubs selling alcoholic and non-alcoholic beverages: hotel school diploma; a Technical and Professional Certificate (Certificate d'Aptitude Technique et Professionnelle, or "CATP") for hotel staff; CATP for waiters; CATP for cooks or caterers (traiteurs); university degree plus three-month period of training; secondary school leaving certificate plus six-month period of training; certificate showing that the applicant passed the examination at the end of the intensive training for future traders organised by the Chamber of Commerce; certificate showing that the applicant successfully completed the training course on bar work organised by the Chamber of Commerce; any diploma acknowledged as the equivalent. If the applicant has no diplomas or certificates of any kind, professional experience of one year in a bar may be considered as sufficient to enter the profession.
- b) Bars/pubs selling alcoholic and non-alcoholic beverages with an establishment offering accommodation with fewer than 10 rooms: hotel school diploma; CATP for hotel staff; three-year practical period of training in a hotel or a bar with fewer than 10 rooms; CATP for cooks; CATP for caterers; CATP for waiters in restaurants; certificate showing that the applicant passed the examination at the end of the intensive training course for future traders organised by the Chamber of Commerce; certificate showing that the applicant successfully completed the training course on bar work organised by the Chamber of Commerce .
- c) Restaurant: hotel school diploma; CATP for hotel staff; CATP for waiters plus one-year period of training, CATP for cooks or caterers; university degree plus one-year period of training; secondary school leaving certificate plus two-year period of training; any diploma acknowledged as the equivalent. If the applicant has no diplomas or certificates of any kind, professional experience of three years in a restaurant (kitchen) may be considered as sufficient to enter the profession.
- d) Hotel: hotel school diploma; CATP for hotel staff; CATP for waiters plus two-year period of training; CATP for cooks or caterers plus one-year period of

INFO LEAFLET / SETTING UP A BUSINESS

training; university degree plus one-year period of training; any diploma recognised as an equivalent. If the applicant has no diplomas or certificates of any kind, professional experience of three years in a hotel may be considered as sufficient to enter the profession.

In addition to a business permit, in order to run a bar / pub selling alcoholic beverages, a licence to sell alcohol or serve alcoholic beverages (concession de cabaretage) is required (Act of 29 June 1989, as amended). This special licence is granted by the licensing department (service de cabaretage) of the Customs and Excise Authority (Administration des Douanes et Accises) (Luxembourg Regulations of 13 January 1994). In theory, no new bar may be opened in towns (communes) where the number of existing bars has reached the proportion of one per 500 inhabitants, apart from certain exceptions. As this is the case for most of the towns in Luxembourg, opening a new bar is only possible on the basis of an existing licence. However, a large number of licences that are not used are owned by brewers.

In towns where this may be necessary due to the tourist industry, the Finance Ministry may authorise the opening of a bar over and above the stated proportion.

A licence to sell alcohol or serve alcoholic beverages will only be granted to nationals from countries other than EU Member States on condition that said nationals can prove that they have lived in Luxembourg for five consecutive years. In addition, an individual who wishes to set up a bar selling alcoholic beverages must first make the prior declaration to the tax authorities and pay an opening tax (taxe d'ouverture) to the tax office of the town where the bar is to be set up.

It should also be stressed that a licence to sell alcohol or serve alcoholic beverages relates to operating one bar, subject to certain exceptions provided for by the above-mentioned law. The holder of a licence to sell alcohol or serve alcoholic beverages may not therefore run a second bar on the basis of this first licence. To be able to do this, the second bar would have to be run on the basis of a licence held by a third party who would run the bar either in his or her name or on behalf of the developer of this second bar who would be the holder of the business permit. Special legislation in the area of licensing (cabaretage) also affects the right to set up a business in the sense that a provisional permit may not be granted in the event of the departure of the qualified person in charge of managing the bar.

The Act of 15 July 1993 relating to bars selling non-alcoholic beverages contains some specific information about operating a bar of this kind (opening hours, entry of minors etc.).

For further information, please contact HORESCA – Hotel, Restaurant and Pub Owners' Association (www.horesca.lu).

Transport business

The transport business is considered as a general business activity provided that the maximum authorised mass of the vehicle transporting goods does not exceed 3.5 tons.

This also applies to the transportation of passengers by road provided that no more than nine passengers can be transported in the vehicle.

Transportation of goods by road with vehicles that exceed that maximum weight of 3.5 tons and the transportation of passengers by road with vehicles equipped for transporting more than nine passengers are subject to certain specific conditions provided for by the Act of 30 July 2002 transposing European Council Directive 98/76/EC of 1 October 1998. Business permits for carriers are issued by the Ministry of Middle Classes.

However, carriers of passengers which only provide transport for non-commercial purposes or whose main activity is different from a carrier of passengers by road are exempt from the application of all provisions governing establishments providing transport for passengers by road, provided that their transport activity has little effect on the transport market.

A permit to practice the profession of carrier of passengers by road automatically includes an authorisation to exercise this profession by means of taxis, ambulances and rental vehicles, subject to compliance with the legislation governing the skilled craft trades, and commercial activity involving vehicle rental.

In order to practice the profession of carrier of passengers or goods by road, an applicant must meet conditions relating to:

- a) good standing,
- b) financial capacity,
- c) professional capacity.

If the applicant is an individual who does not meet the condition provided for under (c) above, the Ministry may nonetheless authorise him or her to practice the profession of carrier on condition that he or she appoints another person who does meet the conditions provided for under (a) and (c) above.

If the applicant for the profession is a legal entity, the individual who effectively and permanently runs the activity as a carrier must meet the conditions provided for under (a) and (c) above.

INFO LEAFLET / SETTING UP A BUSINESS

The Luxembourg Regulation of 13 August 2002 implementing Article 3 and Article 8 of the Act of 30 July 2002 on setting up business as a carrier contains further information about financial capacity.

The condition relating to financial capacity means having the financial resources required to ensure the correct start of operations and the proper management of the business activity that the applicant must provide by means of a security or guarantee issued by a banking or financial institution. The security or guarantee is issued in favour of the body of creditors in the event of the carrier's bankruptcy. The amount of the security or guarantee is EUR 9,000 for the first motor vehicle and EUR 5,000 for each additional vehicle. The security or guarantee should be for an unlimited period of time.

Goods carriers whose transport activities only have a small effect on the transport market due to the short distances travelled, using vehicles whose maximum authorised mass is between 3,5 and 6 tons do not need a security or guarantee. This is also the case for carriers which only transport goods inside Luxemburg, regardless of the maximum authorised mass of the vehicles used.

The condition relating to professional capacity means having knowledge that corresponds to the level of training in the subjects listed in the Luxembourg Regulation of 13 August 2002 implementing Article 9 of the Act of 30 July 2002.

The knowledge required is gained either by attending classes or by five years of practical experience with a carrier, or by a combination of the two. Passing an examination shows that an individual has the knowledge required. A certificate must be shown as proof of an individual's professional capacity. This certificate may also have been issued by an authority appointed for this purpose by an EU Member State.

Holders of qualifications obtained in higher education or technical education involving a good knowledge of the relevant subjects are exempt from these provisions, either in whole or in part. Carriers which can show that they have been authorised in an EU Member State under national regulations to practice the profession of carrier of goods or, where applicable, of carrier of passengers by road in the area of national or international transport must however also provide a certificate as proof of their professional capacity.

As regards the profession of carriers of goods by water in the area of national and international transport, the Act of 21 April 1993 and the Ministry of Transport, Navigation Department (Ministère des Transports, Service de la Navigation) should be consulted.

As regards carriage of passengers for payment on the Mosel River, the Luxembourg Regulation of 30 December 1992 and the Ministry of Transport, Internal Navigation, Navigation Department (Ministère des Transports, Navigation intérieure, Service de la Navigation) should be consulted.

As regards transport by air, the Ministry of Transport, Civil Aviation Department (Ministère des Transports, Direction de l'Aviation Civile) should be consulted.

Travel agents

The Act of 14 June 1994 regulating the conditions for the performance of activities involving the organisation and sale of trips or holidays applies to all individuals who, as their main activity or on an ancillary basis and on a habitual basis, take part in or assist in transactions consisting of organising or selling the following, regardless of how they are paid for this:

- individual or group trips or holidays,
- services that may be provided in relation to trips or holidays, in particular issuing tickets, reserving rooms in hotels or in other forms of accommodation for tourists, issuing vouchers for accommodation or meals,
- services relating to receiving tourists, in particular looking after the customer and the organisation of visits, conferences or similar events,
- package trips, holidays and tours. A "package" of services consists of the prior combination of at least two transactions relating to transport, accommodation or other tourist services that are not related to transport or accommodation and that represent a significant proportion of the package, where this service exceeds 24 hours or includes an overnight stay and is sold or offered for sale at an inclusive price, even if the customer is invoiced separately for the various parts of the package.

These transactions may only be carried out by individual or legal entities with the capacity of travel agents. The relevant authorisation is given by the Ministry of Middle Classes on the basis of the Act of 28 December 1988 governing setting up a business, as amended. Applicants must therefore first meet the requirements laid down by Luxembourg law for the performance of a general business activity.

In addition, travel agents have to show that they are covered by a sufficient financial guarantee for the activities planned in the area of trips and package holidays or tours, to be able to repay the funds received for the above-mentioned services, in the event of bankruptcy or insolvency, based on the commitment of a collective guarantee body, a credit institution or a company insuring loans and securities. This financial guarantee should include any costs of repatriation and must, in this case, be immediately available in the national territory.

The Luxembourg Regulation of 4 November 1997, which lays down the amount, the terms and conditions and the use of the financial guarantee provided for in Article 6 of the Act of 14 June 1994, provides further information in this respect. Insurance companies are the usual parties involved, with the insurance in question being called "insurance against the financial insolvency of travel agencies".

Travel agents also have to show that they are insured against the financial consequences of professional legal liability.

Landscape gardeners, horticulturalists, market gardeners, florists and nurserymen or women

Landscape gardeners, horticulturalists, florists and horticultural seed growers (nurserymen or women) also need a business permit issued by the Ministry of Middle Classes. Qualification for such individuals is based either on a certificate awarded following an apprenticeship issued by a professional organisation that is representative of the sector in question, or a diploma or qualification that is acknowledged as an equivalent. Young people can study at school for a Technical and Professional Certificate (Certificate d'Aptitude Technique et Professionnel, or "CATP") for the following professions: nurseryman-landscape gardener, horticulturalist-florist and market gardener. If applicants have no apprenticeship certificate or qualification acknowledged as equivalent, they have to show that they had a five-year period of training in one of the lines of business in question.

Manager of a vocational training body

A vocational training body means any service provider which offers continuous professional education in accordance with the provisions of the Act of 22 June 1999 having as its aim, inter alia, the support and development of continuous vocational training. It includes all activities of training or teaching, excluding teaching or training in schools, which have the following purpose:

- adapting the qualifications of workers and company agents / managers by improving their skills and bringing them up to date with techniques and technologies used in organisation, production or marketing,
- re-training workers and company agents / managers with a view to helping them gain entry into a different professional activity,
- promoting workers by training them in more demanding tasks or positions or in positions with more responsibility and developing skills and potential which is not being used or is only being used in part.

According to Article 9 of the Act of 28 December 1988 governing setting up a business, as amended, the activity consisting in managing such a training body is subject to a business permit issued by the Ministry of Middle Classes, with the consent of the Education Ministry (Ministre de l'Education Nationale). As regards this consultation, the Luxembourg Regulation of 30 December 1999 lays down the professional qualifications required for approval.

The professional qualifications required by managers of such a vocational training body consist of a university degree or postgraduate qualification or a certificate of

INFO LEAFLET / SETTING UP A BUSINESS

completion of university or postgraduate studies issued by a higher education institution recognised by the State where the body's head office is located and showing the successful completion of a complete cycle of three years of studies.

These qualifications can also consist of the validation of the effective performance in an EU Member State of managing a vocational training body.

In addition, the Act of 8 September 1998 governing relations between the State and the bodies acting in the social, family and therapeutic areas, are subject to ministerial approval from the Family and Integration Ministry (Ministère de la Famille et de l'Intégration) (www.fm.etat.lu) or the Health Ministry (Ministère de la Santé) (www.ms.etat.lu), according to the respective skills involved, the offering of services of consultation, help, assistance, guidance, training for social work, event leader (animation) or professional orientation in the social or social-educational field.

Managers of childcare facilities

Managing a crèche, a nursery, a day nursery, a service providing school meals or a service offering help with homework requires the prior approval of the Family and Integration Ministry (Ministre de la Famille et de l'Intégration) (www.fm.etat.lu). The following are accepted as professional qualifications: diplomas or qualifications as an assistant in special education (moniteur d'éducation différenciée), teacher, paediatric nurse, graded teacher (educateur gradué), primary school teacher or any other diploma or qualification preparing the holders thereof for professional work with children. If the performance of such an activity needs to be organised as a business, managers must also apply for a business permit from the Ministry of Middle Classes in accordance with the Act of 28 December 1988.

Financial and insurance sector

Entry into the professional sector of banks and non-banking financial institutions is governed by the Act of 5 April 1993 relating to the financial sector, as amended. Please see Chapter 7 of this document for further information.

The law lays down the conditions banks and non-banking financial institutions have to meet to obtain a business permit. This permit is issued by the minister with responsibility for the Commission de Surveillance du Secteur Financier or "CSSF" (Luxembourg supervisory authority for the financial sector: www.cssf.lu) after said authority has examined the application.

Permits to carry out insurance transactions are issued by the Finance Ministry (Ministère des Finances) after a preliminary review of the application by the Insurance Commission (Commissariat aux Assurances) (www.commassu.lu). The Luxembourg Regulation of 31 December 2001 lays down the conditions, on the basis of the Act of 6 December 1991, under which insurance companies should set up

guarantee funds and technical reserves, in particular the solvency margin. This law also grants supervisory powers to the Insurance Commission, which takes part in the development of regulation and is in charge of the coordination and development of the insurance and reinsurance sector in Luxembourg.

What skills are required to practice certain liberal professions (professions libérales)?

Business permits are currently required for the following professions:

- architects (architectes),
- interior designers (architectes d'intérieur),
- landscape architects (architectes paysagistes),
- construction (civil) engineers (ingénieurs-conseils)
- specialized engineers (ingénieurs d'une autre spécialité),
- chartered accountants (experts-comptables),
- surveyors (géomètres),
- advisers in industrial property (conseillers en propriété intellectuelle),
- accountants (comptables),
- economic advisers (conseillers économiques).

For these professions, the professional qualifications required, in general, are a diploma or degree awarded after studying at a university or in higher education, in a particular subject, and showing the successful completion of a cycle of a certain length of time, possibly completed by a period of training and/or an aptitude test.

To be an accountant, the professional qualifications required are a certificate of completion of secondary technical studies or as a technician (technicien), in the administrative and commercial division, completed by a period of training and passing an aptitude test.

Of course, lawyers, doctors and company auditors also practice liberal professions, but they are covered by other laws than those relating to setting up a business for which the Ministry of Middle Classes is responsible.

Pharmacists in pharmacies are traders but are nonetheless involved in public health such that they require an authorisation from the Ministry of Health. The Ministry will decide in accordance with the Act of 31 July 1991 which lays down the conditions for authorisation to practice the profession of pharmacist.

Architects, interior designers, landscape architects, construction engineers and chartered accountants must be registered as members of the local Guild of Architects and Consulting (Civil) Engineers (Ordre des architectes et des ingénieurs-conseils) (www.oai.lu) or the Guild of Chartered Accountants (Ordre des experts-comptables) (www.oec.lu) respectively. These professions, organised within a guild, may not be **combined with any other activity that may affect the professional independence of the**

individual involved. More especially, trade activities or skilled craft activities may not be performed at the same time as a person practices one of the above-mentioned professions.

Said guilds have also drawn up special internal rules in order to guarantee the independence of their members acting within a company structure. Thus, the majority of shares / interests in said company structures must be held by members of the guilds in question or by individuals whose activities are compatible with the guild's requirements, from the standpoint of professional ethics. This majority may be a simple majority or a qualified majority (3/4). In addition, the company's managers must be professionals subject to the codes of conduct of the respective guilds. If there is a Board of Directors the majority of the positions on such boards must be held by such professionals. The relevant guilds should therefore be consulted for the precise conditions.

Architects

An architect is an individual whose usual profession is creating and designing a work of construction, town planning or town and country planning, drawing up plans for the work, and summarising and analysing the various activities involved in the creation of the work. The profession of architect also includes consulting and expert appraisals.

The following are considered architectural projects in which an architect may be involved: residential and administrative buildings, buildings to be used for teaching, research or for medical purposes, and any ordinary building without any special technical problems. This last type of building is reserved for construction engineers.

To be an architect, the professional qualifications required are a university degree or certificate of completion of studies at university level issued by a higher education institution recognised by the State in which the institution's head office is located and showing the successful completion of a complete cycle of four years of studies, without prejudice to European regulations governing the professional qualifications of architects who are nationals of an EU Member State.

This evidence of qualification to practice this profession must be completed by a period of training with a professional in this line of business. This professional training, which should last at least a year, must take place after the diplomas, certificates or other qualifications have been obtained.

Interior designers

The profession of independent interior designer consists of creating and composing inside areas, drawing up plans for a work of this kind, and summarising and analysing the various activities involved in the creation of such work.

To be an interior designer, the professional qualifications required are a university degree or certificate of completion of studies at university level issued by a higher education institution recognised by the State in which the institution's head office is located and showing the successful completion of a complete cycle of at least three years of studies in interior design.

Landscape architects

The profession of landscape architect consists of seeking and providing for the planning, design, management, conservation and protection of the environment excluding buildings.

To be a landscape architect, the professional qualifications required are a university degree or certificate of completion of studies at university level issued by a higher education institution recognised by the State in which the institution's head office is located and showing the successful completion of a complete cycle of at least four years of studies in landscape architecture.

Construction (civil) engineers

A construction (civil) engineer (ingénieur-conseil) is an individual whose usual profession is designing a work of construction that is technical or involves town and country planning, drawing up plans and summarising the activities involved in the creation of such work.

To be a construction engineer, the professional qualifications required are a university degree or certificate of completion of studies at university level issued by a higher education institution recognised by the State in which the institution's head office is located and showing the successful completion of a complete cycle of four years of studies or the equivalent.

This evidence of qualification to practice this profession must be completed by a period of training with a professional in this line of business. This professional training, which should last at least a year, must take place after the diplomas, certificates or other qualifications have been obtained.

Specialized engineers

A specialized engineer in other subjects is an individual whose usual profession is designing a work in the technical or scientific area, drawing up plans and summarising the activities involved in the creation of such work. For example, computer engineers will be given permits to practice in their speciality, and so on.

It should also be stressed that, in practice, not all engineers are required to register with the Guild of Architects and Consulting (Civil) Engineers (OAI), but only those whose specialism is similar to construction. For example, computer engineers may practice their profession outside the professional framework of the OAI. Therefore, said engineers may also practice a trade and/or skilled craft activity.

Surveyors

To be a surveyor, the professional qualifications required are a diploma showing university education or higher technical education similar to university in an EU Member State, or recognised as equivalent, in one of the following special fields: geodesy, topography, cartography, photogrammetry, geomatics or a similar specialism. This evidence of qualification to practice this profession must be completed by a period of training of at least two years in Luxembourg under the supervision of an official surveyor, including at least six months with the Land Registry and Topography Authority (Administration du Cadastre et de la Topographie). This professional training must take place after the diplomas, certificates or other qualifications have been obtained.

Advisors in industrial property

The profession of industrial property advisor, practiced independently, consists of providing orientation and assistance and representing principals in the field of industrial property, in particular regarding obtaining, maintaining, defending and disputing exclusive rights created by patents, trade marks, drawings or models.

Entering the profession of industrial property advisor is subject to proof of the following professional qualifications:

- a university degree, higher education diploma or a certificate of completion of university or higher education studies issued by a higher education institution recognised by the State in which the institution's head office is located and showing the successful completion of a complete cycle of at least four years of studies in a legal, scientific or technical area.
- completing a 12-month period of training with an advisor in industrial property who has been approved by Luxembourg's Intellectual Property Department (Service de la Propriété Intellectuelle) or with an advisor in industrial property approved in another Member State, where applicable.
- passing the European qualification examination provided for in Article 134 of the Convention on the grant of European patents of 5 October 1973.
- passing a complementary national examination relating to Luxembourg law on patents for inventions, the Uniform Benelux Law on Trade Marks and Uniform Benelux Law on drawings and models, including the administrative procedures and formalities related to the application of these laws.

INFO LEAFLET / SETTING UP A BUSINESS

Individuals who meet the requirements laid down in Article 3 of Directive 89/48/EC of 21 December 1988 and who have passed an aptitude test may also enter the profession of industrial property advisor.

Chartered accountants

A chartered accountant is an individual whose usual profession consists of organising, assessing and adjusting accounting records and accounts of all kinds, drawing up balance sheets and analysing, using technical accounting procedures, the position and operation of companies and bodies as regards their various economic and financial aspects.

The performance of the duties provided for is not incompatible with the performance of other activities such as keeping accounts, providing a legal address for companies (domiciliataire), performing all payroll and corporate secretarial services, advising on tax matters and completing tax returns, performing contractual audits of accounts and performing the duties of company auditors.

No person may carry out, even on an ancillary basis or occasionally, the activities listed above or call him or herself a chartered accountant or a similar name unless he or she is authorised to do so under the conditions laid down by the law governing setting up a business.

The foregoing provisions do not prevent:

- business enterprises, people in the skilled craft trades and industrialists, the professions and individuals performing their activities pursuant to an employment contract within such an enterprise from carrying out all accounting and tax transactions required by their employer's enterprise;
- for credit institutions supervised by the Commission de Surveillance du Secteur Financier or "CSSF" (Luxembourg supervisory authority for the financial sector), lawyers, company auditors or companies of which more than 50% of the capital is held by the individuals or entities listed in this paragraph, all duly authorised to practice their profession, from carrying out all accounting and tax transactions for financial holding companies and finance companies for which they provide a legal address (domiciliation) for their operations;
- the statutory auditors (commissaires aux comptes) referred to in the Act of 15 August 1915 relating to commercial companies, as amended, from performing their duties.

The name "fiduciary" may only be used together with the name of the activity that is performed.

To be a chartered accountant, the professional qualifications required are a university degree, higher education diploma or a certificate of completion of university or higher education studies issued by a higher education institution recognised by the State in which the institution's head office is located and showing the successful completion of a complete cycle of three years of studies in economic, business and financial sciences or certifying that the individual has the professional qualifications required to practice the profession of chartered accountant.

Evidence of the above-mentioned qualification to practice this profession must be completed by a three-year period of training in the line of business, including at least one year with a duly established chartered accountant. This professional training, which should last three years, must take place after the diplomas, certificates or other qualifications have been obtained.

In addition to evidence of qualification and of the period of training, proof of passing an aptitude test on Luxembourg's tax law, Luxembourg's business law, company accounts, employment law and Luxembourg social security and on the code of conduct of chartered accountants in Luxembourg must also be provided. The terms and conditions of the aptitude test will be laid down by regulation.

Accountants

The profession of accountant, practiced on a self-employed basis, consists of organising accounting services and giving advice on these matters on behalf of third parties, opening, keeping, centralising and closing accounting entries required to draw up financial statements, calculating results and drawing up annual financial statements in the form required by the relevant legal provisions.

However, accountants are limited to organising the accounts, drawing up balance sheets and filling in tax returns for companies which, on the date the accounts were closed, did not exceed the limit of the two following criteria for two consecutive financial years:

- balance sheet total: EUR 2,305 million;
- net turnover: EUR 4,610 million.

To be an accountant, the professional qualifications required are a diploma of completion of secondary technical studies or studies as a technician, in the administrative and commercial division, in accordance with the Act of 4 September 1990, as amended, reforming technical secondary education and continuous professional education, or evidence showing that the concerned individual has equivalent diplomas.

Evidence of the above-mentioned qualification to practice this profession must be completed by a three-year period of training in the line of business, including at least one year with an accountant, a chartered accountant or a duly established company auditor. This professional training, which should last three years, must take place after the required diplomas have been obtained.

Economic advisor

A business permit for the activity of economic advisor consisting in the provision, on a professional basis, of services and advice in micro- and macro-economics and in company management and the provision of any related or complementary services will be granted by the Ministry responsible for granting business permits to individuals who can prove they have a university degree, higher education diploma or a certificate of completion of university or higher education studies issued by a higher education institution recognised by the State in which the institution's head office is located and showing the successful completion of a complete cycle of three years of studies in economic, business or financial sciences or in company management or in business law or certifying that the individual has the professional qualifications required to practice the profession of economic advisor.

Other formalities related to starting a business or a regulated profession

Registration with the Trade and Companies Register

Any individual or legal entity, and any branch, who or which performs a commercial or manufacturing activity must register with the Registre de Commerce et des Sociétés or “RCSL” (Trade and Companies Register) (www.rcsl.lu), depending on the place of establishment, within one month after incorporation or of starting activity. Liberal professions carried out through a company vehicle considered by law as of commercial nature are also requested to register with RCSL.

The type and nature of registration is laid down in detail by law.

Registration gives rise to the collection of a tax whose amount varies depending on whether an individual or legal entity has registered, and depending on the amount of a company's capital.

The Trade and Companies Register (RCSL) operates under the authority of the Justice Minister, who has entrusted management of the Register to an Economic Interest Group (GIE) consisting of the State, the Chamber of Commerce and the Chamber of Skilled Trade.

Tax and social security obligations

In order to fulfil their tax obligations, companies are required to register with the Revenue Service – Direct Taxes (Administration des Contributions Directes) (www.impotsdirects.public.lu) and with the Registration and Domains Service – Indirect Taxes (Administration de l'Enregistrement et des Domaines) (www.aed.public.lu). See Chapter 6 of this document for further information.

The declaration of a new commercial venture is to be sent to the Social Security Centre (Centre Commun de la Sécurité Sociale) (www.ccss.lu). See Chapter 7 of this document for further information.

Under the statutes governing social security, registration with the various sickness and pension funds should be as follows:

- self-employed persons are registered with the Pension Fund for the Skilled Craft Trades, Traders and Industrialists (Caisse de Pension des Artisans, des Commerçants et des Industriels) and with the Sickness Fund for the Self-Employed Professions (Caisse de Maladie des Professions Indépendantes);
- private sector employees are registered with the Pension Fund for Private Sector Employees (Caisse de Pension des Employés Privés) and with the Sickness Fund for Private Sector Employees (Caisse de Maladie des Employés Privés);
- workers are members of the Workers' Sickness Fund (Caisse de Maladie des Ouvriers) and the Pension and Invalidity Insurance Institution (Etablissement d'Assurance contre la Vieillesse et l'Invalidité).

In addition, companies with salaried employees must be registered with the Accident Insurance Association (Association d'Assurance contre les Accidents).

Operating licences

Apart from the aforementioned prerequisites, many businesses also require a special operating licence, which is issued following an environmental impact assessment and clarification of safety in the workplace and neighbourhood protection. Under this partly public procedure, which is also known as the Commodo-Incommodo procedure, so-called “classified installations”, i.e. all industrial, commercial or (skilled) craft trades undertakings, both public or private, all installations, all activities or related activities and any process whose existence, operation or implementation could involve dangers or risks, require prior authorisation. The authorisation procedure is set out below.

Other licences regarding the environment are referred to in the statutes relating to waste, the protection of water or of rivers and streams, protection of the atmosphere or laws relating to the protection of nature.