

## REFORM OF THE RIGHT OF ESTABLISHMENT IN LUXEMBOURG : LAW OF 26 JULY 2023

The law of 26 July 2023 as published in the official gazette on 28 August 2023 (the "**New Law**") amends the amended law of 2 September 2011 regulating the access to the professions of craftsman, merchant, industrialist as well as certain liberal professions. The provisions of the New Law will enter into force on 1 September 2023.

### Key issues

- Main changes to the right of establishment introduced by the law of 26 July 2023

According to the Luxembourg Government, the New Law aims to modernise the right of establishment by creating a modern legal framework likely to stimulate the entrepreneurial spirit. The main modifications introduced by the New Law are the following:

- ❖ **New requirements applying to the manager ("*dirigeant*") holding the business license ("*autorisation d'établissement*")**
  - Simplification of the justification of the "real link" ("*lien réel*") with the business ("*entreprise*"): it is no longer required that the manager holding the business license be a partner, a shareholder or an employee of the business. He/she has to be either (i) the owner of the business (if he/she carries out the business activities concerned in his/her own name), or (ii) duly registered as authorised representative ("*mandataire*") and in charge of the daily management (in case the business is a legal entity).
  - Requirement of the "physical presence in the establishment" of the holder of the business to ensure the effective and permanent daily management of the business.
  - Possibility for a former manager of a business declared bankrupt to benefit from the "new chance principle" if this bankruptcy is due to one of the circumstances set forth in the New Law (e.g. natural disaster recognised by the Government, loss of a preminent client...) The "new chance principle" allows this manager to keep his/her professional respectability and therefore to remain eligible to a business license.
  - Obligation to declare within one month the change in the habitual residence of the managers. The absence of such a declaration results in the loss of validity of the business license.

❖ **Creation of new categories of commercial activities and of new specific commercial activities**

➤ Creation of new categories of commercial activities and services for which a dedicated/specific business license is required, such as:

- rental of shared workspaces or office spaces with ancillary services;
- food retailing activity;
- sale of motor vehicles;
- commercial activities and services related to high-value moveable properties ("*biens meubles de grande valeur*"), such as artworks, precious metals, gemstones, jewellery and time pieces, provided the related transaction amount to at least EUR 10,000 excl. VAT.

These new categories will allow the relevant authorities to trace and control the activities concerned in a more efficient manner (in particular in the context of the fight against money laundering and terrorism financing with respect to transactions related to motor vehicles and high-value moveable properties).

➤ Creation of the commercial activity of "real estate business introducer" ("*apporteur d'affaires immobilier*"):

The concept of real estate business introducer refers to a person connecting a real estate agent or developer with anyone wishing to sell or rent a real estate property.

As is the case for the activities of real estate agent, properties manager, co-ownership manager and real estate developer, the activity of real estate business introducer shall require specific professional qualifications.

➤ Extension of the concept of accommodation operator ("*exploitant d'hébergement*"):

The accommodation operator ("*exploitant d'hébergement*") refers now to a person (natural or legal) renting accommodation units ("*unités d'hébergement*") for a total of 90 overnight stays or more in a year. "Accommodation unit" is defined as furnished accommodation that is intended for visiting customers who do not take up residence and who stay there on a basis of daily, weekly or monthly rentals. This of course concerns hotel operators but may also concern now coliving operators as well as individuals renting parts of their property on a short-term basis, for instance through electronic platforms such as Airbnb.

The business license for the commercial activity of accommodation operator is subject to the successful completion by the manager of an accelerated training course.

❖ **Specific requirements in case of a change of the manager holding the business license**

- In the event of a new application following a change of the manager holding the business license, the Minister will issue the business license to the new manager only if the company:
  - does not have debts in respect of social security contributions and taxes exceeding a certain amount;
  - is up to date with its tax returns; and
  - is up to date with its filing and publication obligations under the amended law of 19 December 2022 on the register of commerce and companies and the accounting and annual accounts of undertakings, and with its registration obligations under the amended law of 13 January 2019 establishing a register of beneficial owners.

❖ **Simplification of administrative procedures**

- Dematerialization of the business licence, with respect to, in particular, issuing, consulting and communicating about the business license, which will occur online on the State's dedicated exchange gateway.
- Reinforcement of data exchange between the Ministry of Economy granting business licenses and the Trade and Company Register ("RCS"), the Register of Beneficial Owners ("RBE"), the VAT Administration ("*Administration de l'enregistrement, des domaines et de la TVA*") and the Joint Social Security Center ("*Centre commun de la sécurité sociale*").
- Assignment of a two-dimensional barcode (QR code) to each business licence which must be displayed on the company's website and at each point of business.

❖ **Other changes**

- With respect to liberal professions subject to a business license: abolition in the law of the liberal professions of "independent engineer" ("*ingénieur indépendant*") and of "landscape engineer" ("*ingénieur paysagiste*").
- With respect to craft activities:
  - Limitation of the number of business licenses that a natural person can hold as manager of a craft business;
  - Simplification of the access to certain activities: creation of a so-called list C including crafts activities not requiring any professional qualification;
  - Facilitation of transfer of business in case of death, professional disability or retirement of the manager of a craft business

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