



OPENING UP SHOP

KLEYR | GRASSO is a member of L&E Global, the alliance of employment counsel worldwide

Our firm was founded in 1994.

During the early years, we gained considerable expertise in litigation and advisory services to local clients. Our firm then resolutely also turned towards international clients and cross-border business. Today, we advise local and multinational companies from all industry sectors, many of the world's largest corporations, leading institutional investors, prestigious private equity houses and numerous other businesses, clients and professionals in almost all practice areas.

We undertake significant client work hand in hand with leading audit and tax firms, and we regularly work on cross-border cases with foreign magic circle firms, which recommend us to their clients for the legal work and services they need in the Luxembourg jurisdiction.

Our vision is to further consolidate our position as one of the leading medium sized law firms in the Luxembourg legal market, and our values reflect our aspirations for the future:

- take time to understand the clients' businesses and their particular needs
- provide tailor made quality, responsive and innovative services and focus on real and pragmatic solutions

We consider that clients rightly expect us lawyers to understand their businesses and to provide them with commercially sound solutions. It is therefore important for us to be familiar with the developments within the industry sectors in which our clients operate.

I. LABOUR AND EMPLOYMENT REQUIREMENTS

A. EMPLOYER POLICY REQUIREMENTS

In Luxembourg, employers are in principle not required by legislation to create and implement employment policies. However, there are a number of policies that employers should create. These policies will help an organization manage employee relations and mitigate the risk of legal liability in the future. The following are thus recommended but not mandatory policies and may be included in a sole policy through an internal regulation or as an attachment

to the employee's employment contract:

- A health and safety policy;
- A flexible working time policy, describing the general rules regarding working time;
- An overtime policy;
- A remuneration policy;
- A whistle-blowing policy;
- A company car policy;
- An equality and diversity policy;
- An IT and communications systems policy;
- A policy regarding sick leave;
- An on-call policy;
- An anti-bribery/corruption policy;

- Policies surrounding the use of employer tools (computer and mobile phone use, internet use, social media, physical tools, etc.) to ensure employees are aware of the expectations surrounding employment;
- A maternity and parental leave policy;
- A harassment policy;
- A disciplinary policy concerning the employees' performances;
- A travel and business expense reimbursement policy;
- A confidentiality and data protection policy.

This guide is intended as general information only. For legal advice and assistance with your business needs, please contact our Luxembourg firm, KLEYR | GRASSO.



For the financial sector, the following policies might also be useful:

- Written Investment Guidelines and a written occupation Investment Risk Management Policy;
- An execution and due diligence policy, for example with regards to broker services and investment funds;
- A conflict of interest policy;
- A remuneration policy.

Exception: The Banking and Insurance Sector:

- Due to the obligations put down in the respective collective bargaining agreements regarding banks and insurance companies, if applicable, banks are obligated to put down a policy of prevention and protection against harassment at the workplace (Annex IV Sectoral Agreement on Moral Harassment of 9 July 2013). Equally, insurance companies must foresee a policy of prevention and protection against harassment and violence at the workplace (Annex V Sectoral Agreement on harassment and violence at work of 25 June 2009).

B) EMPLOYEE TRAINING REQUIREMENTS

Employers are required to complete certain training activities.

Concerning all companies:

- They must ensure that a sufficient number of employees are trained regarding fire safety and security rules and the subsequent evacuation of employees;
- They must ensure that all employees are appropriately informed and trained so that work can be carried out efficiently and safely. For example, for employees

who use a computer on a daily basis for continuous or near continuous spells of time of an hour or more, the employer must provide them with information on working at computer workstations and train them appropriately;

- In addition, the employer has the possibility to grant further training measures, but they are not obligated to.

Concerning banks:

- The collective bargaining agreement prescribes that banks shall, where appropriate, give access to further training measures for employees who have been absent because of an interruption of their career; the purpose of this training is to equip them to perform their tasks. The relevant procedures shall be determined by the banks in consultation with the Works Committees or in their absence the staff delegations. Banks shall respect this due to the adhered principle of equal opportunities for men and women in respect to access to occupational training and promotion and of working conditions and salary. (Article 26 Collective Employment Agreement for Bank Employees)

- Banks are also obligated to provide training to employees, both workers and managers on the policy of prevention and protection against harassment at the workplace. (Annex IV Sectoral Agreement on Moral Harassment of 9 July 2013)

- Furthermore, in this specific sector, induction training is often provided and is intended to impart a basic familiarity with the specific features of the Luxembourg financial centre, the banking techniques and general professional knowledge required by the position; if necessary, this

programme will be supplemented by further training to provide the requisite knowledge of languages, information technology and economics, etc. However, depending on the degree of compatibility of the individual profile with the position concerned, the induction period may be omitted. (Annex 1 Training Agreement)

Concerning insurance companies:

- Insurance companies must inform and train their employees, both workers and managers, on the policy on prevention and protection against harassment and violence at work. (Annex Sectoral Agreement on harassment and violence at work of 25 June 2009)

- Equally in this sector, induction training is often provided and is intended for learning insurance techniques and general professional knowledge required by the job function; this program is supplemented, if necessary, by upgrades in languages, office automation and economics etc. However, depending on the degree of compatibility of the individual profile with the position concerned, the induction period may be omitted. (Article 12 collective bargaining agreement for Insurance Companies Employees)

- The collective bargaining agreement prescribes that insurance companies shall, where appropriate, give access to further training measures to employees who have been absent because of an interruption of their career; the purpose of this training is to equip them to perform their tasks. The relevant procedures shall be determined at the level of the insurance companies in consultation with the Works



Committees or, in their absence, the staff delegations. Insurance companies shall respect this due to the adhered principle of equal opportunities for men and women in respect of access to occupational training and promotion and of working conditions and salary. (Article 18 collective bargaining agreement for Insurance Companies Employees)

C) EMPLOYMENT AGREEMENTS

- In Luxembourg, a permanent contract is the rule and the fixed-term contract is the exception.
- Fixed-term employment contracts may not be used to fill a post resulting from the normal and permanent activity of the company. Therefore, the fixed-term employment contract must indicate the temporary and exceptional nature of the tasks that the employee will have to carry out under this specific form of employment. It may only be concluded under the following conditions listed in the Luxembourg Labour Code:
 - the temporary replacement of employees due to their absence or suspension of their employment contract;
 - the performance of seasonal work;
 - the performance of work in sectors of activity in which it is common not to conclude permanent employment contracts;
 - the performance of work resulting from an extraordinary and temporary workload or from the starting up of a company (in practice, this is one of the most used ground to enter into a fixed-term employment contract);

- the performance of urgent work in order to avoid accidents and to repair weaknesses in materials, to organise safety measures for the company's properties so that the company may not be held liable in case of damages suffered by employees or company's properties;
- under specific conditions, the hiring of an unemployed registered with the Employment Labor Administration (ADEM) or the hiring of students.

Fixed-term employment contracts must not exceed 24 months, possible renewals included.

If a fixed-term employment contract does not fulfil the above conditions, it will be considered as a permanent employment contract.

- The employment contract, whether for an indefinite period or for a fixed period, must be concluded at the latest at the time of entry into service of the employee and put down in writing for each employee individually. (Article 121-4 of the Luxembourg Labour Code)
- The contract must be passed in duplicate, the first being given to the employer, the second being given to the employee. (Article 121-4 of the Luxembourg Labour Code).
- Finally, the employment contract must include a number of indications, such as for example the identity of the parties, the starting date of the employment agreement, the place of work, the nature of the employment held and the normal work schedule. Further details and all the required indications are listed in Article

121-4 of the Luxembourg Labour Code. As mentioned above, the applicable policies of the company may be attached to the employment contract.

- Current practice in Luxembourg is still the conclusion of global employment contracts, i.e. contracts between 1 employee and more than 1 employer, to render the withholding and payroll obligation much easier.



II. CORPORATE LAW REQUIREMENTS

In order to incorporate a company in the Grand-Duchy of Luxembourg (Luxembourg), there are a number of steps and requirements that are needed to ensure legal compliance. Those main steps and requirements (for unregulated companies, meaning companies not submitted to the supervision of any Luxembourg authority, such as the Luxembourg Supervisory Authority of the Financial Sector or the Luxembourg Supervisory Authority of the Insurance/ Reinsurance Sector) are as follows:

- choose the form of commercial company to be adopted (such as: private limited liability company (Société à responsabilité limitée), public company limited by shares (société anonyme), partnership limited by shares (société en commandite par actions), etc.);
- prepare articles of incorporation;
- define the organization's capital structure (amount of capital (required legal minimum to be respected), number of shares, rights attached to shares, etc.);
- define and establish the initial registered office/ address of the company (either proper offices (leased/acquired) or with a Luxembourg based domiciliation agent);
- define and establish a board of directors/ of managers (the Board) (Note: in Luxembourg for substance reason usually the Board has a majority of Luxembourg resident members (often partially provided by the domiciliation agent));
- choose and open a bank account of the company with a Luxembourg based bank (the "Bank"), subject

to the satisfaction of "know-your-client" obligations and account opening procedures;

- create all the necessary organization and foundational resolutions, such as first Board meeting;
- if applicable, or wished by the client, drafting of a shareholder agreement and/or regulations restricting powers of the Board;
- payment of the corporate capital into the company's bank account opened with the Bank and delivery by the Bank of a blocking certificate to the Luxembourg notary, stating that the capital has been paid into the bank account;
- signing of the notary deed of incorporation before a Luxembourg notary (can be made under power of attorney), the signing of the incorporation deed being subject to the delivery of the blocking certificate by the Bank to the Luxembourg notary);
- registration of the company with the Luxembourg register of commerce and companies (will be done by the Luxembourg notary); it being stressed however that under Luxembourg law the company comes into existence promptly upon signing of the incorporation deed before Luxembourg notary;
- if a commercial activity is exercised, corresponding with the Luxembourg tax authorities, to complete all necessary application steps to obtain a tax/VAT/business ID number (which is used in most corporate documents and declarations);
- register trademarks or other intellectual property protections, where applicable.

Our law firm will be able to assist you in the setting up of a company in Luxembourg and has established a long term relationship with domiciliation agents, further service providers or experts in the above business law requirements and will be able to assist the client and to coordinate the work as wished by the client.



III. PAYROLL AND BENEFITS PROVIDERS

We work with third party companies regarding payroll and benefit services. Contact details can be provided upon request.

We are pleased to offer our services for all of the required work identified above and assist your organization to open in Luxembourg. Any portion of the

work can be conducted on the basis of a blended rate. As an alternative, all of the above work can be offered for a project budget to be agreed and depending on the volume and complexity of work.

If you have any questions, please contact

We look forward to working with you.

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