



AUTHORISATION OF ESTABLISHMENT

Today most commercial activities, the crafts sector or certain independent professions are subject to receiving a right of establishment before setting up business.

In fact, the principle of free trade is established in article 11 of the Luxembourg constitution which provides that " the law guarantees freedom of trade and industry, the exercise of professions and of labour except where restrictions may be imposed by the legislature. "

It is presently the law of 28 December 1988, called the law on the right of establishment, which basically governs access to and practice of activities, subject to authorisation by the Minister of the Middle Classes. The law on the right of establishment of 1988 (as amended) and its rules of enforcement thus make up common law in matters of authorisations of establishment.

To this core syllabus are added special laws or laws which include specific provisions governing the right of establishment and the exercise of certain activities which are subject to authorisation by the Minister of the Middle Classes.

As time went by, a rather large Community contribution in the form of directives was added to the legal system applicable to all such activities; it broadened the scope and defined mechanisms of recognition concerning professional qualification, although the actual opinion on such qualifications remains largely in the hands of the national authorities:

Note : article 26 of the law on the right of establishment which organises the information in favour of third parties provides that the mention of the profession and the issue number of the governmental authorisation must be indicated on all letters, estimates, invoices, building site panels and shop windows.



GENERAL INFORMATION

An authorisation of establishment is required from any natural person or legal entity wishing to exercise a commercial (trade, transport, horeca), skilled crafts and industrial activity, as well as for exercising certain professions on a self-employed basis (architect, engineer, chartered accountant, economic adviser, industrial property adviser, land surveyor).

A new authorisation is necessary for the holders of an authorisation of establishment in the following cases :

- to change or expand the corporate object,
- to change the company manager on whose professional qualification the company rests,
- to transfer an establishment from one commune into another,
- in the case of setting up a subsidiary.

A new authorisation is waived in the case of changes in the company form and/or company name, but these changes must nevertheless be notified to the Minister within a period of one month following the relevant change.

It must also be noted that Community nationals who are occasionally and temporarily in Luxembourg to collect orders or provide services, which come under commercial and self-employed professions, are exempted from administrative authorisations by Luxembourg authorities.

Individuals who carry out self-employed professional activities which are subject to an authorisation of establishment and who do not hold such an authorisation would carry out illegal work within the meaning of the law of 3 August 1977 relating to the prohibition of illegal work, as amended by the law of 12 February 1999. This is also applicable to paid employment if the employee is aware of the fact that the employer does not hold the necessary authorisation.

The authorisation for the right of establishment is unlimited in time, except in certain specific cases. Thus an authorisation becomes invalid through lack of use of over 2 years as from the date when it was granted, or in case of voluntary business close down, within the same period of time (art. 2 of the law on business establishment of 1988).

The authorisation will be revoked concerning people who were prohibited from exercising their profession by virtue of a decision in res judicata.



ADMINISTRATIVE PROCEDURE

The requested authorisation for establishing a business is issued by a decision of the Minister of the Middle Classes after an administrative investigation and after a reasoned opinion of a commission (art. 2 of the law on business establishment of 1988).

A ministerial decision for granting, refusing or revoking an authorisation for business establishment can be subject to appeal for annulment before an administrative court within a period of three months as from the date of notification of the decision (art. 2 of the law of business establishment of 1988).

CONDITIONS AND MODALITIÉS OF LICENSING

The right of establishment is granted to any individual who fulfils the double condition of honorability and professional qualification.

If the applicant is a legal entity, it is the manager(s) who will have to meet these two requirements (art. 3 of the law on business establishment of 1988).

Honorability is appraised on the basis of legal precedents and of all elements supplied by the official enquiry (art. 3).

Besides, Article 2 of the law on business establishment expressly specifies that an authorisation may be refused or withdrawn if the individual concerned is deliberately eluding the social and tax charges dictated by his profession, as well as in the case of a criminal conviction based on a breach of the legal provisions concerning unfair competition.

Qualification is appraised through diplomas, certificates of course attendance, certificates of affiliation to social security bodies and certificates issued by Member States of the European Union according to the relevant directives.

If the applicant is a legal entity, the business manager or the person in charge of the management or the running of the enterprise must meet this requirement.

Sources of the Ministry of the Middle Classes

For more information, and to obtain the application form for your demand of authorisation, please do not hesitate to contact IBS & Partners :

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