



CONTACT :

Hance Law Avocats

3A Sentier de l'Espérance,

L-1474 Luxembourg

Tel: +352 274 404

luxembourg@hance-law.com

LUXEMBOURG COMMERCIAL COMPANY

DEFINITION

A Luxembourg Commercial Company is any company that performs a commercial, craft or industrial activity in the territory of Luxembourg. In order to be able to perform the stated activities such company has to obtain a business permit (autorisation d'établissement or autorisation de commerce).

OBJECTIVE, PURPOSE

Luxembourg Commercial Company performs a commercial, craft or industrial activity in the territory of Luxembourg and/or abroad. It is considered to be a Luxembourg resident for tax purposes and has to file annual financial statements in compliance with Luxembourg legislation.

LEGAL BASIS

The main law governing incorporation and operation of companies in Luxembourg is the Commercial Companies Act of August 10, 1915 (as amended). Business activities of commercial companies are governed by the Law of 28 December 1988 and articles 1832 to 1873 of the Civil Code. The Law of 22 September 2011 and various regulations by the Grand Duchy of Luxembourg determine conditions for issuing a business permit to commercial companies.

LEGAL FORM

Luxembourg law recognises the following types of commercial companies:

- **Société anonyme (S.A.)** – similar to a Public Limited Company or an Aktiengesellschaft (AG) (also in a form of a single shareholder S.A.);
- **Société à responsabilité limitée (S.à r.l.)** – similar to a Private Limited Company or a Gesellschaft mit beschränkter Haftung (GmbH) (also in a form of a single shareholder S.à r.l.);
- **Société en commandité par actions (SCA)** – similar to Partnership Limited by Shares or a Kommanditgesellschaft auf Aktien (KGaA);
- **Société en nom collectif (S.e.n.c.)** – General Partnership ;
- **Société en commandité simple (SCS)** – Limited Partnership ;
- **Société co-operative (S.C.)** – co-operative (a co-operative can also be incorporated as a public company);
- **Société européenne (S.E.)** – a société anonyme incorporated in conformity with article 2 of the European Council Regulation (CE) No. 2157/2001 dated 8 October 2001 on the articles of incorporation for a European company.

Business activity can also be undertaken by an individual person, who has to register as a sole proprietorship.

A Partnership (transparent company) is considered to have a legal personality (it is a separate legal person), which is separate from the legal personality of its partners.

It has rights and obligations under commercial and tax law. It has its own assets and the partners of partnerships have unlimited liability, over and above their initial stake in the company.

Opaque company (capital company) is considered to have a legal personality (it is a separate legal person), which is separate from the legal personality of its shareholders. It has rights and obligations under commercial and tax law. It has its own assets. The liability of shareholders of capital companies is limited to their contribution to the company.



CONTACT:

Hance Law Avocats
3A Sentier de l'Espérance,
L-1474 Luxembourg
Tel: +352 274 404
luxembourg@hance-law.com

BUSINESS PERMIT

A company has to prove it fulfils two main conditions for an issuing of a business permit:

- the manager or the operating officer has to satisfy the required legal conditions, qualifications and possess professional integrity for the activity concerned).
- the business has to be settled in a fixed physical establishment in Luxembourg (this excludes all so-called 'letterbox companies').

Other conditions for a performing of a commercial, craft or industrial activity are:

- professional integrity (it is based on the applicant's judicial history for the last 10 years) and on the elements brought to light by an administrative investigation;
- professional qualification with regard to the planned activity (traders or specially regulated commercial activities (including industrial activities), liberal professions requiring a business permit and skilled craftsmen);
- establishment in Luxembourg (the business permit is only granted if there is a physical installation in Luxembourg set up, which includes an infrastructure suitable for the nature and scale of the concerned activity- i.e. an office or premises suitable for a performance of the specific activity in question);
- effective and permanent management of the business by the business permit holder who must effectively manage and run the company in person, on a regular and daily basis (a distant home address could be detrimental to the application). The permanent presence of a third person, even if authorized to commit the business, is not enough to make up for the absence of the business permit holder. The business permit holder has to be connected to the business (as an owner, associate, shareholder or salaried worker of the business).
- compliance with tax and business obligations (the business manager must not have evaded business and tax obligations in his/her previous or current business activities, whether these activities were carried out under his/her own name or through a company run by the said person).

ADMINISTRATION

Commercial company's operations are managed by management (in various forms) and monitored by general meetings of shareholders.

Obligation to audit company's financial statements depends on size criteria. An audit is performed either by an internal auditor (commissaire aux comptes) or statutory auditor (réviseur d'entreprises).

TAX TREATMENT

Transparent companies (partnerships) – this type of company is comparable to a sole proprietorship: although the company files a tax return to jointly establish the commercial profit and a declaration for the commercial tax it is not considered to have a separate tax status.

Profit is subject to income tax at the level of each partner, since the partnership does not have the status of a corporate entity for tax treatment purposes. The taxable profit is divided among the partners pro rata to their respective share in the business.

Communal business tax is paid by the business (if a commercial activity is carried out or in the case the entity is a law firm). Net wealth tax payable by each partner (who is opaque company) based on their percentage share in the business.

Taxation is made in two parts:

1. Calculation of the taxable commercial profit;
2. Division of the taxable profit between the different partners pro rata to their respective share in the business and charging of said profit to their respective overall incomes.

Opaque (capital) company – The company has a separate tax status from that of its shareholders. Its tax obligations are separate from those of its shareholders. It is a separate taxpayer and files a tax return for corporate income tax and communal business tax.

Profit is subject to corporate income tax at the level of the company. Communal business tax is paid by the company. Net wealth tax is payable by the company (except if net wealth tax burden can be offset under certain conditions).