

# ***Factual analysis of Member States Investors' Schemes granting citizenship or residence to third- country nationals investing in the said Member State***

## ***Deliverable B.II Investors' Residence Schemes in Luxembourg***

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The views expressed herein are those of the consultants alone and do not necessarily represent the official views of the European Commission.

**Milieu Ltd** (Belgium), Chaussée de Charleroi 112, B-1060 Brussels, tel.: +32 2 506 1000; e-mail: [emma.psaila@milieu.be](mailto:emma.psaila@milieu.be); [ana.gomez@milieu.be](mailto:ana.gomez@milieu.be) and [vanessa.leigh@milieu.be](mailto:vanessa.leigh@milieu.be); web address: [www.milieu.be](http://www.milieu.be).

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## I. GENERAL BACKGROUND

### ■ *Legal background:*

Law of 29 August 2008 on the freedom of movement of people and on immigration<sup>1</sup> (Immigration Law) was amended on 8 March 2017 in line with the Government's economic diversification and growth policy to encourage entrepreneurship.<sup>2</sup> A number of new articles were introduced including the new Article 53bis which now regulates the residence permit (*autorisation de séjour*) for third-country investors. It aims to target foreigners willing to make a high-quality, substantial investment.<sup>3</sup>

### ■ *Competent authorities:*

The Luxembourgish Ministry of Foreign and European Affairs is the competent authority for migration policies in general. Specifically, the Department for Foreigners of the Immigration Directorate within the Ministry is in charge of handling requests concerning the entry (including the entry visa) and residence (including residence permits) of third-country nationals.<sup>4</sup>

The Ministry of Economy and the Ministry of Finance are involved in processing the applications for the residence permit for investors. The Ministries examine the fulfilment of the economic investment requirement. In addition, the National Employment Agency (*Agence pour le développement de l'emploi* - ADEM) is involved in the recruitment of the staff required to fulfil the employment element of the investment requirement (see below Section II.1.2 of this Report).

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<sup>1</sup> Law of 29 August 2008 on the freedom of movement of people and on immigration (*Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration*), Mémorial A138, available at <https://maee.gouvernement.lu/dam-assets/directions/d8/legislations/Loi-modifiee-du-29-aout-2008-sur-la-libre-circulation-des-personnes-et-l-immigration.pdf> (consolidated text of 20 March 2017) (Immigration Law).

<sup>2</sup> Information gathered through consultation with national stakeholder (representative of the Ministry of Foreign Affairs, competent authority, 12 October 2018).

<sup>3</sup> Information gathered through consultation with national stakeholder (representative of the Ministry of Foreign Affairs, competent authority, 12 October 2018). See Section II.2 of this Report to see the level of investment.

<sup>4</sup> Ministry of Foreign and European Affairs website, 'Immigration Directorate', available at <https://maee.gouvernement.lu/en/directions-du-ministere/immigration.html>.

## II. PROCEDURES, COMPETENT AUTHORITIES AND APPLICABLE CRITERIA

### 1 APPLICATION PHASE

#### 1.1 PROCEDURES

##### ■ *Who can apply for a residence permit under the investors' residence schemes?*

Any third-country national who plans to make any of the following investments can apply for an investors' residence permit:<sup>5</sup>

- **Investment of at least EUR 500,000 in a company and five work positions:** The investment can be in an already **existing company** or a **new company** (still to be created). In both cases, the company must have **its registered office in Luxembourg** and carry out a commercial, artisanal or industrial activity. When the company is new, the five work positions must be created within three years of the incorporation of the business and the recruitment of the staff must be done in collaboration with the National Employment Agency. When the company already existed, at the time of making the investment, the foreign investor must also make a commitment to **keep**<sup>6</sup> the investment and the work positions for **at least 5 years; or**
- **Investment of at least EUR 3 million in a management and investment structure**, either existing or still to be created, with its registered office in Luxembourg where it must have and maintain the necessary substance,<sup>7</sup> also with a solid internal governance system (including adequate internal control mechanisms and appropriate accounting procedures) and at least two job positions;<sup>8</sup> **or**
- **Deposit of funds with a financial institution of at least EUR 20 million:** the financial institution must be established in Luxembourg and the investor must make a commitment to keep the deposit for at least 5 years.

Direct and indirect investments concerning the acquisition or rental of real estate are not taken into consideration for investors to obtain a residence permit.<sup>9</sup>

Investments can be made by the investors themselves or through the intermediary of an investment structure.<sup>10</sup> Intermediaries may include other investment funds, family wealth management funds, private equity or venture capital funds, etc. Those intermediaries have to be entirely owned by the investor applying for a residence permit.<sup>11</sup>

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<sup>5</sup> Article 53bis (1) Immigration Law.

<sup>6</sup> The requirement to keep the investment and level of employment does not apply in the case of acquisition of a company in difficulty and under a redundancy plan.

<sup>7</sup> 'Necessary substance' refers to the required physical and tangible installation of a business in order to operate properly. This is assessed in the context of business structures, the set-up of professional premises, the need for financial, human and technical resources, the number of employed workers (minimum two) and the contractual relationships with professionals of the financial sector. Source: Government of the Grand Duchy of Luxembourg website, 'Glossary', available at <https://guichet.public.lu/en/support/glossaire/substance-appropriee.html>.

<sup>8</sup> Article 53bis (10) Immigration Law.

<sup>9</sup> Article 53bis (2) Immigration Law.

<sup>10</sup> Article 53bis (3) Immigration Law.

<sup>11</sup> Information gathered through consultation with national stakeholder (representative of the Ministry of Foreign Affairs, competent authority, 12 October 2018). See Section II.2 of this Report to see the level of investment.

The effective beneficiary of the deposited or invested assets<sup>12</sup> must be the investor him/herself or his/her spouse or registered partner.<sup>13</sup>

■ *Stages and conditions of the procedure*<sup>14</sup>

**Before entering the country**

Since foreign investors come to Luxembourg with the intention of making a durable investment (see above requirement to keep the investment for at least five years) it is, thus, right to construe that they intend to stay for longer than 90 days and, thus, before entering the country, they must obtain the necessary authorisations that will entitle them to stay for periods of over 90 days. Foreign investors must, consequently, follow two steps before entering the country:

1. *Obtaining a temporary authorisation to stay*:<sup>15</sup> The application must be filed with the Immigration Directorate (or with the Luxembourg diplomatic or consular representation abroad). The application must contain the applicant's identity details (name, surname and address) and be accompanied by a certified copy of their valid passport, a birth certificate, an extract of criminal records (or an affidavit). If the documents are not in English, French or German, an official translation by a sworn translator must be attached to the application. The application can be submitted by the foreign investor or by a proxy. In the latter case, the document entitling the proxy (except for attorneys) must also accompany the application. Only complete applications will be processed; incomplete applications will be returned. The competent authority must process the application within three months of submission. If no decision is taken in the referred period, it is deemed that the application is rejected. In case of a positive decision, the temporary authorisation to stay is issued and sent to the applicant by post. The temporary authorisation must be used within the 90 days after it has been granted (i.e. the foreign investor, thus, has 90 days to apply for the visa, where necessary, and the investors' residence permit).<sup>16</sup>
2. *Obtaining an entry visa, where necessary*:<sup>17</sup> Foreign investors applying for residence and coming from the countries included in the list of countries whose citizens require a visa<sup>18</sup> must first obtain the corresponding Schengen type-D visa (long-stay visa). This visa entitles them to stay for periods of over three months and to travel freely within the Schengen area. The visa application must be filed with the Luxembourg consular services in the country of origin of the foreign investor. To apply, the foreign investor must hold a passport valid for at least three months after the expiration date of the visa.

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<sup>12</sup> 'Assets' are all personal and immovable property owned by a person. Source: Government of the Grand Duchy of Luxembourg website (Government website), 'Glossary', available at <https://guichet.public.lu/en/support/glossaire/avoirs.html>.

<sup>13</sup> Article 53bis (4) and (5) Immigration Law.

<sup>14</sup> Government website, 'Entry and stay in Luxembourg for investors from third countries', available at <https://guichet.public.lu/en/entreprises/creation-developpement/projet-creation/entree-sejour/investisseur-pays-tiers.html>.

<sup>15</sup> Articles 38-41 Immigration Law. Article 38 of the Immigration Law contemplates the following categories of people who must obtain a temporary authorisation to stay: employee (salaried workers); self-employed; researcher; athletes; students, pupil, trainees, volunteers and au pairs; researcher; investors; family members; and persons who wish to stay in Luxembourg for more than 90 days for private reasons (and do not fall under the category of family reunification).

<sup>16</sup> Article 39(1) Immigration Law.

<sup>17</sup> Information on the obligation to obtain a Schengen visa available at the Government website, 'Luxembourg entry visa for third-country nationals', available at <https://guichet.public.lu/en/citoyens/immigration/plus-3-mois/ressortissants-tiers/demarches-communes/entree-visa.html>. List of countries whose citizens are exempted from the visa requirement available and list of countries whose citizens need a visa available at <https://maee.gouvernement.lu/en/services-aux-citoyens/visa-immigration.html>.

<sup>18</sup> Available at <https://maee.gouvernement.lu/en/services-aux-citoyens/visa-immigration.html>.

## After entering the country

After foreign investors have obtained the necessary documents to enter the territory, they must follow four steps to obtain the corresponding investors' residence permit:

1. *File a declaration of arrival:*<sup>19</sup> Within three days from entry into Luxembourg, the foreign investor must appear before the census office (*Bureau de la population*) of the communal administration of the place of intended residence with the corresponding temporary authorisation to stay and, where necessary, the visa to make a declaration of arrival. The investor is vested with a copy of the declaration of arrival which serves as evidence that the declaration has been received by the competent authority. This declaration of arrival entitles the foreign investor to stay and reside in Luxembourg until the corresponding residence permit is issued.
2. *Undergo a medical check:*<sup>20</sup> Before filing the application for a residence permit, the foreign investor must undergo a medical check carried out by a general practitioner established in Luxembourg and a tuberculosis screening by the Health and Social Welfare League (*Ligue medico-sociale*, LMS). The medical check consists of a general clinical examination, a blood test, a capillary glucose test for people with a risk of developing diabetes, and a urine test.<sup>21</sup> Upon the results of the medical tests, a certificate is issued determining whether or not the foreign investor fulfils the health conditions to reside in Luxembourg. This certificate is validated by a doctor appointed by the Ministry of Health competent to take measures in the framework of potentially epidemic diseases or contagious diseases as defined by the World Health Organisation.<sup>22</sup> Once the certificate is validated it is included in the investor's file containing all the documents necessary for an application for a residence permit (see below).<sup>23</sup>
3. *Obtaining the positive opinion of the competent ministry regarding the investment:*<sup>24</sup> Before filing the application for a residence permit, foreign investors must obtain the **positive opinion of the Ministry of Economy or the Ministry of Finance** (depending on the investment carried out) regarding the intended investment. The Ministry of Economy is competent to examine and verify **investments** of at least **EUR 500,000** in an **existing business** or in a **new business** still to be created. The **Ministry of Finance** is responsible for examining and verifying investments of at least **EUR 3 million** in a **management and investment structure**, whether already existing or still to be created; or at least **EUR 20 million** in the form of a deposit with a **financial institution** established in Luxembourg.
4. *Apply for a residence permit for investors:* Within three months of the date of the declaration of arrival, the foreign investor must file **in person** an application for a residence permit presenting before the Immigration Directorate a copy of the temporary authorisation to stay, the receipt of the declaration of arrival, the medical certificate obtained (see above) and, where appropriate, proof of adequate accommodation.<sup>25</sup> Furthermore, the application must be accompanied by the opinion of the Minister of Economy or the Minister of Finance regarding the investment (see above step 3) and validating that the foreign investor:<sup>26</sup>
  - Holds a valid passport or travel document and, where applicable, the corresponding visa (in this case a Schengen type-D visa if included in the list of countries for which such visa is required);
  - Is not subject to a non-admission measure in the Schengen Information System;
  - Is not subject to a prohibition of entry in the Luxembourg territory;
  - Is not considered to be a threat to the public order, national security, public health or the

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<sup>19</sup> Article 40(1) Immigration Law.

<sup>20</sup> Article 41 Immigration Law.

<sup>21</sup> Government website, 'Medical check-up for third-country nationals', available at <https://guichet.public.lu/en/entreprises/sante-securite/visite-medicale/visite-medicale/controle-medical.html>.

<sup>22</sup> Article 41(3) and 28 Immigration Law.

<sup>23</sup> Article 41(3) Immigration Law.

<sup>24</sup> Article 53ter Immigration Law.

<sup>25</sup> Article 53ter(1) and Article 40(2) Immigration Law

<sup>26</sup> Article 53ter (2) and Article 34(1) and (2) Immigration Law.



international relations of Luxembourg or of a State party to an international convention on the crossing of frontiers of which Luxembourg is a party to;

- Proves:
  - The aim and conditions of the intended stay;
  - Sufficient means of subsistence for the whole duration of the intended stay and for, if applicable, the return to the country of origin or the transit to a third-country where his/her admission is guaranteed; or to be able to prove that s/he can secure obtaining such means;
  - Health insurance covering all the possible risks in the territory of Luxembourg.

Before issuing the corresponding residence permit, the totality of the investment (see above ‘*Who can apply*’) must be paid.<sup>27</sup>

5. *Obtaining a residence permit for investors*: Should all of these requirements be fulfilled, the Immigration Directorate will issue the corresponding **investors’ residence permit** which has a duration of **three years**.

Every year, after the issuance of the residence permit, the corresponding Minister (whether the Ministry of Economy or the Ministry of Finance depending on the type of investment) checks that the investment continues to fulfil the legal requirements. If the investment has ceased to meet these requirements, the foreign investor is granted the opportunity to rectify the situation within a year. If after this, the investment continues to fail to meet the legal requirements, the corresponding Minister can make a recommendation to the Immigration Directorate to withdraw the permit.<sup>28</sup>

The investors’ residence permit can be **renewed** for a period of three years. The procedure to renew the residence permit is the same as that to obtain the initial permit: the foreign investor must obtain the positive opinion of the corresponding Minister (see above step 3) and, if this opinion is positive, s/he will file the application for renewal. However, the investor does not need to make a new investment.<sup>29</sup>

#### ■ *Application fees*

The applicable non-refundable **administrative fees** vary depending on the permit requested:

- To obtain a **type-D Schengen visa**, the fee is of **EUR 50** (or EUR 35 for children between 6 and 12 years old; and nationals of Russia, Moldova, Ukraine, Serbia, Montenegro, Bosnia and Herzegovina, Albania, Georgia, FYROM (Macedonia), Armenia, Azerbaijan and Cape Verde).<sup>30</sup>

No information was retrieved for the fees of the medical exam and the issuance of the medical certificate; or for the fees for processing the residence authorisation and issuing the residence card.<sup>31</sup>

#### ■ *Reasons for turning-down applications*

Article 101 of the Immigration Law provides the general reasons for refusing the issuance or renewal

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<sup>27</sup> Article 53ter(4) Immigration Law.

<sup>28</sup> Article 53ter (2) Immigration Law.

<sup>29</sup> Article 53quater(3) Immigration Law.

<sup>30</sup> In accordance with Regulation (EC) No 539/2001 as amended, nationals of Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, Moldova and Serbia (excluding holders of passports issued by the Serbian Coordination Directorate) holding biometric passports are exempt from the visa obligation. Government website, ‘Luxembourg entry visa for third-country nationals’, available at <https://guichet.public.lu/en/citoyens/immigration/plus-3-mois/ressortissant-tiers/demarches-communes/entree-visa.html>.

<sup>31</sup> Consultation with national stakeholder (representative of the Ministry of Foreign Affairs, competent authority, 12 October 2018).



of the residence permit of third-country nationals (thus, including investors). These reasons are:

- That the third-country national does not have the necessary permit to stay and reside in Luxembourg;
- That the third-country national is considered a threat to public order, security or health;
- That the documents used in the application or the permit granted appear to have been fabricated, forged, falsified or tampered with;
- That the third-country national has used false or misleading information or has resorted to fraud or other illegal means to enter and stay in Luxembourg or to enable the entry and stay of another third party;
- That the third-country national has been prosecuted and condemned abroad for a crime or misdemeanour for which the sanction is the extradition of the person concerned in accordance with the relevant laws and treaties on extradition;
- The third-country national is subject to an expulsion order.

Although the legislation does not establish specific reasons to turn down an application for an investors' residence permit (and its renewal) it can be interpreted that, apart from the abovementioned general reasons, if the foreign investor does not obtain the positive opinion of the Ministry of Economy or Finance (depending on the investment) or fails to provide the documentation required in the procedure (see above), the application for a residence permit will be turned down. This is in line with the fact that the investors' residence permit may be withdrawn if the foreign investor fails to produce the documents required by law to prove the investment and to issue the corresponding permit.<sup>32</sup>

#### ■ *Legal remedies in the case of refusal of residence*

Under Article 108 of the Immigration Law the decisions rejecting the issuance or renewal of a residence permit for the general reasons of Article 101 (see above) have to be motivated. In addition, under Article 113, these decisions can be appealed before the administrative courts. Individuals have the possibility to appeal the decision if they can prove that they have an interest to act (*intérêt à agir*).<sup>33</sup>

## 1.2 COMPETENT AUTHORITIES AND NON-PUBLIC BODIES<sup>34</sup>

The **Immigration Directorate** is the competent authority to receive and process applications for entry visas, where applicable, and applications for foreign investors' residence permits, and to issue the corresponding authorisation (visa or permit).

The **Ministry of Economy and the Ministry of Finance** are also involved in the processing of the applications. They carry out the necessary checks to validate that the investment fulfils the legal requirements. When the foreign investor applies from abroad, the approval of these Ministries is necessary for the foreign investor to obtain the necessary visa and to apply for the residence permit. When the foreign investor does not need an entry visa, the approval is necessary to obtain the residence permit.

The involvement of the Ministry of Economy or the Ministry of Finance depends on the type of investment. The Ministry of Economy is competent to examine and verify **investment projects** of at least **EUR 500,000** in an **existing business** or in a **new business** still to be created.

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<sup>32</sup> Article 53ter(4) Immigration Law.

<sup>33</sup> Information gathered through consultation with national stakeholder (representative of the Ministry of Foreign Affairs, competent authority, 12 October 2018).

<sup>34</sup> Government website, 'Entry and stay in Luxembourg for investors from third countries', available at <https://guichet.public.lu/en/entreprises/creation-developpement/projet-creation/entree-sejour/investisseur-pays-tiers.html>.

Meanwhile, the **Ministry of Finance** is responsible for examining and verifying investments of:

- at least **EUR 3 million** in a **management and investment structure**, whether already existing or still to be created;
- at least **EUR 20 million** in the form of a deposit with a **financial institution** established in Luxembourg.

The checks on the origin of the funds used for these investments are subject to the national anti-money laundering law.<sup>35</sup> This means that, in practice, the obliged entities under the referred law (including credit and financial institutions, lawyers and notaries) will also be involved in the procedure by implementing the necessary due diligence measures to identify the beneficiary of the investment, the owner of the funds and the origin of such funds. Furthermore, these obliged entities will inform the Financial Intelligence Unit (*Cellule de renseignement financier* (CRF) attached to the Ministry of Justice)<sup>36</sup> in case a transaction is suspected to be enabling or serving as a means of money laundering or terrorist financing. In such cases, the CRF will alert the Ministry of Economy or Finance (depending of the investment) and the Immigration Directorate so the application for an investors' residence permit is rejected.

The **National Employment Agency** is also involved in the procedure, as when foreign investors make an investment of at least EUR 500,000 in a **new company** they must also create five work positions in cooperation with the Agency.

Furthermore, the medical check is carried out by a Luxembourgish general practitioner and the certificate issued is validated by the **Health and Social Welfare League**.

Although officially there are **no non-public bodies** involved in the procedure, foreign investors may hire the services of intermediaries to assist them with the paperwork required for the procedure. For example, Inimex, a private company specialised in immigration processes, advertises its services to help foreign investors obtain a residence permit.<sup>37</sup>

### 1.3 MONITORING OF THE PROCEEDINGS AND THE AUTHORITIES INVOLVED

There is **no cap** for the scheme nor are there **scrutiny mechanisms** or **reporting obligations**.<sup>38</sup>

### 1.4 INFORMATION ON APPLICATIONS

There is **no legal obligation** to publish the names of successful applicants.

Since the introduction of the scheme by amendment to the Immigration Law on 8 March 2017, six applications have been filed by foreign investors (five Chinese for the renovation and management of a hotel, and one Australian for the establishment of a brewery) and all of them have been approved.<sup>39</sup>

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<sup>35</sup> Article 52bis (6) Immigration Law and Law of 12 November 2004 on the fight against money laundering and terrorist financing (*Loi du 12 novembre 2004 relative à la lutte contre le blanchiment et contre le financement du terrorisme*), Mémorial A183, available at <http://data.legilux.public.lu/eli/etat/leg/loi/2004/11/12/n1/jo> (last amended in April 2018).

<sup>36</sup> Ministry of Justice website, 'Fight against money laundering', available at <https://justice.public.lu/fr/organisation-justice/ministere-public/parquets-arrondissement/lutte-anti-blanchiment.html>.

<sup>37</sup> Inimex website, 'Luxembourg: immigration for investors', available at <https://immigrationeu.com/en/luxembourg-immigration-for-investors/>.

<sup>38</sup> Information gathered through consultation with national stakeholder (representative of the Ministry of Foreign Affairs, competent authority, 12 October 2018).

<sup>39</sup> Information gathered through consultation with national stakeholder (representative of the Ministry of Foreign Affairs, competent authority, 12 October 2018).

## 1.5 INFORMATION ON APPLICATIONS BY FAMILY MEMBERS

### ■ *Measures concerning residence permits granted to family members*

Under Article 69(1) of the Immigration Law any third-country national holding a valid residence permit of a duration of at least one year ('the sponsor') (thus, including foreign investors, as they are granted a three-year residence permit, see Section II.1.1 above) can apply for family reunification.

The family members covered by family reunification are:<sup>40</sup>

- The spouse or registered partner of the foreign investor; and
- Unmarried children under the age of 18 of the foreign investor and/or his/her spouse or partner.

The Ministry of Foreign Affairs may also extend the coverage of family reunification to direct ascendants up to the first degree who are dependent on the investor, unmarried adult children (of the foreign investor and/or his/her spouse or partner) who are dependent of the investor due to their health condition; and to the first-degree direct ascendants or, in their absence, the legal tutor or other family member of a non-accompanied minor covered by an international protection measure.<sup>41</sup>

To apply for family reunification the sponsor must:<sup>42</sup>

- provide proof that s/he has a source of stable, regular and sufficient income to cover his/her own needs and those of the family members for which family reunification is requested. S/he must prove that such income will avoid him/her and his/her family members resorting to the public social assistance system;
- have appropriate accommodation where the family members can reside;
- hold a health insurance covering him/herself and the family members.

Together with this, the application must be accompanied by documents evidencing the family relationship (e.g. birth or marriage certificates) and certified copies of the travel documents of the family members whose reunification is requested.<sup>43</sup>

The application is filed and processed before the family members enter Luxembourg, although, exceptionally, the Ministry of Foreign Affairs may allow that this is done after their entry into the country.<sup>44</sup> This would mean, thus, that foreign investors must first obtain their residence permit before they can apply for family reunification.

The Ministry must notify its decision in writing within nine months of the filing of the application, although this period may be exceptionally prolonged in complex cases.<sup>45</sup> If the Ministry decides to issue a residence permit this will have the express indication 'residence permit for family member' and will have a validity of one year. The permit is renewable, further to the corresponding application, as long as the conditions to issue the initial permit (see above) are maintained.<sup>46</sup>

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<sup>40</sup> Article 70(1) Immigration Law.

<sup>41</sup> Article 70(4) and (5) Immigration Law. Under Article 68(a) and (d) of the Immigration Law 'non-accompanied minors' are all third-country nationals or stateless persons under the age of 18 who enter the territory of Luxembourg without being accompanied by an adult who is responsible for them as established by law or resulting from customs (i.e. after a long-term care relationship) or any minor who is left on their own upon their entry into Luxembourg and 'beneficiaries of international protection measures' are persons covered by refugee status or subsidiary protection in accordance with the Luxembourgish law on international protection and temporary protection (of 18 December 2015).

<sup>42</sup> Article 69(1) Immigration Law. These conditions do not apply where the request for family reunification is made after a period of three months following the granting of international protection (Article 69(3) Immigration Law).

<sup>43</sup> Article 73(1) Immigration Law.

<sup>44</sup> Article 73(4) and (5) Immigration Law.

<sup>45</sup> Article 73(6) Immigration Law.

<sup>46</sup> Article 74(1) Immigration Law.

- *Statistical data on the number/percentage of successful applications for residence permits for family members*

There is no statistical data on the number/percentage of applications for residence permits for family members of foreign investors.<sup>47</sup>

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<sup>47</sup> Information gathered through consultation with national stakeholder (representative of the Ministry of Foreign Affairs, competent authority, 12 October 2018).

## 2 TYPE OF INVESTMENT<sup>48</sup>

Type of investment required	Applicability of financial threshold	Procedure to verify the fulfilment of the investment criterion	Competent authorities and non-public bodies
<p><b>Investment in a company (existing or new)</b></p> <ul style="list-style-type: none"> <li>■ Established in Luxembourg,</li> <li>■ With at least five job positions (in new companies: to be created in the first three years in cooperation with the National Employment Agency)</li> <li>■ To be kept for five years</li> </ul>	<p><b>At least EUR 500,000</b></p> <ul style="list-style-type: none"> <li>■ of which at least 75% must be funds of the investor. The remaining 25% may be a loan for a period of at least three years.<sup>49</sup></li> <li>■ The amount invested must be proportional to the needs of the business project or the value of the existing company in which the investment is made<sup>50</sup></li> </ul>	<p>Before applying for the residence permit, the foreign investor must obtain the opinion of the <b>Ministry of Economy</b>.</p> <p>The Ministry of Economy will assess whether the investment fulfils the legal conditions. However, the legislation does not provide on the basis of which evidence such assessment will be carried out.</p>	<ul style="list-style-type: none"> <li>■ Competent authority to assess that the investment fulfils the legal conditions: Ministry of Economy</li> <li>■ Competent authority to consult with the investor on the job creation: National Employment Agency</li> </ul>
<p><b>Investment in a management structure</b></p> <ul style="list-style-type: none"> <li>■ Established in Luxembourg, where it must maintain a necessary substance;<sup>51</sup></li> <li>■ With at least two job positions</li> <li>■ With a solid internal governance system which includes, at least, adequate internal control mechanisms and appropriate accounting procedures</li> </ul>	<p><b>EUR 3 million</b> of which at least 75% must be funds owned by the investor. The remaining 25% may be a loan for a period of at least three years.<sup>52</sup></p>	<p>Before applying for the residence permit, the foreign investor must obtain the opinion of the <b>Ministry of Finance</b>, which will assess whether the investment fulfils the legal conditions.</p> <p>The appropriateness of the necessary substance is assessed in particular with regard to the activity of the investment and management structure, the configuration of the business premises, the need for financial, human and financial resources. The number of jobs and contractual relations with professionals in the financial sector.<sup>53</sup></p>	<ul style="list-style-type: none"> <li>■ Competent authority to assess that the investment fulfils the legal conditions: Ministry of Finance</li> </ul>

<sup>48</sup> For the purposes of this Table, the term ‘investment’ covers any pecuniary disbursement required as part of the process for obtaining residence under the investors’ residence scheme.

<sup>49</sup> Article 53bis (7) Immigration Law.

<sup>50</sup> Article 53bis (11) Immigration Law.

<sup>51</sup> ‘Necessary substance’ refers to the required physical and tangible installation of a business in order to operate properly. This is assessed in the context of business structures, the set-up of professional premises, the need for financial, human and technical resources, the number of employed workers (minimum two) and the contractual relationships with professionals of the financial sector. Source: Government of the Grand Duchy of Luxembourg website, ‘Glossary’, available at <https://guichet.public.lu/en/support/glossaire/substance-appropriee.html>.

<sup>52</sup> Article 53bis (7) Immigration Law.

<sup>53</sup> Article 53bis (10) Immigration Law.

<p><b>Deposit in a financial institution</b> It can consist of currencies or financial instruments invested with a single financial institution<sup>54</sup></p>	<p><b>EUR 20 million</b> The totality of the funds must be funds owned by the investor.<sup>55</sup></p>	<p>Before applying for the residence permit, the foreign investor must obtain the opinion of the <b>Ministry of Finance</b>, which will assess whether the investment fulfils the legal conditions.</p> <p>Compliance is assessed again the first working day of each 12-month period after obtaining the residence permit.</p> <p>Compliance is assessed in particular on the basis of the monthly average of the balance, the net inventory or stock market value.<sup>56</sup></p>	<p>■ Competent authority to assess that the investment fulfils the legal conditions: Ministry of Finance</p>
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<sup>54</sup> Article 53bis (8) Immigration Law.

<sup>55</sup> Article 53bis (8) Immigration Law.

<sup>56</sup> Article 53bis (8) Immigration Law.

### 3 RESIDENCE PHASE

Residence permit	Procedure	Competent authorities and non-public bodies	Renewal of the residence permit <sup>57</sup>
<p><b>Investors' residence permit for a duration of three years<sup>58</sup></b></p>	<ul style="list-style-type: none"> <li>■ At the time of filing the application, the foreign investor must prove that s/he has secured an appropriate accommodation.</li> <li>■ There is no legal requirement, however, for the investor to be <b>physically present</b> in Luxembourg at the time of filing the application or once s/he has obtained the corresponding residence permit. However, from the legal requirements (filing a declaration of arrival with the census office, proof of accommodation, not being absent for more than six months a year from the Luxembourgish territory, filing the application in person) it can be construed that the physical presence of the foreign investor is required.<sup>59</sup></li> </ul>	<ul style="list-style-type: none"> <li>■ The Immigration Directorate is the competent authority to issue and renew the residence permit</li> <li>■ The census office of the place of intended residence is competent to issue the declaration of arrival</li> </ul>	<ul style="list-style-type: none"> <li>■ The investors' residence permit can be renewed.</li> <li>■ The duration of the renewed residence permit will be of three years too.</li> <li>■ The foreign investor must apply for the renewal of the residence permit. For such purposes s/he must again obtain the opinion of the Ministry of Economy or Finance (see Section II, point <b>1.2</b>) validating that the investment continues to fulfil the legal requirements.</li> <li>■ The renewal procedure is the same as when applying for the first-time issued permit, except for the fact that no new investment has to be made; the foreign investor only has to prove that the initial investment has been maintained.<sup>60</sup></li> </ul>

<sup>57</sup> Article 53quater(3) Immigration Law.

<sup>58</sup> Article 53quater(1) Immigration Law.

<sup>59</sup> Information gathered through consultation with national stakeholder (representative of the Ministry of Foreign Affairs, competent authority, 12 October 2018).

<sup>60</sup> Information gathered through consultation with national stakeholder (representative of the Ministry of Foreign Affairs, competent authority, 12 October 2018).



## 4 DUE DILIGENCE CRITERIA AND SECURITY CONSIDERATIONS

Due diligence and security considerations	Procedure to verify due diligence and security considerations	Competent authorities and non-public bodies	Ex-post checks
<p><b>Checks on the applicant</b></p>	<ul style="list-style-type: none"> <li>■ When applying for a temporary authorisation to stay foreign investors must provide criminal records.<sup>61</sup> The Immigration Directorate checks the SIS in carrying out these checks. However, no information was obtained on whether such criminal records are also checked against other international databases (EURPOL, INETRPOL).<sup>62</sup></li> <li>■ Before applying for a residence permit, applicants must pass a medical check to ensure that they do not pose a threat to public health.<sup>63</sup></li> <li>■ At the time of filing the application for a residence permit foreign investors must provide evidentiary documentation that demonstrates that they:<sup>64</sup> <ul style="list-style-type: none"> <li>• Are not subject to a non-admission measure in the Schengen Information System;</li> <li>• Are not subject to a ban on entering Luxembourg;</li> <li>• Are not considered to be a threat to public order, national security, public health or the international relations of Luxembourg or of a State party to an international convention on the crossing of frontiers to which Luxembourg is a party;</li> <li>• Have sufficient means of subsistence for the whole duration of the intended stay and for, if applicable, the return to the country of origin or the transit to a third-country where their admission is guaranteed; or to be able to prove that they can secure obtaining such means;</li> <li>• Have health insurance covering all the possible risks in the territory of Luxembourg.</li> </ul> </li> <li>■ This documentation is assessed by the Immigration Directorate in cooperation with the authorities issuing them.<sup>65</sup></li> </ul>	<ul style="list-style-type: none"> <li>■ Competent authority to carry out the medical check: general practitioner</li> <li>■ Competent authority to validate the medical certificate: Health and Social Welfare League</li> <li>■ Competent authority to check the documentation presented by the applicant to prove that s/he does not represent a threat to public order, security or health: Immigration Directorate</li> </ul>	<p>Every year, after the issuance of the residence permit, the corresponding Minister (see Section II, point <b>1.2</b>) checks that the investment continues to fulfil the legal requirements and the Immigration Directorate checks that the applicant continues to fulfil the security considerations. If the investment has ceased to meet these requirements, or the foreign investor does not fulfil the security considerations, the foreign investor is granted the opportunity to rectify the situation within a year. If after this, the investment continues to fail to meet the legal requirements, the corresponding Minister (see above, Section II, point <b>1.2</b>) can make a recommendation to the Immigration Directorate to withdraw the permit.<sup>66</sup></p>

<sup>61</sup> Government website, 'Entry and stay in Luxembourg for investors from third countries', available at <https://guichet.public.lu/en/entreprises/creation-developpement/projet-creation/entree-sejour/investisseur-pays-tiers.html>.

<sup>62</sup> Information gathered through consultation with national stakeholder (representative of the Ministry of Foreign Affairs, competent authority, 12 October 2018).

<sup>63</sup> Article 41 Immigration Law and Government website, 'Entry and stay in Luxembourg for investors from third countries', available at <https://guichet.public.lu/en/entreprises/creation-developpement/projet-creation/entree-sejour/investisseur-pays-tiers.html>.

<sup>64</sup> Article 53ter (2) and Article 34(1) and (2) Immigration Law.

<p><b>Checks on the origin of funds:</b> Article 53bis(6) of the Immigration Law provides that the investments (see Table in Section II.2) are subject to the measures of the Anti-money Laundering Law.<sup>67</sup></p>	<ul style="list-style-type: none"> <li>■ Before applying for a residence permit, foreign investors must get the opinion of the Ministry of Economy or Finance (depending of the investment) who will assess whether the investment fulfils the legal requirements.</li> <li>■ Since funds used in the investment are subject to the anti-money laundering law it can be construed that the obliged entities under such law (e.g. credit and financial institutions, lawyers and notaries) cooperate with the competent authorities to avoid that any transaction could represent a risk of money laundering or terrorist financing.</li> <li>■ On the basis of this opinion, the Immigration Directorate decides whether or not to issue the residence permit.</li> <li>■ Checks are carried out every year (see ex-post checks).</li> <li>■ The Ministry of Finance checks the EU's and UN's lists of sanctions and the world check database.<sup>68</sup></li> </ul>	<ul style="list-style-type: none"> <li>■ Competent authority to assess the investment and issue an opinion: Ministry of Economy or Finance (depending on the type of investment, see above Table in Section II.2)</li> <li>■ Competent authority to ensure that the transaction does not pose a threat of money laundering or terrorist financing: obliged entities and FIU</li> </ul>	
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<sup>65</sup> Article 53ter(2) Immigration Law. No information was retrieved on how this assessment and cooperation are carried out (Consultation with national stakeholder (representative of the Ministry of Foreign Affairs, competent authority, 12 October 2018)).

<sup>66</sup> Article 53ter (2) Immigration Law.

<sup>67</sup> Law of 12 November 2004 on the fight against money laundering and terrorist financing (*Loi du 12 novembre 2004 relative à la lutte contre le blanchiment et contre le financement du terrorisme*), Mémorial A183, available at <http://data.legilux.public.lu/eli/etat/leg/loi/2004/11/12/n1/jo> (last amended in April 2018).

<sup>68</sup> Information gathered through consultation with national stakeholder (representative of Ministry of Foreign Affairs, competent authority, 12 October 2018).

### III. RIGHTS GRANTED BY THE PERMITS

#### 1 RIGHTS GRANTED TO INVESTORS

Under Article 53quater (5) of the Immigration Law, a foreign investor who has carried out an investment in a new or an existing company and has been granted a residence permit may request a business permit (*autorisation d'établissement*) to carry out artisanal, commercial or industrial activities or certain liberal professions (e.g. architect, accountant, real estate agent, running a restaurant or a hotel, etc.) if s/he proves having the necessary qualifications/skills, has registered with the corresponding professional registries and meets the conditions of the Law of 2 September 2011 regulating the access to the professions of craftsman, merchant or industrialist and certain liberal professions.<sup>69</sup>

The Single Permit Directive was transposed into the national legislation of Luxembourg.<sup>70</sup> Therefore, it can be assumed that the following rights as set out in Article 12(1) of the said Directive apply to foreign investors: the right to equal treatment comprising working conditions, including pay and dismissal as well as health and safety at the workplace; freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security; education and vocational training; recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures; branches of social security; access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing as provided by national law, without prejudice to the freedom of contract in accordance with Union and national law; and advice services afforded by employment offices.

#### 2 RIGHTS GRANTED TO THE INVESTORS' FAMILY MEMBERS

The residence permit granted to family members of foreign investors grants them the right to education, vocational and professional training, as well as the right to employment or self-employed work.<sup>71</sup>

#### 3 OTHER BENEFITS

Foreign investors and/or their family members do not benefit from any special tax regime or other benefits.<sup>72</sup>

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<sup>69</sup> Law of 2 September 2011 regulating the access to the professions of craftsman, merchant or industrialist and certain liberal professions (*Loi du 2 septembre 2011 réglementant l'accès aux professions d'artisan, de commerçant, d'industriel ainsi qu'à certaines professions libérales*), available at <http://legilux.public.lu/eli/etat/leg/loi/2011/09/02/n1/jo>.

<sup>70</sup> Eur-lex, national transposition measures, available at <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32011L0098>.

<sup>71</sup> Article 74(2) Immigration Law.

<sup>72</sup> Information gathered through consultation with national stakeholder (representative of the Ministry of Foreign Affairs, competent authority, 12 October 2018).

#### IV. INTERACTION BETWEEN RESIDENCE AND CITIZENSHIP SCHEMES

There is no direct interaction between the investors' residence schemes in Luxembourg and the acquisition of citizenship. Foreign investors are, thus, as any other third-country national subject to the general rules on naturalisation established in the Law of 8 March 2017 on Luxembourgish nationality.<sup>73</sup> Under this Law, third-country nationals who wish to be eligible for Luxembourgish nationality must:<sup>74</sup>

- Have resided in Luxembourg on the basis of a legal permit for at least five years and in the year preceding the application for citizenship must have resided in Luxembourg uninterruptedly;
- Attend the course “Living together in the Grand Duchy of Luxembourg”;
- Pass a language test at A2 level in oral expression and B1 in comprehension.
- Have a clean criminal record.

No statistical data was obtained on the number of investors naturalised. Luxembourg only collects statistical data on the total number of third-country nationals, without disaggregating the data by type of applicant.

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<sup>73</sup> Law of 8 March 2017 on Luxembourgish nationality (*Loi du 8 mars 2017 sur la nationalité luxembourgeoise*), Journal Officiel 289, available at: <http://legilux.public.lu/eli/etat/leg/loi/2017/03/08/a289/jo>.

<sup>74</sup> Articles 14 to 18 of the Law on Luxembourgish nationality.

## V. ECONOMIC AND FINANCIAL EFFICIENCY OF RESIDENCE PERMITS FOR FOREIGN INVESTORS

There are no mechanisms to monitor the economic impact and financial efficiency of residence permits for foreign investors.

Since the scheme was only introduced in March 2017, there are no studies on the economic impact of investors' residence schemes in Luxembourg nor is the competent authority able to have a position on whether the schemes have met the expectations for which they were created (economic growth and diversification, and encouragement of entrepreneurship).<sup>75</sup>

However, on the basis of the six successful applications and the level of investment (see Section II.2) it can be estimated that the income generated through investors' residence schemes ranked between EUR 3 (if we consider that all investments made were investments in a company) and 60 million (if we consider that all investments made were investments in a deposit). Nevertheless, taking into account that the foreign investors (five Chinese and one Australian) obtained an investors' residence permit to open a new company and considering that the level of investment required for this type is of EUR 500,000, thus, the total investment would rise to EUR 3 million. Apart from this, each of these foreign investors should create at least five work positions. Therefore, at least 30 work positions would have been created.

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<sup>75</sup> Information gathered through consultation with national stakeholder (representative of the Ministry of Foreign Affairs, competent authority, 12 October 2018).