

Luxembourg

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CHAPTER 1 - Companies covered

Since the amended Companies Act of 10 August 1915, Luxembourg ‘commercial’ legislation has introduced a ‘monistic’ form of company based on the general meeting of shareholders, the board of directors and the College of Auditors.

Legislation of 6 May 1974 brought in workers’ representation at Board and Auditors’ level. Limited companies are covered as follows:

a) at a quantitative level:

workers’ representation at Board level is mandatory for all companies based in Luxembourg and employing at least 1000 workers over a three-year reference period; there are actually about ten companies employing at least 1000 workers.

b) at a qualitative level:

workers’ representation is also compulsory for all companies based in Luxembourg with:

- 1) a State interest of at least 25%, or
- 2) a State concession in its main activity, irrespective of the size of the workforce.

In this context, a Grand-Ducal Decree of 11 August 1974 lists the Compagnie Grand-Ducale d’Électricité (Cegedel), the Compagnie Luxembourgeoise de Télédiffusion (RTL) and the Compagnie Luxembourgeoise de Navigation Aérienne (Luxair).

A Grand-Ducal Decree of 8 April 1989 amended the earlier legislation by the addition of the Société européenne des satellites (SES).

Companies established and operating on the basis of an international treaty are excluded from the scope of the Law of 6 May 1974.

CHAPTER 2 – Employee representation on the board of directors

a) The extent of employee representation

As regards companies covered by the quantitative criterion, the law fixes workers’ compulsory representation at one third of the number of Directors on the Board.

By establishing that there shall be a minimum of nine Directors on a Board, the law ensures that employees are represented by no fewer than three members.

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As regards companies covered by the qualitative criterion, workers' representation on the board of directors is delivered through one Director per 100 employees (the number of Directors representing staff not exceeding one third of the number of Directors on the Board).

b) The appointment of employee representatives

In this respect, the law departs from the normal practice whereby Directors are appointed by a general meeting of shareholders; it empowers staff representatives to appoint Directors representing staff by a list system under the rules of proportional representation.

- These Directors must be appointed from among the company's workforce.
- The electoral colleges of blue- and white-collar representatives shall conduct separate ballots.
- The law allows the most representative national trade unions to make a direct appointment of three Directors to represent employees in companies in the iron and steel industry.
- The Directors must not be chosen from among company personnel.
- A prior inter-union agreement shall determine how individual unions may distribute the seats they appoint directly.
- Employees may be appointed Directors only if they have two years' service with the company.

c) Status and protection of employee Directors

Basically, the rights and duties of the workers' representatives are the same as of the other members of boards. Directors representing staff shall be appointed for the same period of time as Directors representing shareholders. Their term of office may be renewed. This term of office may be terminated early in the event of:

- death;
- resignation;
- termination of employment.

The law also incorporates the principle whereby employee Directors may be removed from office either by staff representatives or by the trade union that appointed them.

The legislation extends to Directors representing staff the common law whereby Directors appointed by the general meeting of shareholders are responsible for errors committed during their period of office. However, it exempts them from the statutory obligation to lodge shares as a guarantee against their actions as managers.

Directors representing staff may not be members of more than two Boards simultaneously. At no time may they be Directors of companies engaged in the same areas of activity. Similarly, they may not be employed by a company engaged in the same areas of activity as the company covered by the legislation.

Directors who constitute at least one third of the Board's membership may, by indicating the agenda, call a meeting of the Board in circumstances where it has not met for over three months. The Chairman of the Board is obliged to place on the agenda of the next meeting any issues specified in a request presented by one third of Board members.

Directors representing staff may not be dismissed during their term of office without authorisation from the Labour Tribunal. However, in the event of serious misconduct by the Director in the performance of his/her professional duties within the company, the senior manager may initiate the procedure pending a final decision by the Labour Tribunal. The law also extends Directors' protective provisions to candidate Directors for a period of six months and to former directors for a period of six months.

CHAPTER 3 – Employee representation in the college of auditors

The law of 6 May 1974 requires the appointment to the college of auditors of a supplementary independent auditor. This appointment is subject to the unanimous agreement of the board members representing the shareholders and those representing the workforce.

CHAPTER 4 – The Luxembourg model in practice

The above title should serve to convince the reader that, where employee participation is concerned, Luxembourg numbers among the most progressive countries. The law of 1974 is widely enforced and, as such, accepted by employers. Little difference is to be observed between the terms of the legislative requirements and actual practice. Not that there has been any scientific research conducted on the effects of this specific form of participation which, quite simply, is part and parcel of the Luxembourg model and just one additional component of the partnership between the two sides of industry.

History and culture

Industrial relations in Luxembourg – often referred to as the Luxembourg model – are based on institutionalised forms of bargaining and social dialogue at all levels. Luxembourg seems to be one of the few countries in which the bargaining and dialogue practised over the last sixty years have come to form the basis of a status quo of social peace that is conducive to social progress, social justice and respect for labour.

The worldwide recession of the 1970s and 1980s gave rise in Luxembourg to a set of arrangements designed to deal with the effects of recession by recourse to tripartite instruments (government/employees/employers) or participatory models.

A brief enumeration of these arrangements is as follows:

Staff delegations

The institution of the staff delegation was reformed by the law of 18 May 1979. Under the terms of this law, any employer regularly employing a workforce of 15 employees or more is required to appoint staff delegates.

The general task of staff delegations under the law is to safeguard and defend the interests of employees in relation to working conditions, job security and social status. The staff delegation has the task of preventing or smoothing over the conflicts liable to arise between employer and employees, whether they be individual or collective in nature.

Joint works committees

A law of 6 May 1974 introduced joint works committees, composed of representatives of both sides of industry in equal proportion, in all private sector companies in Luxembourg employing a workforce of 150 employees over a reference period of three years.

The employer is required to inform and consult the joint works committee at least once a year on current and foreseeable labour requirements in the firm and on any workforce training, further training and retraining measures likely to be entailed by these requirements.

More generally, the joint works committee is empowered by law to issue opinions on economic and financial decisions that may have a decisive effect on company structure or workforce size.

The committee also has co-decision powers in relation to the adoption or amendment of general criteria for staff selection in matters of recruitment, promotion, transfer and redundancy and also in relation to the adoption or amendment of general staff assessment criteria.

The tripartite coordination committee

The tripartite coordination committee, composed of four members of the government, four employer representatives and four representatives of the most representative trade unions in the country, plays an important role in the framework of measures to be taken by the government to stimulate economic growth and maintain full employment.

This committee (set up by a law of 24 December 1977) is required to issue its opinion in advance of implementation of such measures on the basis of an examination of the overall economic and social situation and an analysis of the nature of unemployment. It may, furthermore, draw up its own proposals.

What it is important to realise is that the current situation is the fruit of a long-term development in the course of which all social partners and successive governments have invested much sweat, resources, ideas, effort and concessions on all sides and which has been able to be achieved only as a result of mutual respect and concern for a single goal, namely the creation and safeguarding of the social peace that is a prerequisite for social progress.

An eloquent description of the Luxembourg model is to be found in the June 1977 issue of the OGBL magazine *Actualités* in a contribution by OGBL President John Castengaro:

“It is on the basis of the Luxembourg model that the national Tripartite system with its action plan for full employment and economic growth was able to be realised and that widespread unemployment and poverty could be prevented, unlike in all the other countries, fostering political stability and contributing a spirit of innovation by means of which not only did it prove possible to overcome the crisis (author’s note : the recession of the 1970s and 1980s) but also to conduct a successful economic and employment policy.”

Accordingly, though it has to be observed that the social partners may have trouble in getting harmoniously to grips with the big issues, they invariably find one institutionalised body or another in which they manage to reach agreement and even to develop a common strategy.