

**THE LEGAL SYSTEM
OF THE GRAND DUCHY OF LUXEMBOURG**

By

MARC CALCOEN

**Licentiaat in de Rechten
University of Leuven
Belgium**

**Kandidaat in de Politieke en Sociale Wetenschappen
University of Leuven
Belgium**

CHAPTER SIX (B)

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CHAPTER SIX (B)**THE LEGAL SYSTEM OF THE GRAND DUCHY OF LUXEMBOURG****§ 1.1. Introduction.****§ 1.1(A). Location.**

The Grand Duchy of Luxembourg (Grand Duche de Luxembourg) is situated south-east of Belgium, between France and the Federal Republic of Germany. It has an area of 1,000 sq. miles, about the size of Rhode Island. The northern and higher part of the country is a continuation of the Belgian Ardennes, a hilly region covered with forests. The southern part is agricultural, mainly farmland, woods and vineyards. The heavy industry is concentrated in the southwest corner. The spoken language is Letzeburgish, a German-Moselle-Frankish dialect. French is the official language in the administration, law and parliament, while German is the written language of commerce and the press. The three languages are recognized as official languages. The capital is Luxembourg-Ville. The population of Luxembourg is 365,000, of which 90,000 are foreigners (25%), the highest percentage in a European country.

§ 1.1(B). History.**§ 1.1(B) (1). Political History.****§ 1.1(B) (1) (a). The County and Duchy of Luxembourg (963-1443).**

In A.D. 963, Siegfried, Count of the Ardennes, established the Luxembourg dynasty by building castles and fortresses. The Count owed allegiance to the German emperor. In subsequent centuries, they organised the county, arranged for proper administration and legislation and gave freedom to some of the cities. This helped the counts become very powerful. Some were elected emperor of the Holy Roman Empire and promoted the county to a duchy. The Luxembourg dynasty remained semi-autonomous until 1443.

§ 1.1(B) (1) (b). Foreign Rule (1443-1815).

In 1443, the Duke of Burgundy conquered the area. From then on, it was no longer governed by national princes, but became, with a number of duchies and counties of the Low Countries, a part of Burgundy (1443-1506), and was later passed to the Habsburgs. The Habsburg-Spanish House reigned from 1506 to 1713, and the Habsburg-Austrian House from 1714 to 1795. After the French Revolution and during the reign of Napoleon, Luxembourg was a part of France (1795-1814).

§ 1.1(B) (1) (c). After the Congress of Vienna.

The Congress of Vienna gave Luxembourg as a grand duchy to William I, King of the Netherlands. Luxembourg had the legal position of an independent state, in personal union only with the Netherlands, and included within the German League. It seceded together with Belgium in 1830 from the Netherlands, but came back to William I in 1839, although it lost its western part (now the Belgian province of Luxembourg). From then on, Luxembourg was administered separately from the Netherlands. On the death of William III in 1890 without a male heir, the personal union with the Netherlands came to an end, Luxembourg accepting no woman on the throne. The Grand Duchy passed to Adolphus, Duke of Nassau-Weilburg. Luxembourg's neutrality, recognized by the big powers in 1867, was violated in World War I by Germany. After the War, the grand duchess, who had pro-German sympathies, abdicated in favor of her sister Charlotte, who reigned for 45 years. The present grand duke, Jean, succeeded her in 1964.

§ 1.1(B) (2). Legal History.

Luxembourg law has been influenced by the law of the varying occupying nations and, after the country's independence, by the voluntary introduction of law from neighbor states. Historically, each regime adopted in general the juridical order of the preceding regime. All provisions not conflicting with the new order are considered to be maintained in force. The French Revolution brought about the most fundamental changes. The French Code Civil (1804) and Code de Commerce (1807) were made applicable to Luxembourg, as part of France, and are still the present civil and commercial law. Criminal law originates from the Belgian law of 1867, itself closely based on the Napoleonic French Code Pénal. The Constitution was directly inspired from the model of the Belgian constitution of 1831. After the independence, the French influence remained most important and changes in the basic legislation were made along the French pattern. But, for economic reasons, importation of laws from other countries continued. The law on corporations is based on the Belgian law (1915). German fiscal legislation, introduced under the German occupation in the Second World War, has remained in force, notably in the field of direct taxation; the law of 4 December 1967 on income tax has remained in line with the German model. In the field of labor law and social security, a rather autonomous system has developed, deriving its sources from a number of countries.

Luxembourg law presents itself as an amalgam of French, Belgian and German law, because the absence of specialised bodies for the production of law has prevented legislative development and the creation of original legislative solutions. Because of the close link between the law of Luxembourg on the one hand and the law of its neighbors on the other, interpretation of legislation in Luxembourg can generally be approached by the medium of French, Belgian and, in lesser extent, German legal publications and doctrine.

§ 1.2. System of Government.**§ 1.2(A). Introduction.**

Luxembourg has a parliamentary and democratic form of government with a constitutional monarchy. The sovereign power resides in the nation. According to the doctrine of the separation of powers, three main branches of power can be distinguished:

the legislative, the executive and the judiciary. The effective conduct of the government depends on legislative-executive cooperation. Therefore, the separation of powers is not rigid.

§ 1.2(B). The Crown.

Luxembourg is a hereditary monarchy under the family of Nassau. The Grand Duke is the chief of state. He has no powers other than those formally vested in him by the Constitution and the laws. He is invested with two fundamental prerogatives. Article 33 of the Constitution states that the Grand Duke alone exercises the executive power. His power however is not unlimited, because article 45 of the Constitution requires that the orders of the Grand Duke have to be countersigned by the responsible minister. The Grand Duke always acts through the government. The Grand Duke also intervenes in the legislative process both by the right of proposing legislation and by the sanction and promulgation of the laws.

§ 1.2(C). The House of Deputies.

The legislative power is vested in a unicameral House of Deputies (*Chambre des Députés*), elected for mandates of five years on the basis of universal suffrage. Voting is obligatory for all Luxembourg citizens over 18 years old. Prospective candidates for the House have to be 21 years old. Voting is carried out according to a proportional representation system within four constituencies (North, East, West and South). There is one deputy for every 5,500 inhabitants. Currently, there are 59 deputies.

The House of Deputies votes the laws. It controls the state finances by voting the budget, taxes and loans. A law becomes effective only when it has been given the Grand Duke's consent, and when published in the official gazette, *Mémorial*.

§ 1.2(D). The Government.

The executive power, vested in the Grand Duke, is exercised through the Government. Constitutionally, the Government must have at least three members, but currently, there are 11 members of Government. The President of the Government is called the Minister of State (*Ministre d'État*). The other members bear the title of Minister or *Secrétaire d'État*. Each minister is in charge of one or more departments. The minister cannot be a deputy, but he has the right to address the House of Deputies and can be summoned before it. The Government is responsible before the House of Deputies. The Government is nominated and can be dismissed by the sovereign.

§ 1.2(E). The Council of State.

Article 76 of the Constitution provides for a council called to deliberate on bills and amendments that may be proposed, to settle the questions of administrative disputes and to give their advice on all other questions referred to them by the Grand Duke or by the laws. The Council of State (*Conseil d'État*) consists of 21 members, appointed by the Grand Duke upon nominations, in turn, by the House of Deputies, the Government and the Council of State itself. The Council must give its advice on any bill before it can be deliberated in the House. The House is not bound by the opinion of the Council. The Council exercises some of the attributions of an upper House. The Council has the power

to postpone the enactment of bills by not agreeing with the House of Deputies on the exemption of a second vote. The second vote can then only be taken after at least three months' delay. The Council is also a judiciary body in administrative matters. The Committee for Contentious Proceedings (Comité du Contentieux) consists of 11 members and is the highest administrative court. It has jurisdiction to hear all appeals in cassation for excess or abuse of jurisdiction, material violation of the law or of protective formalities and, in certain cases specified by the law, to hear appeals on the merits (full jurisdiction appeals, recours de pleine jurisdiction).

§ 1.2(F). Consultative Institutions.

An Economic and Social Council (Conseil économique et social), with representatives of the Government and the professional bodies, was created by law of March 21, 1966. It issues reports, studies and opinions every year on the economic, financial and social situation of the country.

The Professional Chambers (Chambres professionnelles) have existed since the law of April 4, 1924. There are three Chambers of employers (agriculture, craftsmen, industry and commerce) and three of employees (public servants, labor, and private employees). They are invested with a public law statute and elected by universal suffrage. The Government must ask their opinion on measures concerning their respective occupations before these are passed by the House of Deputies.

The National Council on Immigration (Conseil National de l'Immigration) was set up in 1977. It can make studies related to immigrant workers and gives advice to the government on proposed legislative, regulatory or administrative measures.

§ 1.2(G). Local Government.

The basic unit of local government is the commune, administered by an elected council, with a burgomaster and at least two aldermen (échevins). The 118 communes are grouped into 12 cantons, which, in turn, form three arrondissements administratifs, each under a commissaire de district, who represents the ministry of the interior.

§ 1.2(H). Political Parties.

§ 1.2(H) (1). Parti Chrétien Social (P.C.S.).

The Christian Social Party is Roman-Catholic oriented and compares with the Christian Democratic Parties of other West European countries. It is supported by farmers, conservative groups and Catholics. It supports the EEC and NATO, and stands for political stability and planned economic expansion.

§ 1.2(H) (2). Parti Ouvrier Socialiste Luxembourgeois (P.O.S.L.).

Philosophically, the Socialist Party is similar to the German Social Democratic Party. The issue of cooperation between socialists and communists on the communal level led to a split in the party and the formation of the P.S.D.

§ 1.2(H) (3). Parti Social-Démocrate Luxembourgeois (P.S.D.).

The Social-Democratic Party was formed in the early seventies after the departure of the conservative wing of the P.O.S.L. The P.S.D. has not been able to strengthen its political base.

§ 1.2(H) (4). Parti Démocratique (P.D.).

The P.D. is a center party, drawing support from the professions, merchants and urban middle class. It is comparable to other West European liberal parties, favoring progressive social legislation and advocating minimum government involvement in the economy.

§ 1.2(H) (5). Parti Communiste Luxembourgeois (P.C.L.).

The Communist Party has received a steady 10%-18% of the votes in national elections since World War II; in 1979, their vote fell considerably. The main strength of the P.C.L. lies in the steelbelt in the industrialized south.

§ 1.3. Sources of Law.**§ 1.3(A). Introduction.**

Traditionally, the theory on sources of law was based on the conception that all law derives from the state, that written law is preeminent and that the legislative power is superior to the other powers. The sources of law are usually classified into national and international sources. The national sources consist of fundamental public law sources (the constitution and the statutes), secondary public law sources (regulations) and a non-written source (custom). The international sources are international treaties, international custom and some acts of international legislation. In Luxembourg, enacted law is the principal source of law. Luxembourg is a civil law country.

§ 1.3(B). The Constitution.

The supreme source of law is the Constitution of October 17, 1868. It was modeled on the Belgian Constitution of 1831. It has been modified in 1919 (affirmation of the principle of popular sovereignty and the introduction of universal suffrage), in 1948 (definition of social and economic rights such as the right to work, provisions for social security, health protection, the right to rest, free primary education), in 1956 (disposition permitting the delegation of exercise of powers to international institutions) and in 1972 (lowering of the voting age from 21 to 18). The provision for revising the Constitution guarantees its permanence. The House of Deputies must pass a declaration, after which it is automatically dissolved. The subsequent legislature can only adopt the modifications by means of a vote with a specified majority (article 114).

§ 1.3(C). The Statutes (lois).

The statutory law is the essential part of the legislation. The Constitution contains a series of provisions reserving for legislation certain determined matters particularly important with regard to the fundamental liberties and the functioning of the state. The

procedure of elaboration of statutes comprises the vote, the promulgation and the publication. Legislation is proposed by the House, although in practice it seldom exercises this power. Nearly all the bills are of the Government's initiative. After the vote in the House, a three-month time-limit is opened in which the Grand Duke ought to sanction the bill; otherwise, it collapses. The promulgation gives existence to the law, but it is not yet binding upon the public. The publication puts the law into force and it becomes binding for every citizen normally three days after publication in the *Mémorial*, the official journal. After this date, the law is supposed to be known by all, according to the rule '*nul n'est censé ignorer la loi*' (nobody is allowed to ignore the law).

The statute is subordinate to the Constitution, but the courts do not have the right to pass on the constitutionality of legislation. This power belongs exclusively to the House of Deputies, which has, in fact, unrestricted powers.

§ 1.3(D). The Regulations (*règlements*).

§ 1.3(D) (1). General Regulations or Decrees.

Article 36 of the Constitution provides that the Grand Duke makes the regulations and orders necessary for the execution of the law (*règlement général*). He ensures the enforcement of the laws while being unable to derogate from them. The executive branch was granted an autonomous regulatory power by the Constitution concerning the organisation of government. The procedure of issuing regulations is less complicated: a proposed regulation is sent for advice to the Council of State and, if necessary, to the Professional Chambers; after deliberation by the Government, it is signed by the Ministers and then by the Grand Duke. It is always passed in the form of an *arrêté*. A general regulation is said to have the force of law (*force de loi*). The courts control the conformity of the regulations with the legal dispositions.

§ 1.3(D) (2). Regulations Based on Legislative Delegation.

In exceptional circumstances, Parliament has enabled the executive branch to act in the legislative sphere. This happened during the two World Wars. This practice is common in economic affairs, the so-called laws 'with full powers.' The regulations, resulting from such a delegation, can derogate from the existing laws, but they remain limited by the enabling law from which they derive.

§ 1.3(D) (3). Local Regulations.

The local regulations (*règlements communaux ou locaux*) are compulsory rules, passed by local authorities, in the field of their local competence and on matters that depend upon local autonomy.

§ 1.3(E). Customary Law (*coutume*).

Custom, under the old regime the basis of positive law, was abolished by the French Revolution. At present, custom is considered as a subordinate source of law. It must have the character of a persistent and uniform usage and in exercise of a legal right. Custom plays a marginal role, because it appears as the interpretation of written law.

§ 1.3(F). Court Decisions.

According to the conceptions of civil law countries, a judicial decision only has a legal effect for the particular case. The authority of precedent is not recognized.

§ 1.3(G). International Sources.

The treaty-making power is exercised by the Grand Duke under the control of the Parliament. All international treaties must be ratified by the House of Deputies. Some of the international customs are applied by the national courts. As for the general principles of international law, the courts take a cautious attitude. International legislation, from the Belgium-Luxembourg Economic Union, the Benelux Economic Union and the European Communities, is binding.

§ 1.3(H). Publication of Legislative Acts.

The *Mémorial* is designed as the official journal of the Grand Duchy of Luxembourg. It is published by the Government under the authority of the Prime Minister. The *Mémorial* has three parts: A—Legislative collection; B—Administrative and Economic collection; and C—Special collection on companies.

The preparatory documents of legislation and debates of the House of Deputies are published in the *Compte Rendu des séances de la Chambre des Députés du Grand Duché de Luxembourg*.

A legislative collection running from 1830 is the *Pasinomie Luxembourgeoise*. The texts are reproduced in chronological order and contain references to the debates of the House.

The publication by bill-poster is still in use for local regulations. Many areas of law are codified. Some of the codes are old: the Civil Code (1804), the Code of Civil Procedure (1806), the Commercial Code (1807), the Criminal Investigation Code (1808), and the Penal Code (1879). Some are more recent, such as the Social Insurance Code (1925).

§ 1.4. Judicial System.

§ 1.4(A). Introduction.

There are two types of courts in Luxembourg: the ordinary courts and the administrative courts. Special social jurisdictions have recently emerged. The ordinary courts are competent to deal with all cases involving so-called civil rights (*droits civils*). They also have exclusive jurisdiction in commercial and criminal matters. All judges are appointed for life by the Grand Duke and they cannot be removed except by a court decision. All jurisdictions sit in benches with the exception of the justices of the peace and the judges for juveniles.

Capital punishment was abolished in 1979. Hard labor for life is the most severe punishment available.

The Luxembourg courts do not exercise a constitutional jurisdiction. They refrain from controlling the conformity of the ordinary laws with the Constitution if the constitutionality is in dispute.

§ 1.4(B). Ordinary Courts.

§ 1.4(B) (1). Justices of the Peace and Police Courts.

On the first level of the judicial system are the Justices of the Peace (*justice de paix*). There are three Justices of the Peace (Luxembourg, Esch-sur-Alzette and Diekirch). They are composed of four, three or two judges, but the trials take place with one judge. They have jurisdiction in civil and commercial matters up to an amount of 30,000 Luxembourg francs. Sitting as Police Courts (*tribunal de police*), they are competent to deal with petty offenses (*contraventions*). Apart from the general jurisdiction, they have specific jurisdiction and play an important role in the non-contentious jurisdiction (*jurisdiction gracieuse*).

§ 1.4(B) (2). District Courts.

Luxembourg is divided into two judicial districts (*arrondissements*): Luxembourg and Diekirch. The District Court (*tribunal d'arrondissement*) at Luxembourg has one President, six Vice-Presidents, 19 judges and 10 deputy judges. The District Court at Diekirch has a President, four judges and two deputy judges. They are divided into a number of chambers each of which sits as a bench of three judges. The District Courts are invested with both original and appellate jurisdiction. The original jurisdiction in civil matters is general, i.e. the District Court is presumed to be competent in the absence of express provisions to the contrary (*tribunal civil*). The Chamber dealing with commercial cases is called the Commercial Court (*tribunal de commerce*) and sits without lay assessors. When exercising criminal jurisdiction, the District Court is known as the Correctional Court (*tribunal correctionnel*), and deals with misdemeanors (*délits*). The District Court has appellate jurisdiction over the judgments of the Justices of the Peace. A Juvenile Court (*tribunal de la jeunesse*) is organized at the District Court's level and has original jurisdiction over offenses committed by persons under 18 years old.

§ 1.4(B) (3). Supreme Court of Justice.

The Supreme Court of Justice (*Cour Supérieure de Justice*) is composed of a President, two Vice-Presidents and 13 judges (*conseillers*). It sits at the same time as a Court of Cassation and as a Court of Appeals. The Court sits as a Court of Appeals from decisions rendered by the District Court in civil and commercial matters, and decisions by the Supreme Conciliation Boards and Arbitral Tribunals in labor cases. As a Court of Cassation, it has jurisdiction over the decisions by the Justices of the Peace, the District Courts, the Assize Court, the Supreme Court of Justice sitting as Court of Appeals and the Supreme Council of Social Insurance. As a Court of Cassation, the Supreme Court controls the procedural and substantive correctness and questions of law. The Supreme Court is made up of five judges when sitting as a Court of Appeals and of seven judges when sitting as Court of Cassation. A member of the Court sitting as single judge hears appeals from the decisions of the Juvenile Court. The Supreme Court sits in general assembly of 16 judges for matters specified by the law. Conflicts of jurisdiction between the administrative and ordinary courts are decided upon by the Supreme Court.

§ 1.4(B) (4). Assize Court.

The Assize Court (*Cour d'Assises*) is made up of six judges, three from the Supreme Court of Justice and three from the District Court. The Assize Court sits without a jury,

which is unknown in Luxembourg. It tries offenses classified as felonies (crimes). A defendant is acquitted if fewer than four of the six presiding judges find him guilty.

§ 1.4(C). Administrative Courts.

The supreme administrative court is the Committee for Contentious Proceedings (Comité du Contentieux) in the Council of State. It has a general competence in administrative litigation. It hears appeals on the merit from the Government, the administrative authorities and the Pension Board, and appeals in cassation from these agencies and the Audit and Exchequer Chamber.

§ 1.4(D). Social Courts.

§ 1.4(D) (1). Labor Courts.

Labor laws have organized Conciliation Boards of Employers and Workers (Conseils de Prud'hommes), with jurisdiction over labor contracts, labor books, etc., and Arbitral Tribunals (tribunaux arbitraux), which deal with cases between employers and employees. They consist of a magistrate of the Justice of the Peace and an equal number of assessors representing employers and workers. Appeals go to the Supreme Court of Justice and not to the District Courts.

§ 1.4(D) (2). Social Insurance Courts.

In social insurance matters, the Arbitral Council of Social Insurance (Conseil Arbitral des assurances sociales) decides the cases. Appeals go to the Supreme Council of Social Insurance (Conseil Supérieur des assurances sociales). These courts comprise professional judges and lay assessors.

§ 1.4(E). The Attorney General's Department.

The Attorney General's Department (Ministère Public), under the direction of the Attorney General (Procureur général), is responsible for the administration of the judiciary and the supervision of judicial police investigation. Public prosecution lies with the Parquets, attached to the District Court, and the Parquet Général, attached to the Supreme Court of Justice.

§ 1.4(F). Collection of Court Decisions.

Judicial decisions are published in the *Pasicrisie Luxembourgeoise*, *Recueil de la jurisprudence luxembourgeoise en matière civile, commerciale, criminelle, de droit public, fiscal, administratif et notarial*. Decisions from both ordinary courts and the administrative jurisdiction are published. Each volume generally covers several years. The *Pasicrisie* also contains doctrinal articles on topical questions.

§ 1.5. Legal Education.

There is no university in Luxembourg. Lawyers must attend law faculties of foreign universities, chiefly in Belgium, France and the Federal Republic of Germany. In 1969, the Centre Universitaire de Luxembourg was founded, which includes the Institut

Universitaire International de Luxembourg, approved by the Government. It offers a one-year course in law and postgraduate courses in law and economics.

§ 1.6. Legal Profession.

The number of lawyers practising in Luxembourg is approximately 200. They are divided in three different categories. The *avocats-stagiaires* can defend in criminal trials and can plead, but not solicit before tribunals and courts exercising jurisdiction in matters of civil law, when not assisted by an *avocat-avoué*. The *avocats-avoués* may plead and solicit before all jurisdictions of their judiciary district, and before the Supreme Court of Justice too, when enlisted by the Bar of the City of Luxembourg. *Agrées* represent and give legal assistance to parties before the Justices of the Peace and Arbitral Tribunals. The conditions for the practice of law differ slightly. All must be law graduates. The *avocat-avoué*, however, must be at least 25 years old and answer the conditions of the judiciary probation.

§ 1.7. Banking and Finance.

In the 1970's, Luxembourg significantly developed its role as an international center of banking and finance. By December 1981, there were 115 banks established in the Grand Duchy. German banks have become increasingly important and represent over 50% of total assets. Other foreign banks come from the U.S., Switzerland, France, Belgium, Scandinavia, Japan, the U.S.S.R. and China. In 1981, the number of holding companies domiciled in Luxembourg exceeded 5,200. The European Investment Bank, the financial institution of the European Communities, is also located in Luxembourg, as well as the European Monetary Fund. However, Luxembourg is not a fiscal paradise. The steady growth of financial activities is due to the development of the Euro-market and the issuing of international loans. The stability of Luxembourg's political regime and its central location are also important.

§ 1.8. International Organisations.

Luxembourg participates in many international and regional organisations: the U.N. and its specialized agencies, the O.E.C.D., N.A.T.O., INTELSAT, and the International Energy Agency. Three organisations are of particular importance: the Belgium-Luxembourg Economic Union (B.L.E.U.), the Benelux Economic Union and the European Communities (E.C.).

§ 1.8(A). The Belgium-Luxembourg Economic Union.

In 1921, Belgium and Luxembourg entered into an economic union and since that date no customs border has existed between the two countries. Treaties and agreements relating to tariffs and trade are common to the Union. The Convention provided for the complete integration of Luxembourg into the Belgian monetary system. The Luxembourg franc is at par with the Belgian franc. Belgian money is a legal tender in Luxembourg. The right of Luxembourg to have its own currency is restricted. Exchange rate policy and changes in the exchange rate depend upon the agreement of both countries. The devaluation of the Belgian franc in 1982 without proper consultation of the Luxembourg government gave rise to sharp protest, but, nevertheless, the Union has

continued. Both countries have a common foreign exchange control regime entrusted to the Institut Belgo-Luxembourgeois du Change. This bilateral relationship was left intact in spite of the creation of the Benelux Economic Union and the European Communities.

§ 1.8(B). Benelux Economic Union.

Belgium, the Netherlands and Luxembourg formed the Benelux Economic Union in 1948. The Union aims at the integration of the economies of the three countries through a customs union and other forms of economic cooperation. The Benelux has a lesser impact than the B.L.E.U.

§ 1.8(C). The European Communities.

Luxembourg is one of the founding members of the E.E.C. in 1951. Luxembourg is one of the three European capitals, the others being Brussels and Strasbourg. Many institutions of the E.E.C. are located in Luxembourg, such as the Court of Justice, the General Secretariat of the European Parliament, the European Monetary Fund, the European Investment Bank, the Office of Statistics and the Consultative Committee of the European Iron and Steel Community.

§ 1.9. Foreign Investment.

§ 1.9(A). Introduction.

The Luxembourg government welcomes foreign investment. Preference is given to investment relative to new branches of industry with a high added value and a good technological background. There are no legal restrictions on foreign investment in any economic sector. No distinction is made between foreign and national investors. A permit from the Ministry of the Economy and the Middle Classes must be obtained for establishing commercial and industrial entities.

§ 1.9(B). Forms of Business Organisation.

§ 1.9(B) (1). Joint Stock Company.

The Société Anonyme (S.A.) is the most common form of business entity for the establishment of a Luxembourg subsidiary of a foreign corporation. It's a corporation limited by shares. The shareholders' liability is limited to the amount of their capital contributions. The life of a joint stock company is fixed at 30 years but can be extended.

§ 1.9(B) (2). Limited Liability Company.

The Société à Responsabilité (S.A.R.L.) is a private company, the shares of which are not negotiable. Company law does not fix a limit on the life of the company. Agreement between the shareholders can bring the company into liquidation.

§ 1.9(B) (3). Joint Venture.

A joint venture may be established in the legal form of a Société Coopérative (S.C.). There must be at least seven shareholders. Shares are transferable only to other members

of the joint venture. A joint venture can also take no legal status, by contract between two or more entities each dealing with third parties in its own name.

§ 1.9(B) (4). Branch of a Foreign Corporation.

A branch may be established subject to certain registration requirements and may operate either independently or through an agent.

§ 1.9(B) (5). Holding Company.

A holding company is any Luxembourg company, whatever its legal form may be, which has for its sole object the taking of participations in other Luxembourg or foreign companies, as well as the management and exploitation of such participation, in such a manner that it shall have no industrial or trading activity of its own and shall keep no commercial establishment open to the public. They are governed by the law of July 31, 1929. They have a very favorable treatment.

§ 1.10. Recent Developments.*

§ 1.10(A). The European Community.

On June 19, 1990, five member nations of the European Community signed an agreement to open their common borders. The agreement was between France, West Germany, Belgium, The Netherlands, and Luxembourg. The treaty was signed in the Luxembourg Village of Schengen and was known as the Schengen Treaty. The treaty's terms anticipated the re-unification of Germany and was to come into effect after the re-unification occurred. Once re-unification was completed, the treaty would extend the same rights to former East Germans as it did to West Germany. The pact took effect in 1992. The countries agreed that they would serve as a test site for the opening of the internal European Community market at the start of 1993. This provided the advantage of witnessing how a completely open market would function on a smaller scale.

Also included in the treaty were tighter controls on the external borders of the five nations, but movement between the nations would be completely free once a person entered the region.

In another showing of unity, the countries also agreed to share access to an electronic crime data bank to help all five nations protect against terrorist and other criminals. The police would also be given power in countries other than their own. This power was extremely limited and yet exemplified the trust between the nations. This economic area that the five states created represented a strong producing conglomerate and possessed formidable buying power.

On June 28 and 29, 1991, the leaders of the twelve European Community nations met in Luxembourg to assess the progress in ongoing negotiations toward greater economic and political union between the E.C. members. The E.C. postponed making any major decisions at this meeting until the next summit meeting on December 9 and 10, 1991 in The Netherlands. At these meetings in Luxembourg, Great Britain was still the most cautious towards greater integration.

The discussion focused on a treaty that Luxembourg Premier Jacques Santer had drafted concerning the possibility of political union among the European countries. Premier Santer's work was hailed as "the basis of subsequent work" to develop closer political

ties among the members. Premier Santer's draft suggested ways to change and develop the Community's internal decision making processes, outline the social policy of the E.C., and coordinate foreign and defense policy. The drafting of this treaty was the last act that Premier Santer performed as a rotating President of the E.C. The end of his six month term as temporary President coincided with the end of the summit.

On October 22, 1991, Luxembourg hosted another meeting of the E.C. where the European Free Trade Association reached an agreement to establish the Western European Free Trade area. This common economic area was to come into effect in 1993.

Bibliography**Bibliographies.**

Bibliographie luxembourgeoise, published annually since 1944 by the Bibliothèque Nationale.

Bibliographie du droit luxembourgeois, published by the Association Internationale des Sciences Juridiques: Comité National Luxembourgeois, Bruxelles, Larcier, 1967, 240 p.

Christophory, J. and Hury, C., **Luxembourg**, in World Bibliographical Series, no. 23, Clio Press, Oxford, 1981, 184 p.

Law and Constitution.

Eyschen, P., **Das Staatsrecht des Grossherzogtums Luxemburg**, Tübingen, Mohr, 1910, 231 p.

Graulich, P., Guillittu, P., Clastra Van Loon, J.F., Van Holk, L.E., **Guide to foreign legal materials: Belgium, Luxembourg, Netherlands**, Dobbs Ferry, New York, Oceana, 1968, 258 p.

Majerus, M., **Le statut des étrangers dans le Grand-Duché de Luxembourg**, Luxembourg, Imprimerie Saint-Paul, 1980, 353 p.

Majerus, N., **Histoire du droit dans le Grand-Duché de Luxembourg**, Luxembourg, Imprimerie Saint-Paul, 1949, 2 vols.

Majerus, P., **L'Etat luxembourgeois. Manuel de droit constitutionnel et de droit administratif**, Luxembourg, Imprimerie Saint-Paul, 1977, 407 p.

Metzler, L., **Mélanges de droit luxembourgeois**, Bruxelles, Bruylant, Luxembourg, J. Beffort, 1949, 402 p.

Pescatore, P., **Introduction à la science du droit: réimpression avec mise à jour 1978**, Luxembourg, Centre Universitaire de l'Etat, 1978, 592 p.

Thill, J., **Documents et textes relatifs aux constitutions et institutions politiques luxembourgeois**, Luxembourg, Centre de Documentation Communale, 1973, 339 p.

Thiry, R., **Précis d'instruction criminelle en droit luxembourgeois**, Luxembourg, de Bourcy, 1971, 411 p.

Government and Administration.

Le Conseil d'Etat du Grand-Duché de Luxembourg: livre jubilaire publié à l'occasion du centième anniversaire de sa création, 27 novembre 1856-27 novembre 1956, Luxembourg, Imprimerie Bourg-Bourger, 1957, 623 p.

Le gouvernement du Grand-Duché de Luxembourg, Luxembourg, Service Information et Presse, 1979, 108 p.

The Luxembourg Grand Ducal family, Luxembourg, Press and Information Service, 1970, 40 p.

Bonn, A., **Lecontentieux administratif en droit luxembourgeois**, Luxembourg, Peiffer, 1966, 229 p.

Majerus. P., **The institutions of the Grand Duchy of Luxembourg**, Luxembourg, Press and Information Service, 1977, 80 p.

Banking and Finance.

The regulation of banks in the member states of the EEC, Alphen aan den Rijn, Sijthoff & Noordhoff, 1978, 331 p.

Biel, A., Stuyck, C., **Les fonds d'investissement en droit luxembourgeois**, Luxembourg, Institut Universitaire International, 1978, 58 p.

Dargent, J., Rau, F., **Luxembourg, an international financial centre**, Luxembourg, Information and Press Service, 1972, 68 p.

Link, R., **La réglementation bancaire au Grand-Duché de Luxembourg**, Luxembourg, Binsfeld, 1980, 135 p.

Meier, U., **Struktur des Bankwesens in Luxembourg**, Frankfurt-am-Main, Knapp, 1975, 148 p.

Muhlen, E., **Monnaie et circuits financiers au Grand-Duché de Luxembourg**, Luxembourg, Université Internationale de Sciences Comparées, 1968, 136 p.

Rollmann, N., **Les relations monétaires entre la Belgique et le Grand-Duché de Luxembourg**, Luxembourg, Imprimerie Saint-Paul, 1964, 124 p.

Business.

Guide du marché luxembourgeois, Chambre de Commerce du Grand-Duché de Luxembourg, Luxembourg, Imprimerie Bourg-Bourger, 1979, 319 p.

Luxembourg: ideal location for your development plans. Management guide. Chambre de Commerce du Grand-Duché de Luxembourg, Luxembourg, 1979, 114 p.

Bernard, G., **Les sociétés holding au Grand-Duché de Luxembourg: aspects juridique, fiscal et compatible**, Luxembourg, Institut Universitaire International, 1979, 139 p.

