

# Regulation of the Legal Profession in Luxembourg: Overview

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A Q&A guide to the regulation of the legal profession in Luxembourg.

The Q&A gives a high level overview of the key practical issues including required qualifications for both domestic and foreign legal professionals working in a jurisdiction; common legal professional structures; national regulators, legal professional insurance and client protection; confidentiality and legal professional privilege; legal fees and fee regulation; client money; and notaries.

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## Introduction to the Regulatory Framework

1. How many categories of lawyer are there in your jurisdiction?

There are three categories of practising lawyers in Luxembourg (divided up into lists):

- Court advocates (*avocat à la Cour*) (List I), are fully qualified Luxembourg lawyers.
- Attorneys (*avocat*) (List II) are qualified Luxembourg lawyers (that are admitted to the bar) who still have to complete their training. To represent parties in front of the various courts, attorneys must be supervised by a court advocate (except in a few cases).
- EU admitted lawyers (*avocat de l'UE exerçant sous son titre d'origine*) (List IV), foreign lawyers from the EU practising under their original professional title.

As explained further below, to be admitted to the Luxembourg Bar and be authorised to practise as a lawyer, candidates must prove their professional knowledge and good reputation.

There is generally no distinction between the prerogatives of the different types of lawyers, apart from the fact that only court advocates can represent parties in civil written proceedings in the district and higher courts.

List III lawyers are honorary members (*avocat honoraire*), a title conferred to a lawyer who has been registered at the Bar for at least 20 years and has voluntarily resigned from it.

There are two types of legal entities for practising lawyers:

- *Société d'avocats ayant la qualité d'avocat à la Cour* (List V), which is a corporation formed by lawyers who can practice as a qualified lawyer.
- Other types of corporation formed by lawyers (List VI).

2. What stages of legal education must be completed to qualify as a lawyer in your jurisdiction?

To be admitted to the Luxembourg Bar, a candidate must:

- Hold a master's degree in law from the University of Luxembourg or a master's degree in law from a foreign university. In the latter case, recognition must be obtained in accordance with the amended Law of 18 June 1969 on higher education and the accreditation of foreign higher education qualifications and degrees (amended by the Grand-Ducal Regulation of 10 September 2004, Article 4, providing that the teaching of law must have covered at least the following subjects: civil law, criminal law or criminal proceedings, commercial law, private or public international law, constitutional or administrative law).
- Attend complementary courses in Luxembourg law (*certificat de formation complémentaire en droit luxembourgeois* (CCDL)).
- Prove that they have a good knowledge of the three national languages of Luxembourg (Luxembourgish, French and German).

The candidate is then initially sworn in and allowed to practise law as an *avocat* (List II). After a two-year traineeship, and on passing a final exam, the candidate will progress from List II of the Bar to List I and is then allowed to practise law as a court advocate.

At the start of 2022, the Ministry of Justice put forward Bill No. 7958 aiming to amend the system of admission to the Luxembourg Bar, which is still being discussed at the Chamber of Deputies. Broadly speaking, attendance at the CCDL will be subject to the passing of an entry exam and the final exam will be replaced with continuous assessment of the knowledge acquired during the two-year traineeship.

3. What are the requirements to obtain a practising certificate/licence? How often must this be renewed?

To practise law, lawyers must be registered with one of the two Bar Associations established in the Grand Duchy of Luxembourg (Luxembourg or Diekirch).

The candidate is admitted to the register of lawyers (*Tableau de l'Ordre*), by the governing body of the respective Bar Association, which is the Bar Council (*Conseil de l'Ordre*), after the examination of the candidate's file.

The candidate must meet the following requirements:

- Present the necessary guarantee of good reputation.
- Complete the legal education, pass the CCDL exam, and complete the required training (*see Question 2*).
- Be a Luxembourg or EU national. An exception can be made for non-EU national after obtaining the approval of the Minister of Justice if there is a reciprocity between the non-EU member state and Luxembourg.
- Take an oath before the Luxembourg Supreme Court.
- Once admitted to the Bar, no renewal of the licence is necessary.
- There are no specific requirements to practise as an in-house lawyer.

4. Are there any limitations on lawyers advising throughout your jurisdiction?

A lawyer can only establish one law firm in the Grand Duchy of Luxembourg. The law firm must be established in the judicial district of the Bar Association with which the lawyer is registered.

A lawyer who agrees to take on a case must have the necessary professional and language skills (except if they co-operate with a lawyer with these skills), otherwise they will face disciplinary sanctions.

The following professions are strictly incompatible with the legal profession. These include:

- Judge.
- Clerk.
- Bailiff.
- Notary.
- Auditor or accountant for a company.
- Employment in public sector.
- Employment in private sector (as in-house lawyer in a commercial company).
- Company managing director.
- Manager or commercial, artisanal or industrial company.
- General agent or agent of insurance company.
- Exercise of a commercial or artisanal activity.

However, a lawyer can be a director, manager, member of the board of directors or management of a commercial company, or even a domiciliary agent (that is, providing a legal entity with a registered address) but this activity must be clearly separated.

Generally speaking, it is prohibited to exercise any activity that can undermine the independence of the lawyer or the dignity of the profession.

5. Are there any written codes of conduct or handbooks, or rules and/or principles that lawyers are required to abide by?

Lawyers registered at the Bar Association of Luxembourg or Diekirch must comply with the rules of their respective internal rules and regulations (*règlement d'ordre intérieur*) as adopted by the Bar Councils (available online through the *Journal officiel* website). These regulations complement the Law on the Legal Profession (of 10 August 1991, as amended (Legal Profession Law) .

The Luxembourg Bar is also an Observer Member of the Council of Bars and Law Societies of Europe (*Le Conseil des barreaux européens*) (CCBE). In this respect, the Luxembourg Bar Association has adhered to the statutes and adopted the CCBE Code of Conduct.

6. What are the key rules governing the legal profession in the jurisdiction?

The key legislation governing the legal profession is the Legal Profession Law. It is available on Legilux website (<http://data.legilux.public.lu/eli/etat/leg/loi/1991/08/10/n3/jo>).

The law of 13 November 2002 transposes into Luxembourg law the Qualification of Lawyers Directive (Directive 98/5/EC), which permits lawyers to practise in a member state other than that in which they qualified.

7. Who has the right to conduct litigation in court, and who has rights of audience?

## **Right to Conduct Litigation/ Rights of Audience**

In Luxembourg, no difference is made between the right to conduct litigation and rights of audience. However, only court advocates can represent parties in civil proceedings in the district and higher courts. In general, only qualified lawyers can attend or represent the parties, apply and plead on their behalf before the courts, draft and sign the necessary procedural documents and prepare the case for judgment.

## **Professional Structures**

8. How are law firms in your jurisdiction usually organised?

Lawyers can work as sole practitioners, or as partners or associates in a law firm. Associates can be employed by the law firm or self-employed. Many law firms are created as partnerships which are not stand-alone legal entities. Since 2011, stand-alone legal entities (such as limited partnerships) can practise as court advocates

(registered on List V). These legal entities cannot exercise any other legal profession, and all members must be attorneys registered with the Luxembourg or EU Bar.

9. Are multi-disciplinary practices (MDPs) allowed in your jurisdiction?

Only registered lawyers can be partners in a law firm, regardless of the form it takes. No exceptions are allowed.

Multi-disciplinary partnerships are prohibited in Luxembourg, which means that lawyers cannot combine their activities with firms offering other types of services.

10. Are community and/or alternative legal service providers common? If so, to what restrictions are they subject, if any?

## Community Legal Service Providers

Community legal service providers are not common in Luxembourg as lawyers enjoy a monopoly of practice in Luxembourg.

It is however possible to make use of the Reception and Legal Information Service (*Service d'accueil et d'information juridique*), which is responsible for providing information in various legal fields.

This service exists in Luxembourg as well as in Diekirch.

Legal information is provided free of charge and given during a confidential, individual interview with a person from the Public Prosecutor's Office.

Further, if an individual requires the assistance of a lawyer but cannot afford one, the Luxembourg State can provide free legal aid on certain preconditions, including, in particular, not having sufficient financial resources.

Alternative legal service providers do not exist. Under the Legal Profession Law, qualified lawyers (*see Question 3*) have a monopoly over the provision of legal advice.

11. Are there any restrictions on self-employed lawyers providing legal services on a freelance basis?

There are no restrictions for self-employed lawyers to the extent that the lawyer complies with the professional rules and remains independent.

12. Do restrictions apply to lawyers qualified outside your jurisdiction/law firms established in another country practising in your jurisdiction?

A distinction must be made between EU-qualified lawyers and other foreign lawyers.

EU lawyers can:

- Practise under their original title (List IV). In this case, no requalification is required, only enrolment and swearing in. However, a local lawyer's assistance is still required for some judicial procedures.
- Request to be admitted as court advocate (List I) after at least three years of effective practice in Luxembourg. In this case, EU lawyers must have a good command of the legislation and the official languages (French, Luxembourgish and German (*Article 6.1 (d), Legal Profession Law*)).
- EU lawyers can also be registered on List I after three years if they have a good command of the language of the legislation (French), and they restrain their professional activities to those that do not require a command of the other languages (by a solemn declaration).

Non-EU lawyers must pass the Luxembourg bar exam (*see Question 3*). They can, however, also be admitted with an exemption granted by the Bar Council when the condition of reciprocity is fulfilled. This means that the candidate must be able to establish that a Luxembourg national who would like to become a member of the Bar in their country of origin would not be refused admission on the sole ground of their nationality.

## Temporary Services

Only EU-qualified lawyers can provide temporary legal services in person in Luxembourg without condition of residence or registration at the Luxembourg Bar. However, in case of a representation and defence of a client before the courts, the EU lawyer must be assisted by a court advocate practising in the relevant jurisdiction and the President of the Bar must be notified of this situation.

## Registration

If an EU lawyer wants to practise in Luxembourg under their original title, they must register with the Luxembourg or Diekirch Bar (List IV).

## Bar Admittance

If an EU lawyer wants to provide temporary services, they do not have to register to the Luxembourg Bar but must notify the President of the Bar.

## Legal Education, Workplace Training and Qualifying Tests

EU lawyers practising under their original title (Liste IV) do not need to achieve further educational requirements.

Non-EU lawyers must pass the Luxembourg bar exam.

## Client Protection

13. Is there a national regulator of the legal profession? In a federal jurisdiction, which body regulates the legal profession in the individual states?

The regulatory bodies of the legal profession are the Luxembourg Bar Association of Luxembourg and of Diekirch.

Each Bar Association is presided by a President (*Bâtonnier*) who represents the respective Bar Association judicially and extra-judicially, convenes and chairs the General Assembly as well as the respective Bar Council. The President can delegate the exercise of specific functions to one or more members of the council.

The President of the Bar and the members of the Bar Council are elected each year, by all the court advocates and EU admitted lawyers. The number of members of the Bar Council varies, but is capped at 15.

The Bar Council can adopt internal regulations that set professional rules.



Under the chairmanship of the President of the Bar, the Bar Council is charged with:

- Safeguarding the reputation of the association, maintaining the principles of dignity, integrity and sensitivity which form the basis of the legal profession and the practices of the Bar which enshrine them.
- Referring perpetrators of offences and ethical breaches to the Disciplinary and Administrative Council lawyers, without prejudice to the action of the courts and the public prosecutor's office, where appropriate.
- Ensuring that members comply with their obligations under anti-money laundering and anti-terrorist financing legislation.

The duties of the Bar Council also include the administration of the Bar, in particular, the maintenance of the Bar Register, the duties required by legal aid, the taxation of lawyers' fees and expenses, and, more generally, providing information concerning the practice of the profession and the defence of lawyers' rights. Powers that are not reserved by law to other organs of the Bar Association are the responsibility of the Bar Council.

14. Is there a register of qualified lawyers and, if so, how can it be accessed?

The register of qualified lawyers in Luxembourg (*Tableau de l'Ordre des Avocats*) can be obtained online from [www.barreau.lu](http://www.barreau.lu). The contact details of the Luxembourg and the Diekirch Bar Associations are:

Luxembourg Bar Association. Legal Assistance Service, 45 allée Scheffer, BP 361 L-2013 Luxembourg Luxembourg Bar Association, Lawyer's House, 2A Boulevard Joseph II L-1840 Luxembourg.

**T** +352 46 72 72 1

**F** +352 22 56 46

**E** [info@barreau.lu](mailto:info@barreau.lu)

Diekirch Bar Association. B.P. 68 L-9202 Diekirch

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15. Is membership of a national bar association, law society or similar mandatory?

Any lawyer who wishes to provide judicial assistance and advice in the Grand Duchy of Luxembourg as an independent lawyer must become a member of the Luxembourg Bar Association or of the Diekirch Bar Association.

16. Is there an independent disciplinary tribunal, and what disciplinary powers do the relevant regulatory bodies have? What sanctions are available?

An independent body, called the Disciplinary and Administrative Council was created to deal with disciplinary actions. The Council is composed of Court advocates, who have been lawyers for at least five years and are not members of one of the Bar Councils.

The Council can rule on disciplinary matters resulting from offences or breaches committed by members of the Bar. After the initial examination of the case by the President of the Bar, the Bar Council makes a decision to refer the member of the Bar to the Disciplinary and Administrative Council.

The Disciplinary and Administrative Council can impose the following sanctions:

- A warning.
- A reprimand.
- A fine of between EUR500 and EUR20,000. The fine can go up to EUR250,000 for offences such as money laundering and terrorist financing.
- Suspension of the right to practise for up to five years.
- A lifetime ban from legal practice.
- All decisions of the Disciplinary and Administrative Council (except in matters under arbitration before the President of the Bar) can be appealed to the Disciplinary and Administrative Appeals Council.

17. Is indemnity insurance mandatory for practising lawyers? If so, what is the minimum level of cover required and are there any mandatory terms?

Each lawyer is covered by an indemnity insurance policy for the duration of their registration at the Bar. Most law firms have additional coverage, which is however not compulsory.

18. What are the rules on conflicts of interest?

A lawyer cannot advise or represent more than one client in the same case if the clients have conflicting interests or if there is a serious risk that a conflict will arise. If a conflict of interest arises between two clients in the same case, the lawyer must cease to represent them both (unless the clients waive the conflict issue).

A lawyer who previously jointly advised two parties that are now opposed cannot represent or advise either of them. A lawyer who represents the client's interests must not accept a case against that client.

Lawyers within the same law firm are treated as a single entity for the purpose of these rules.

19. What actions must a lawyer take when a conflict arises?

If a conflict of interest arises (for example between several clients in the same case), the lawyer must stop working on all the mandates affected by the conflict.

20. When can a lawyer represent more than one client in a transaction? Can a lawyer act for either of the clients between whom a conflict arises?

See *Question 18*.

21. To whom should complaints about lawyers' professional conduct be made?

Complaints should be made to the President of the respective Bar Association. In a fee dispute, the Bar Council can make a binding decision for the lawyer to reduce the fees. The complainant can also bring ordinary court proceedings.

22. Can lawyers/law firms hold client files, money or property in the event of a dispute about their retainer or fees?

Lawyers have a right of retention on all procedural acts and documents obtained through their work or at their expense, until payment of the fees.

## Client Engagement

23. What do client engagement communications typically include? Are there any mandatory provisions that must be included? Are there separate provisions for litigation and non-litigation (transaction or advisory) matters?

In general, the client engagement communications are made freely (apart from the public entities, which are regulated and operate by call for tenders). There is no mandatory information that must be included in the initial correspondence. The initial correspondence usually includes an estimation of the fees.

24. Does a legal professional have any on-going obligations in relation to the client?

From the start, the fees and the calculation method must be explained by the lawyer to their client. The client must be kept informed about any changes to the fees.

25. Can a legal professional refuse to accept a client instruction or cease to act, and in what circumstances?

Lawyers can decide to stop representing a client. They must however ensure that they are not leaving the client in a position that could jeopardise their case.

26. Do clients have direct access to all lawyers working on their matter?

Clients have full direct access to both lawyers and court advocates.

## **Confidentiality and Legal Professional Privilege**

27. Are lawyers bound by client confidentiality rules?

Lawyers are bound by strict professional secrecy privilege, which is a matter of public policy. This privilege is general, absolute and unlimited in time. It applies to all information about the client and the client's affairs, regardless of the source of information. In the case of breach, criminal sanctions apply.

28. Are there any exceptions to the client confidentiality rules?

Lawyers can testify in court about confidential or privileged matters if they consider it appropriate. When doing so, lawyers must ensure that the disclosure of information is in the client's best interest and that the client has authorised the disclosure after having been informed by the lawyer of the nature of the information disclosed and of the recipients of the information. Lawyers can never be compelled to testify in court about confidential or privileged matters.

Lawyers can also disclose information when such disclosure is necessary for their own defence, including before the courts and in administrative or disciplinary proceedings.

If a lawyer suspects their client of money laundering, they are obliged to inform the President of the Bar.

29. Are communications with lawyers protected from disclosure (that is, privileged) in judicial or other proceedings?

Lawyers' premises and all correspondence between lawyers (verbal or written), and between lawyers and their clients, are privileged and protected against forced disclosure. In the case of search by criminal authorities in an attorney's office, the President of the Bar or their substitute must be present. The investigating judge can decide to seize documents which are declared confidential by the lawyer, in which case they are sealed and the final decision regarding their disclosure will be made by the court.

30. Do in-house lawyers have the same legal professional privilege protection as lawyers in private practice?

In-house lawyers are not qualified lawyers, nor members of the Bar, so they do not enjoy the same legal professional privilege protection as lawyers in private practice.

## Fees

31. How are legal fees regulated? Is there a tariff system?

Fees are freely determined by agreement with the client (provided that they are reasonable). Lawyers' fees cannot, however, be solely based on the outcome of a case. Therefore, fee arrangements are possible only if the lawyer and their client agree on partial fixed fees and a success fee.

32. What types of fee agreements are most commonly used for litigation and non-litigation matters? What formal requirements exist for fee agreements?

Hourly rates are the most common type of fee arrangement, but retainers or flat fees are also used. Interest can be claimed on outstanding amounts. Fee agreements do not need to be in writing, but it is recommended to draw up an agreement.

## **Client Money**

33. How is the holding of client funds regulated?

Client funds must be placed in a separate and dedicated bank account. The lawyer must not derive any personal benefit from these funds and any accrued interest must be transferred to the client. Client funds can only be used by the lawyer to set off fees, retainers or costs against a client, with the client's consent and in accordance with ethical principles.

34. Are there rules on money laundering affecting the legal profession? Is there any overriding body in your jurisdiction that provides anti-money laundering (AML) supervision in the legal sector?

Anti-money laundering rules have been continuously reinforced since the implementation of the EU directives on money laundering and terrorist financing. These include the Fourth Anti-Money Laundering Directive ((EU) 2015/849/EU) which repealed Directive 2006/70/EC and the Customer Due Diligence Directive (2006/70 EC).

Lawyers must know their clients' identity, and the individuals they act for (if applicable, identification of the ultimate beneficial owner), and the source of funds used in transactions. They must also demand and keep (for at least five years after the transaction closes) written evidence of that information, and report suspicious transactions to the President of the Bar Association who can report the case to the prosecuting authorities.

Lawyers cannot be subject to the anti-money laundering (AML) rules regarding information received from or obtained about one of their clients during a legal consultation, when assessing the client's legal situation or when representing the client in litigation proceedings (whether such information is received or obtained before, during or after this procedure).

Since the Law of 13 January 2019 establishing a Register of beneficial owners (RBE), lawyers who practise their profession as a corporation formed must register the identity of all natural persons who exercise effective control of the company in the RBE.

## Notaries

35. Are notaries required for share purchases or transfers, real estate purchases or leases, or company formation?

Notaries are required for certain real estate transactions and company formations, but not for share purchases and transfers.



36. Are notary fees fixed or a percentage of the transaction value?

Fees are determined by a tariff system provided by the law and can be fixed or proportional to the transaction value. For example, the incorporation of a company requires payment to the notary of a fee based on the company's capital and ancillary fees (such as copying fees, trade registry fees and publication fees).

37. Can notaries work within law firms?

Notaries cannot partner with other legal professions.

38. Is there a national regulatory body for notaries?

The regulatory body for the notaries is the Chamber of Notaries of the Grand Duchy of Luxembourg (*Chambre des Notaires du Grand-Duché de Luxembourg*).

## Contributor Profiles

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**Areas of practice.** Arbitration, litigation, real estate and construction, general commercial, insolvency and restructuring, private wealth and business planning

- Specialising in complex commercial, corporate and financial litigation and arbitration.
- Acting in a number of high-profile cases, with over two decades of experience in managing and conducting litigation for his clients in almost all sectors.
- Extensive experience of applications for enforcing and obtaining freezing injunctions in international arbitration, enforcements of ICSID awards, and more generally in the recovery of assets.
- Represents institutional lenders, developers, general contractors and other business entities in commercial transactions and real estate law issues, including financing, corporate structuring, real estate development.
- Extensive experience in commercial contracts, drafting and negotiating complex commercial agreements across a wide variety of industry sectors.
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