

# Immigration Overview Luxembourg

Maître Anne Morel, *Partner*

Maître Pauline Wirtzler, *Associate*

October 2021



Right by you in Luxembourg

This document is strictly confidential and may not be copied nor its contents passed to any third party without the prior written approval of BSP.

[bsp.lu](https://www.bsp.lu)

# BSP IN A NUTSHELL

BSP is an **independent full-service** law firm based in Luxembourg

Talented and multilingual, our teams of 70 lawyers work side by side with our clients to help them **reach their objectives** and support them with tailor-made legal advice, creating in the process professional relationships based on **mutual trust and respect**.

We are committed to providing the **very best legal services** to our **domestic and international** clients in all aspects of **Luxembourg business law**.

## Our Expertise

- AML Compliance
- Banking & Finance
- Capital Markets
- Corporate
- Data Protection & Privacy
- Dispute Resolution
- Employment, Compensations & Benefits
- Intellectual Property & General Commercial
- Investment Management
- Private Wealth & Business Planning
- Real Estate & Construction
- Startup & Fintech
- Tax





# AGENDA

---

**1. Entry and residence of EU citizens**

---

---

**2. Entry and residence of family members of EU citizens who are third-country nationals**

---

---

**3. Entry and residence of third-country nationals**

---

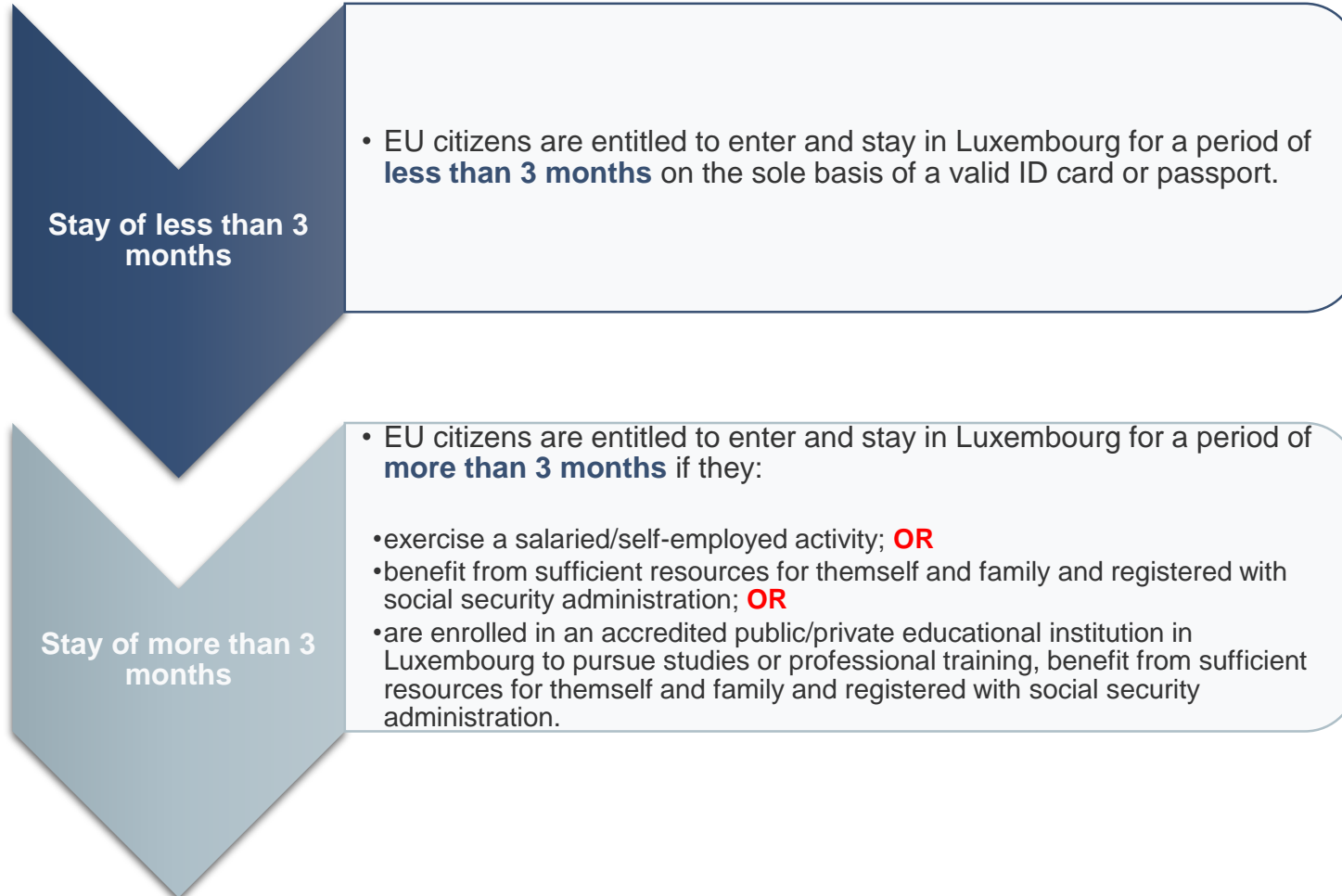
---

**4. Situation of UK nationals after Brexit**

---

# 1. Entry and residence of EU citizens





**EU citizens must register with their city administration within 3 months of arrival**

**After 5 years of uninterrupted legal residence, EU citizens are entitled to permanent residence**

- The continuity of the stay is not affected in particular:
  - by temporary absences not exceeding a total of 6 months per year; **or**
  - by an uninterrupted absence of up to 12 consecutive months for important reasons (pregnancy, childbirth, serious illness, etc.); **or**
  - by a secondment for professional reasons to another Member State or a third-country.

**EU citizens may be entitled to permanent residence after less than 5 years in certain specific situations**

- employed or self-employed persons who, at the time they cease their activity, have reached the age of entitlement to an old-age pension, if they worked in Luxembourg for at least the last 12 months and resided in Luxembourg without interruption for more than 3 years;
- workers who, after 3 years of activity and uninterrupted stay in Luxembourg, exercise an employed or self-employed activity on the territory of another Member State, while keeping residence in Luxembourg where they return every day or at least once a week.



## 2. Entry and residence of family members of EU citizens who are third-country nationals



## 2. Entry and residence of family members of EU citizens who are third-country nationals

Who are considered as family members?



- Spouses and “PACS” partners
- Direct descendants of the EU citizen, the spouse or the partner, who are less than 21 or are at charge
- Direct ascendants at charge of the EU citizen, the spouse or the partner
- Any other family member that, in the country of origin, was a dependant or member of the EU citizen’s household
- Any other family member that the EU citizen must imperatively and personally take care of for serious health reasons
- Any other family member that is the legal partner with whom the EU citizen has a long-lasting, duly attested relationship

Prior authorisation of the Minister in charge of immigration requested



## 2. Entry and residence of family members of EU citizens who are third-country nationals

### Stay of less than 3 months

- Family members who follow or join a EU citizen are entitled to enter and stay in Luxembourg on the sole basis of a **valid passport** and, where applicable, a **valid visa**.

### Stay of more than 3 months

- If the EU citizen exercises a salaried/self-employed activity **OR** benefits from sufficient resources for him/herself and family and registered with social security administration, family members are entitled to enter and stay in Luxembourg on the sole basis of a **valid passport** and, where applicable, a **valid visa**.
- Family members who follow or join a EU citizen must apply for a **residence card** within **3 months of arrival**. Residence card is valid for maximum 5 years.
- Family members are entitled to exercise a **salaried or self-employed activity**.

### Stay of more than 3 months

- If the EU citizen is enrolled in an accredited public or private educational institution in Luxembourg, only the **spouses, PACS partners or children at charge** of the EU citizen are entitled to enter and stay in Luxembourg, on the sole basis of a valid passport and, where applicable, a valid visa.
- Family members concerned who follow or join a EU citizen must apply for a **residence card** within **3 months of arrival**. Residence card is valid for maximum 5 years.
- Family members concerned must apply for a **work authorization** in order to exercise a salaried activity.

# 3. Entry and residence of third-country nationals





### 3.1. Restrictions on entry due to the Covid-19 pandemic

#### Principle

- Third-country nationals cannot enter Luxembourg until **31 December 2021** included.

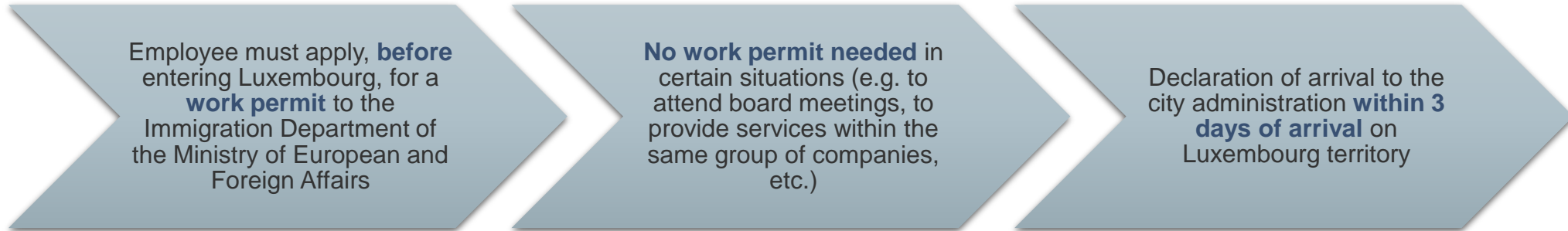
#### Exceptions based on the situation of the third-country national (non-exhaustive list)

- cross-border workers;
- passengers travelling for urgent and duly justified family reasons;
- health professionals, health researchers and care professionals for the elderly;
- persons travelling for study purposes;
- highly qualified workers if their employment is necessary from an economic point of view and their work cannot be postponed or carried out from abroad.

#### Exceptions based on the residence of the third-country national

- Australia, Canada, Chile, Jordan, Kuwait, New Zealand, Qatar, Rwanda, Saudi Arabia, Singapore, South Korea, Ukraine, Taiwan, Uruguay, Hong Kong, Macau, China on the condition of reciprocity at EU level.
- Citizens of San Marino, Andorra, Monaco and the Vatican/Holy See, as well as their family members.

### 3.2. Stay of less than 3 months



The worker must hold a valid passport and, where applicable, a valid visa, before entering Luxembourg



The employer must make a vacancy declaration to the ADEM before employing a third-country national

### 3.3. Stay of more than 3 months



Residence permit for salaried workers



Residence permit for temporary intra-group transferees (ICT workers)



Residence permit for highly qualified workers



Residence permit for family members



Residence permit for posted workers



Residence permit for investors

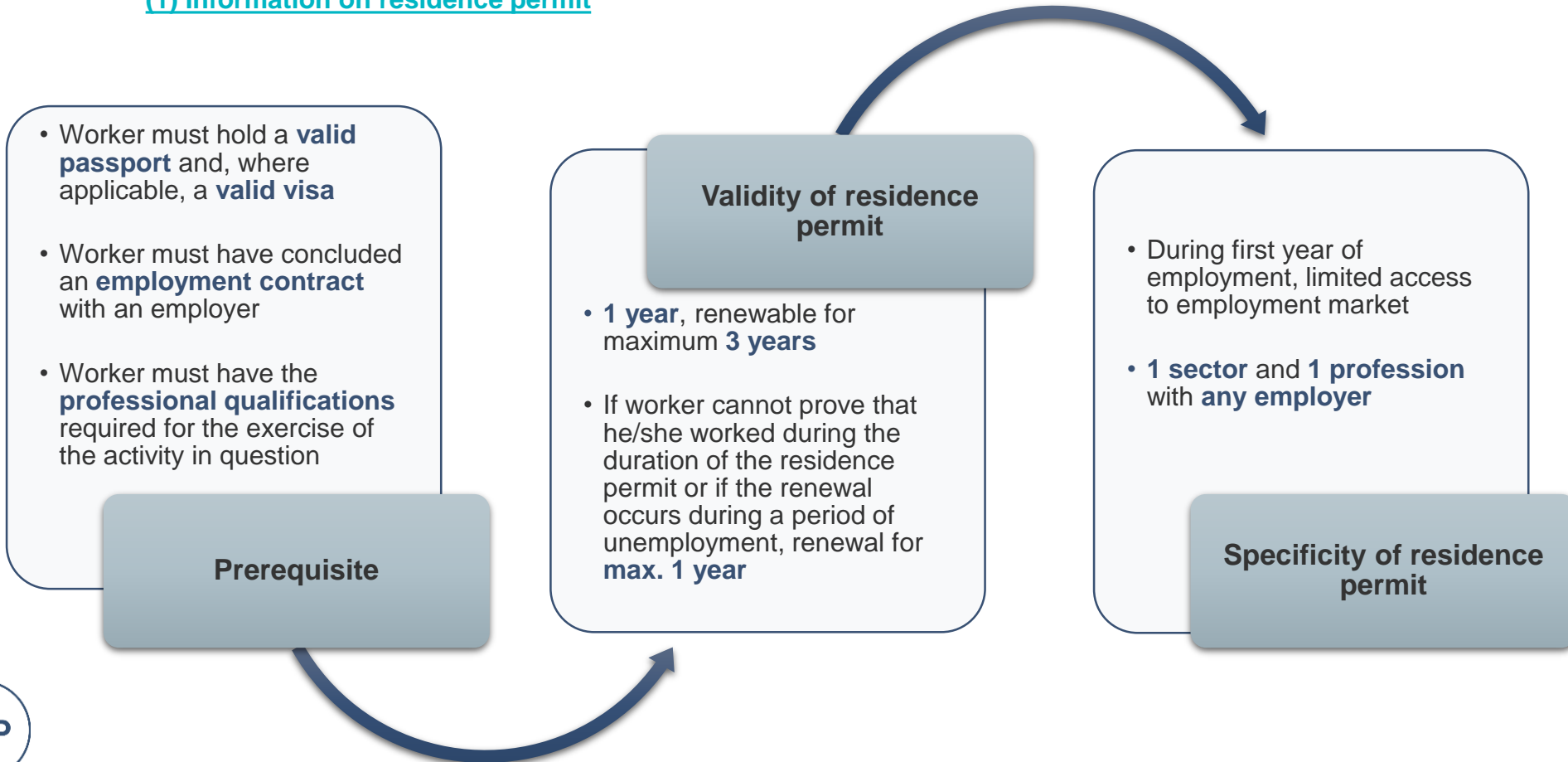




### 3.3. Stay of more than 3 months

#### 3.3.1. Residence permit for salaried workers

##### (1) Information on residence permit

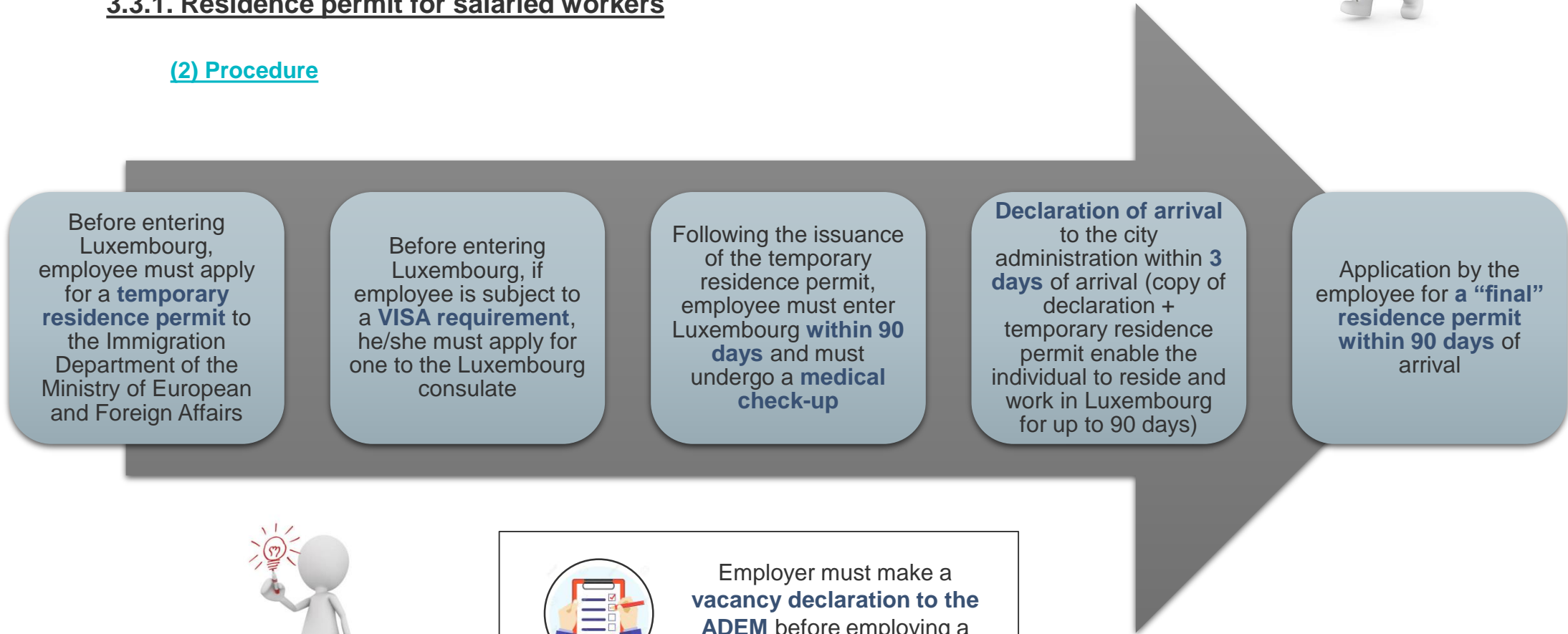




### 3.3. Stay of more than 3 months

#### 3.3.1. Residence permit for salaried workers

##### (2) Procedure



Employer must make a **vacancy declaration to the ADEM** before employing a third-country national

### 3.3. Stay of more than 3 months



#### 3.3.2. Residence permit for highly qualified workers (EU Blue Card)

##### (1) Information on residence permit

###### Prerequisite

- Worker must hold a **valid passport** and, where applicable, a **valid visa**;
- **Employment contract** for a highly qualified position concluded for min. **1 year**;
- **High professional qualifications** for the activity or sector mentioned in the employment contract;
- Annual remuneration at least equal to **EUR 78,336 OR EUR 62,668.80** for certain occupations.

###### Validity of residence permit

- **4 years OR** for the **duration of the employment contract + 3 months** if duration of the employment contract < 4 years;
- Renewable for the same period of time.

###### Specificity of residence permit

- During **first 2 years** of employment, limited access to employment market = **activities for which the individual has been authorized to exercise, with any employer.**



### 3.3. Stay of more than 3 months

#### 3.3.2. Residence permit for highly qualified workers (EU Blue Card)

##### (2) Procedure



The **vacancy declaration to the ADEM** is **not mandatory** for an employee applying for a EU Blue Card

### 3.3. Stay of more than 3 months

#### 3.3.3. Residence permit for posted workers (seconded by a company located outside the EU)

##### (1) Information on residence permit



### 3.3. Stay of more than 3 months

#### 3.3.3. Residence permit for posted workers (seconded by a company located outside the EU)

##### (2) Procedure

**Sending company** must apply, before the posting, for a **posting authorization** and for **temporary residence permits for its workers** to the Immigration Department of the Ministry of European and Foreign Affairs

Before entering Luxembourg, if employees are subject to a **VISA requirement**, they must apply for one to the Luxembourg consulate

Following the issuance of the temporary residence permits, workers must enter Luxembourg **within 90 days** and must undergo a **medical check-up**

**Declaration of arrival** to the city administration within **3 days** of arrival (copy of declaration + temporary residence permit enable the worker to reside and work in Luxembourg for up to 90 days)

Application by the worker for a **“final” residence permit within 90 days** of arrival



### 3.3. Stay of more than 3 months



#### 3.3.4. Residence permit for temporary intra-group transferees (ICT workers)

##### (1) Information on residence permit

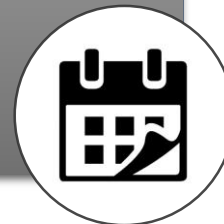
- Transfer of a third-country national by a company located outside the EU, in a Luxembourg entity belonging to the **same group**
- Individual must be employed in the sending company or in the same group company for at least **3 uninterrupted months before the transfer, and for the duration of the transfer**
- Employment contract signed with the sending company will be **suspended** during the transfer and a **new contract** must be signed with the host company

##### Prerequisite



- ICT residence permit is valid for at least **1 year** or, in the event of shorter mobility, for the duration of the stay
- Maximum duration of **3 years** renewal included

##### Validity of residence permit



- Transfer of an **expert** or **manager** in order to bring specific skills to the host company

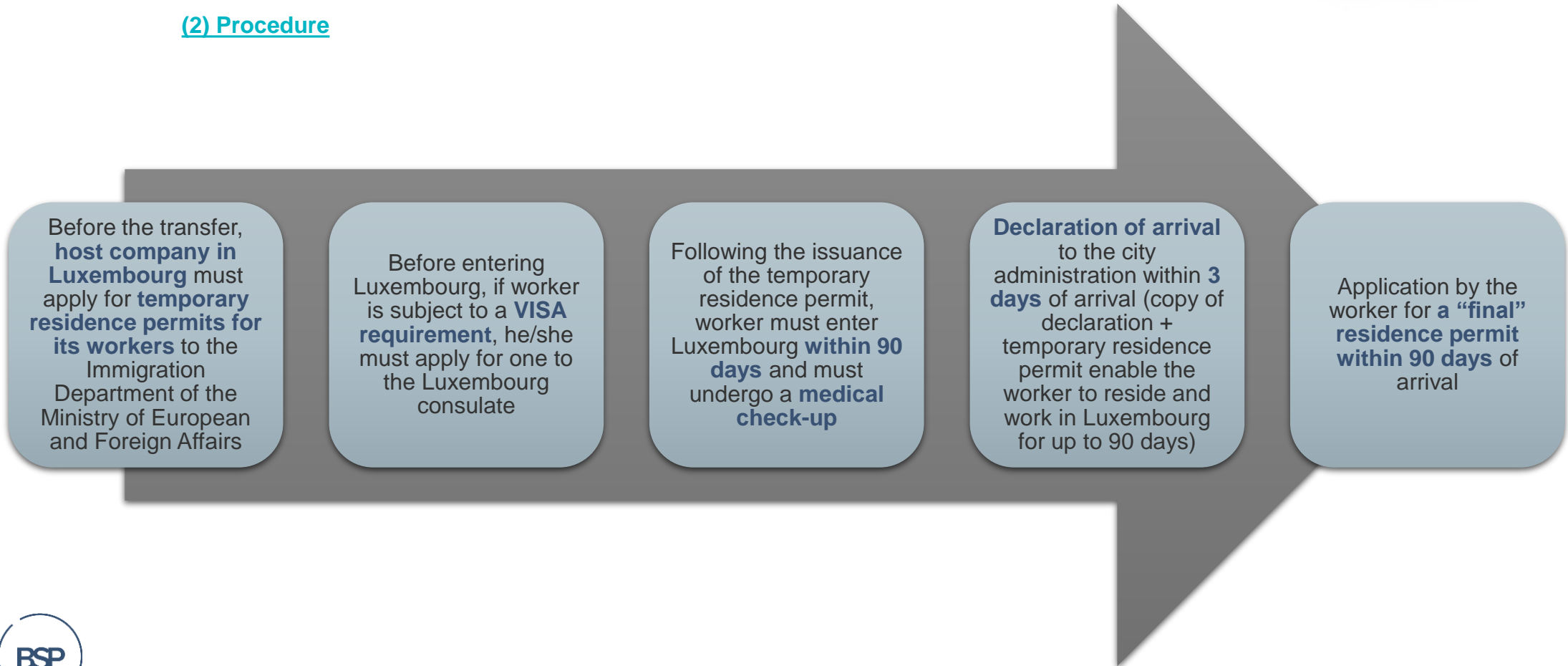
##### Specificity of residence permit



### 3.3. Stay of more than 3 months

#### 3.3.4. Residence permit for temporary intra-group transferees (ICT workers)

##### (2) Procedure

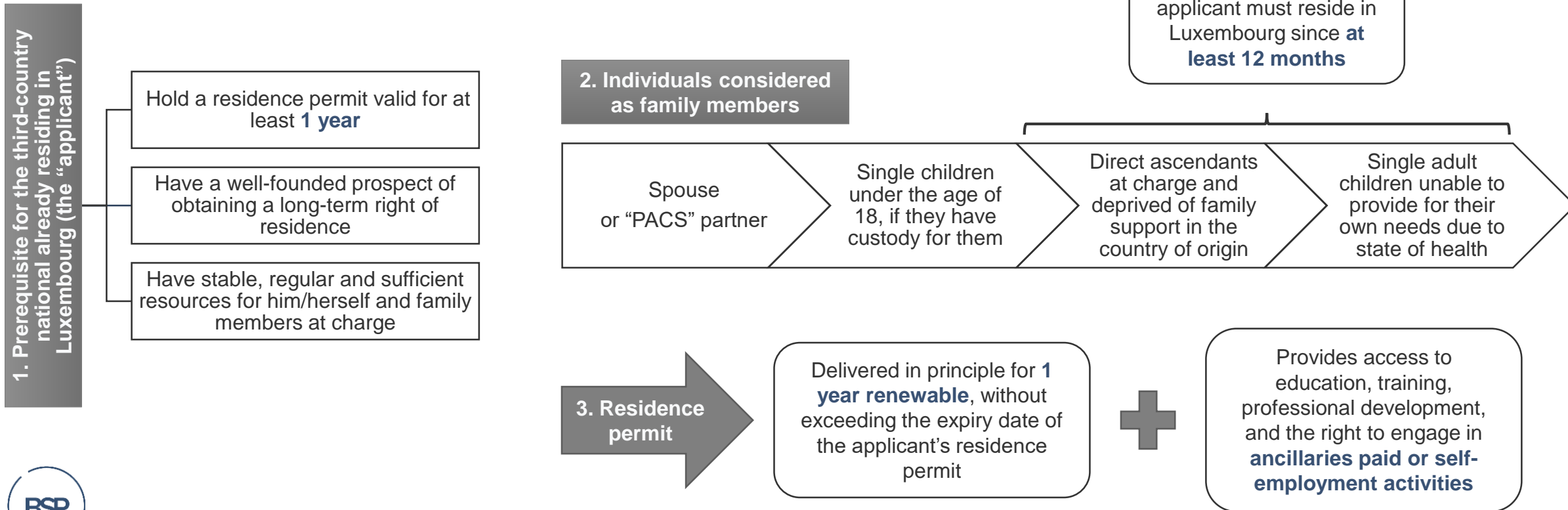


### 3.3. Stay of more than 3 months

#### 3.3.5. Residence permit for family members of third-country nationals



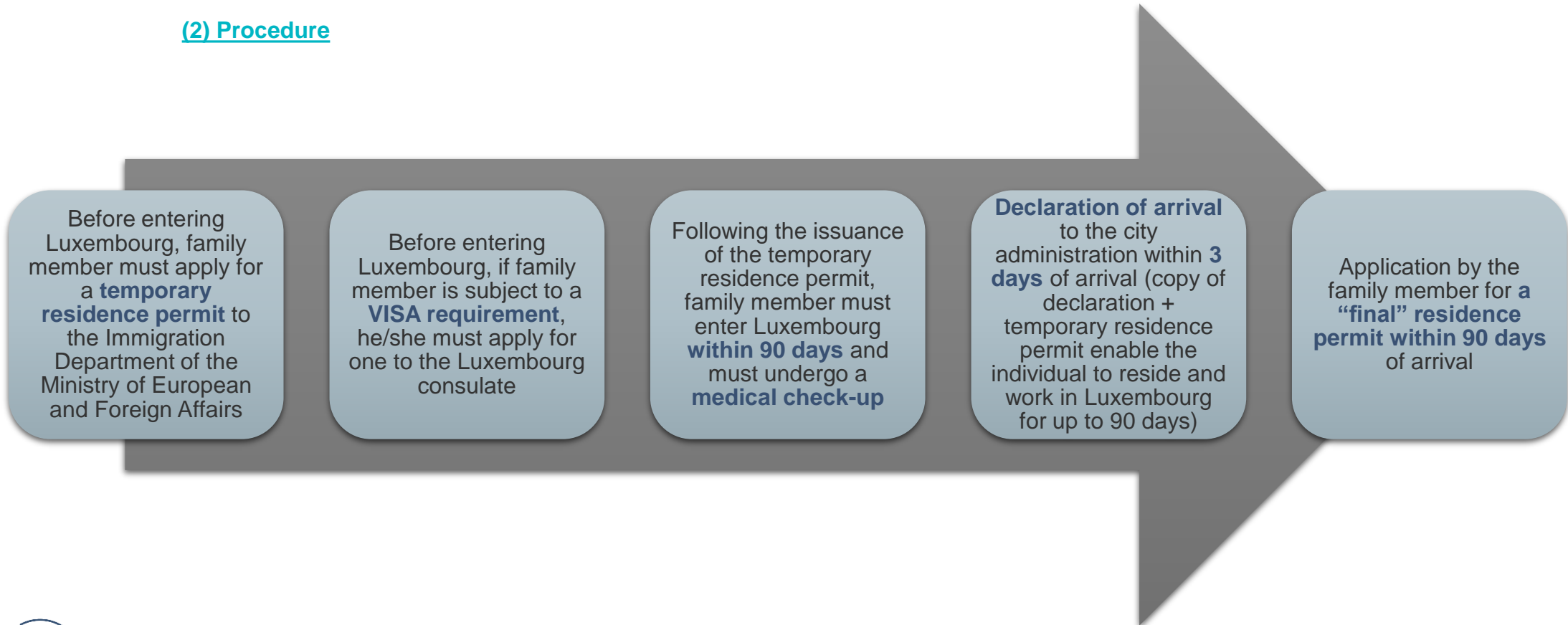
##### (1) Information on residence permit



### 3.3. Stay of more than 3 months

#### 3.3.5. Residence permit for family members of third-country nationals

##### (2) Procedure



### 3.3. Stay of more than 3 months

#### 3.3.6. Residence permit for investors

##### (1) Information on residence permit

➤ **Investment:**

at least **EUR 500 000** in an existing company which has its registered office in Luxembourg with the commitment to maintain the investment and an equivalent level of employment over at least 5 years

OR

at least **EUR 500 000** in a company to be created which will have its registered office in Luxembourg, with the creation of at least 5 jobs in the 3 years following the foundation of the company

OR

at least **EUR 3 million** in an existing or future investment and management structure, which has its registered office in Luxembourg and which has maintained an appropriate substance there

OR

at least **EUR 20 million** in the form of a deposit with a financial institution established in Luxembourg, with a commitment to maintain this investment for a minimum period of 5 years



- ✓ The residence permit is valid for a period of **3 years** and is **renewable** for the same period of time.
- ✓ Investments whose main direct or indirect purpose is the **purchase and rental of buildings are excluded**
- ✓ The investments listed may be made in the **investor's own name or through an investment structure**



### 3.3. Stay of more than 3 months

#### 3.3.6. Residence permit for investors

##### (2) Procedure



Before entering Luxembourg, investor must submit a **project or proof of investment to the Ministry of Economy or Finance** and obtain a favorable response before applying for a residence permit

Before entering Luxembourg, investor must apply for a **temporary residence permit** to the Immigration Department of the Ministry of European and Foreign Affairs

Before entering Luxembourg, if investor is subject to **VISA requirement**, he/she must apply for one to the Luxembourg consulate

Following the issuance of the temporary residence permit, investor must enter Luxembourg **within 90 days** and must undergo a **medical check-up**

**Declaration of arrival** to the city administration within **3 days** of arrival (copy of declaration + temporary residence permit enable the investor to reside and work in Luxembourg for up to 90 days)

Application by the investor for a **“final” residence permit within 90 days** of entering Luxembourg territory

## 4. Situation of UK nationals after Brexit



##### UK nationals already residing in Luxembourg before 1 January 2021

- UK nationals already entitled to a right of residence/right to work in Luxembourg continue to benefit from their right of residence/right to work after 1 January 2021.
- They however have to apply for a specific residence permit after 1 January 2021 (“residence permit for UK nationals as beneficiaries of the Withdrawal Agreement”).
- Applications must be made until 31 December 2021 at the latest.

##### UK nationals arriving in Luxembourg after 1 January 2021

- UK nationals arriving in Luxembourg after 1 January 2021 will not enjoy the right of free access to the labour market.
- They will be subject to the rules governing access to the labour market for third country nationals.
- They must in principle have a residence permit which will allow them to engage in paid activity.



# Thank you for your attention

Maître Anne Morel, *Partner*, [amorel@bsp.lu](mailto:amorel@bsp.lu)

Maître Pauline Wirtzler, *Associate*, [pwirtzler@bsp.lu](mailto:pwirtzler@bsp.lu)

