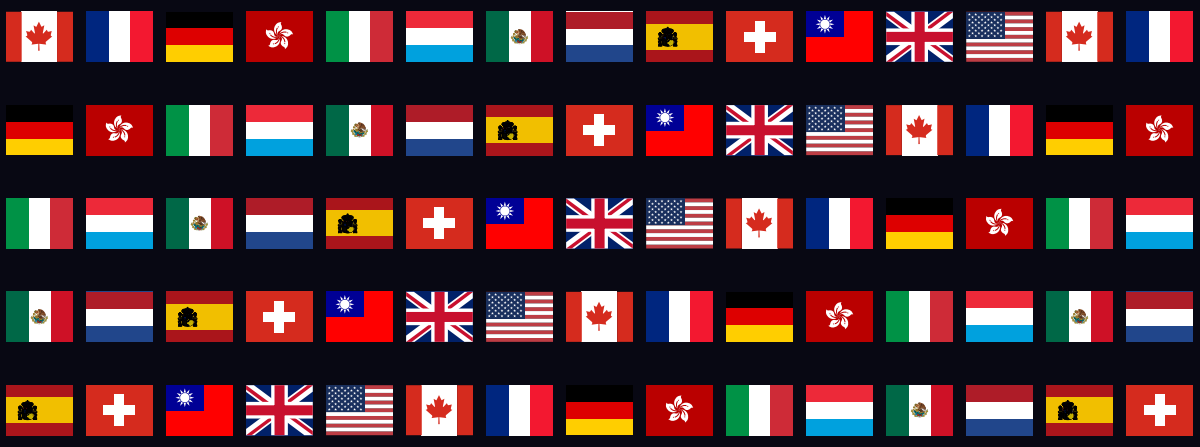
LUXURY & FASHION

Luxembourg



LEXOLOGY
Getting The Deal Through

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Luxury & Fashion

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Quick reference guide enabling side-by-side comparison of local insights, including into the state of the local market; manufacture and distribution; online retail; intellectual property issues; data privacy and security; advertising and marketing; product regulation and consumer protection; M&A and competition; employment and labour issues; and recent trends.

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MARKET SPOTLIGHT

State of the market

What is the current state of the luxury fashion market in your jurisdiction?

Luxembourg is in 2023 (and was also before) the country with the highest gross domestic product (GDP) per capita (US $146,260). Consumers therefore enjoy strong purchasing power and are more inclined to purchase luxury brands and meaningful, sustainable products than consumers in neighbouring countries.

The majority of prestigious brands of haute couture, leather goods, watches and jewellery are located in the upper city. This safe and clean pedestrian zone provides an ideal setting for discovering designer collections.

The major luxury prêt-à-porter fashion brands, such as Chanel, Dior, Louis Vuitton, Hermès, Gucci and Louboutin, have physical shops in Luxembourg. Retailers specialising in luxury items distribution also have a strong presence. Luxembourg is also an important marketplace for jewellery and horlogerie where the most luxury brands are represented and sold, such as Patek Philippe, Jaeger-LeCoultre, Piaget, Rolex and Cartier.

There is also an independent fashion and luxury scene in Luxembourg comprising individual clothing and jewellery designers that produce high-end pieces and fashionable items.

All these luxury fashion brands have a strong online offering, which has been reinforced by the covid-19 crisis as industries reinvented their online presence to adapt. In particular, the luxury fashion market had to find new ways to provide high-end services while not being in physical contact with the clientele.

Finally, there is a strong second-hand luxury fashion market in Luxembourg, comprising numerous shops located in upper-class neighbourhoods that sell vintage items and more recent luxury fashion items.

Although Luxembourg is a small country, its wealth facilitates a prosperous luxury fashion offering and a strong industry.

Law stated - 01 February 2023

MANUFACTURE AND DISTRIBUTION

Manufacture and supply chain

What legal framework governs the development, manufacture and supply chain for fashion goods? What are the usual contractual arrangements for these relationships? (What initiatives are you seeing from a legal perspective to address global supply chain issues?)

The development, manufacture and supply chain for fashion goods are governed by the Code of Commerce and the Civil Code .

Like any commercial relationship, the relationship between a luxury fashion player and its service providers is considered to fall within the scope of the Code of Commerce, which, in addition to the general contractual regime provided under the Civil Code, grants some form of contractual freedom to the merchants.

Usually, fashion companies contract with their service providers and raw material suppliers through specific agreements dedicated to the manufacturing, research and development of fashion items and then supply and sell their products through distribution, franchise and agency agreements.

Moreover, besides the general contractual and commercial requirements arising from the above-mentioned Codes to which any player in the Luxemburg luxury and fashion manufacture and supply chain is subject, the relationships between a luxury and fashion player and its raw material suppliers, irrespective of the service provided (ie,

development, manufacture or supply chain, or all three), must comply with other regulations related to the material used in the item developed, manufactured or supplied.

In this respect, the Law of 27 June 2018 on animal protection expressly prohibits raising an animal 'for the primary use of skin, fur, feathers or wool' (article 12.12).

Further, textile manufacturers, importer or downstream user are also subject to the Regulation (EC) No. 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures (the CLP Regulation), which applies to all actors in the chemical industry, and hence indirectly also to the textile industry. The CLP Regulation has been fully applicable in Luxembourg since June 2017. Depending on their role in the supply chain, different obligations to the classification, labelling and packaging of the product will apply.

Finally, Luxembourg-based luxury and fashion manufacturers, which are usually small and medium-sized companies, can also apply for a specific 'Made in Luxembourg' certification, which allows them to use a specific label of origin delivered by the Luxembourg Chamber of Commerce and the Chamber of Trades, which own the label. This certification is subject to the Regulations for the use and control of the Luxembourgish label of origin in accordance with article 2.37 of the Benelux Convention on Intellectual Property of 25 February 2005, as amended. Providing that the Luxembourg-based company fulfils all the eligibility requirements, the label allows them to 'Display with pride [their] expertise and its origin'. Although the label is not specifically targeted at the luxury fashion industry, it is an important tool of recognition for consumers.

There are currently no specific initiatives in Luxembourg to address global supply chain issues in the luxury fashion market from a legal or practical perspective.

Law stated - 01 February 2023

Distribution and agency agreements

What legal framework governs distribution and agency agreements for fashion goods?

Apart from the application of the European legal framework (specifically Commission Regulation (EU) No. 330/2010 of 20 April 2010 on the application of article 101(3) of the Treaty on the Functioning of the European Union (TFEU) to categories of vertical agreements and concerted practices), which provides for the restrictions to be imposed by a supplier on its distributors or an agent and exemptions to the general prohibition on vertical agreements (cf. article 101(1) TFEU) in the case of selective distribution systems, luxury fashion players are also subject to the Law of 3 June 1994. This law regulates the relations between independent commercial agents and their principals and transposes Directive 86/653/EEC of 18 December 1986, which governs commercial agency agreements (the Law of 1994).

The Law of 1994 regulates the conclusion, performance and termination of the commercial agency contract and transposes Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the member states relating to self-employed commercial agents, which aims to eliminate differences between member states' local laws on commercial representation and to strengthen the protection of commercial agents in their relations with principals. The Law of 1994 is not specific to the fashion and luxury industry.

As commercial agents are considered merchants in Luxembourg, a business licence is required for starting their activity. Upon receiving the licence from the Ministry of Economy, commercial agents can begin providing their services and carrying out their activity. The licence is not specific to the fashion and luxury industry.

Under Luxembourg law, distribution agreements (including selective distribution agreements) are not governed by any specific legislation but by the general provisions of the Civil Code. The general principles surrounding such distribution agreements and, more specifically, framing their termination have therefore been developed by case law.

Law stated - 01 February 2023

What are the most commonly used distribution and agency structures for fashion goods, and what contractual terms and provisions usually apply?

The two types of contractual terms for distribution and agency structures for fashion goods are:

- framework agreements regulating the general relationship between the fashion good supplier and its distributor or agent in addition to specific orders or purchases, which each gives rise to a specific contract; and
- unique order forms established for every order made but without establishing a master agreement structuring the relationship and the number of orders to be made.

Depending on the nature of the fashion good to be marketed and distributed, with regard to the exclusivity of the relationship described in the contractual arrangement, the agreement provides for a description of the good to be marketed and distributed, the duration of the contractual relationship, the obligation to purchase a certain quantity of goods or purchasing goods at a certain price, relevant sales targets (quantity and price), marketing efforts, remuneration, recalls, intellectual property provisions (with a specific focus on the authorisation to use trademarks) and the territory covered by the agreement.

Regarding the territorial scope of this kind of agreement, as is the case in Belgium and the Netherlands, which are small territories in comparison with the neighbouring countries, it is relatively rare to see agency and distribution agreements only applying to the territory of Luxembourg. More often, the territorial scope of the agreement includes Belgium and the Netherlands, or France and Germany (or all these countries).

Regarding the termination of this kind of agreement, the seasonality element must be taken into consideration to avoid any termination within the same season, which would, for example, make the return of the fashion goods, and their new marketing at season price, challenging.

Law stated - 01 February 2023

Import and export

Do any special import and export rules and restrictions apply to fashion goods?

There are no specific import and export rules and restrictions applying to fashion goods in Luxembourg.

Luxury and fashion items are subject to the same regulation as any other goods that are imported within the territory of Luxembourg. As an EU member state, the common external tariff to goods imported from non-EU countries applies to Luxembourg.

The calculation of the import and export duties applicable to luxury and fashion goods depends on the type of good, its value and the materials used to make it. The use of some textiles, leathers, stones and horns is highly regulated or wholly prohibited.

Companies in the fashion and luxury industry must identify the applicable rules and restrictions, such as whether upon import or export a product needs a permit or stamp as provided under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) to which Luxembourg became a party in 1983. CITES parties collaborate to ensure that international trade in specimens of wild animals and plants does not threaten the survival of the species. CITES thus subjects the trade on specimens of wild animals and plants to specific controls, regulations (licensing systems) and prohibitions.

Regarding jewellery and gems, as a member state of the EU, Luxembourg is party to the Kimberley Process, a certification scheme for the international trade of rough diamonds, which is implemented throughout the EU by Regulation (EC) No. 2368/2002 of 20 December 2002. Therefore, common rules applicable to participants of this process also apply to Luxembourg entities involved in the diamond trade.

Law stated - 01 February 2023

Corporate social responsibility and sustainability

What are the requirements and disclosure obligations in relation to corporate social responsibility and sustainability for fashion and luxury brands in your jurisdiction? What due diligence in this regard is advised or required?

There are no specific requirements and disclosure obligations in Luxembourg in relation to corporate social responsibility and sustainability for fashion and luxury brands.

However, Directive 2014/95/EU – the Non-Financial Reporting Directive (NFRD), which lays down the rules on disclosure of non-financial and diversity information by certain large companies – was implemented in Luxembourg by the Law of 23 July 2016 as regards the disclosure of non-financial and diversity information by certain large undertakings and groups.

This law introduced mandatory disclosures in the management reports of large undertakings and groups or separate reports on their policies, the outcomes of those policies and the related risks with respect to social and environmental issues, human resources, respect for human rights, anti-corruption and bribery matters, and the diversity applied in relation to their management and supervisory bodies.

These new provisions only apply to large public interest entities (credit institutions, insurance companies and listed entities on a regulated market in the EU) exceeding 500 employees, total assets of €20 million or a net turnover of €40 million. It thus only applies to large fashion and luxury groups.

The European Commission reviewed the NFRD and published, on 21 April 2021, a proposal for the Corporate Sustainability Reporting Directive. The Directive (EU) 2022/2464 of 14 December 2022 with respect to corporate sustainability reporting (the CSRD) finally entered into force on 5 January 2023 and the first companies will have to apply the new rules for the first time in the financial year 2024, for reports published in 2025. This directive notably extends the scope to all large companies and all companies listed on regulated markets (except listed microenterprises). To date, only certain large public interest companies have been subject to the NFRD. The legislative proposal considers the principle of proportionality for small and medium-sized enterprises (SMEs). SMEs will be permitted to report according to less demanding standards than larger companies.

The Law of 20 April 2009 on environmental liability with regard to the prevention and repair of environmental damage, as amended (the Environmental Law) establishes a framework for environmental liability based on the 'polluter pays' principle to prevent and remedy environmental damage. In summary, it provides that any producer whose activity causes environmental damage should be liable to repair such damage, which can apply to the potential environmental impact of manufacturing fashion and luxury goods.

Non-compliance with the NFRD, the CSRD and the Environmental Law can lead to image and reputational damage for the luxury industry, which can have an impact on sales and revenues.

Law stated - 01 February 2023

What occupational health and safety laws should fashion companies be aware of across their supply chains?

Textile manufacturers, importers or downstream users are subject to the Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures (the CLP Regulation), which applies to all actors in the chemical industry, including the textile industry. The CLP Regulation has been fully applicable in Luxembourg since June 2017. Depending on their role in the supply chain, different obligations to the classification, labelling and packaging of the product will apply.

The other occupational health and safety rules applicable to companies in the fashion sector are the same as for any other employer. Thus, employers are legally required to ensure their employees' health and safety in all work-related aspects. In this respect, companies are responsible for organising their occupational health service and ensuring that medical examinations are effectively carried out when necessary and factoring in related costs. Whenever a company hires a new employee, a medical examination is mandatory and its successful completion is considered a condition precedent for concluding the employment contract.

In addition, employers are required to take the necessary measures to protect the safety and health of their employees, including occupational risk prevention, information and training activities. Taking into account the nature of its activities, the company further needs to evaluate, identify and take measures to prevent risks within their premises. This aspect not only relates to risks that might occur in the proper exercise of the employees' functions, but the company also needs to take into consideration their employees' health status, including both their physical and mental health.

In the context of the covid-19 pandemic, and in particular the restrictive measures that have been in place during the last three years concerning the gathering of people, the wearing of face masks and social distancing, the activities of companies in the fashion industry have also been adapted to further ensure the protection of the general health and safety of employees working in this sector.

Law stated - 01 February 2023

ONLINE RETAIL

Launch

What legal framework governs the launch of an online fashion marketplace or store?

The legal framework in Luxembourg governing the launch of an online fashion marketplace or store is the same as any other kind of retail items sold online.

Before launching the online activity

New businesses must first either establish a corporate vehicle or create a branch through which the new business will carry out of its activities online irrespective of the kind of items their activity focuses on. The company or branch must be duly registered with the Luxembourg Trade and Companies' Register. New business can also be run by a physical person.

A business licence is needed for all natural persons and legal entities wishing to start a business in a commercial or industrial activity, or as a craftsman (artisan). Selling goods or services online is considered by the Business Licences Law to be a commercial activity and therefore requires a licence.

The business licence must be obtained before the launch of the online activities.

A company will need to hire employees or contract with service providers, such as website developers, and must find an internet service provider to host its website. As an employer, the company must register with the Luxembourg social security authority, the Joint Social Security Centre, and the person who holds the business licence on behalf of the company must be registered with the social security organisation as an employee of the company if they are not the owner or controlling shareholder.

Furthermore, when launching an online marketplace or store, the company launching the activity must register with the VAT authority, within 15 days of the beginning of its activities, and apply for a VAT identification number.

Once the website is launched

Beside the common rules applicable to any business in Luxembourg, including rules applicable in the context of business-to-consumer stores (contract law, consumer law, commercial code), the activity of online stores and marketplaces is also governed by the Law of 14 August 2000 on e-commerce, as amended (the E-Commerce Law) implementing the e-Commerce Directive (2000/31/EC).

As for any other online marketplace or store, online fashion business must make available on their website all mandatory information required by law, especially for the purpose of consumer and data protection (ie, terms of use, terms of sales or services, privacy and cookie policies and legal disclaimer with mandatory information), including where relevant complying with the Geo-Blocking Regulation (2018/302) prohibiting discrimination against consumers based on their place of residence when buying goods or services on online platforms.

Law stated - 01 February 2023

Sourcing and distribution

How does e-commerce implicate retailers' sourcing and distribution arrangements (or other contractual arrangements) in your jurisdiction?

Retailer sourcing and distribution arrangements are subject to commercial and competition rules, and in the specific case of e-commerce, such arrangements are additionally subject to the E-Commerce Law.

Law stated - 01 February 2023

Terms and conditions

What special considerations would you take into account when drafting online terms and conditions for customers (or updating existing terms and conditions) when launching an e-commerce website in your jurisdiction? Have there been any recent developments with respect to enforceability of online contracts that implicate e-commerce sites?

Prior to drafting terms and conditions (TCs) for online stores or marketplaces, it should be determined whether the products and services offered on the e-commerce website are directed towards businesses or consumers.

Should the e-commerce website target consumers (business-to-consumer (B2C) relationship), the Civil Code and the Consumer Code would apply, and with it all the EU corpus of legislation protecting consumers. In compliance with requirements under the Consumer Code, the TCs should thus provide clear and comprehensible information. Should the e-commerce website target business customers (business-to-business (B2B) relationship), the provisions of the Civil Code and the Code of Commerce will apply.

Applicable both in a B2C and B2B context, article 1135-1 of the Civil Code provides that TCs drafted (and imposed) by

one party can only be imposed on the other party if the latter was able to review them prior to signing the agreement and if that party can be deemed to have accepted them.

Therefore, if the TCs are amended, the new version must first be submitted to the clients prior to being able to order products or services online.

Further, in a B2C context, the online store or marketplace must, inter alia, provide its customers with confirmation of the contract entered into in a durable medium, within a reasonable period after its conclusion and, at the latest, at the time of delivery of the products or services. It is usually market practice to enable the consumer to download and print the contractual terms. As another example, the Consumer code provides that consumers have a right of withdrawal without penalty or motive for 14 calendar days after the conclusion of the online contract. In case the consumer is not informed about this right, the fourteen-day period is extended for an additional 12 months.

It is also worth mentioning that the Law of 30 November 2022 amending the Consumer Code for the purpose of transposing Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 (the Consumer Omnibus Directive) has brought modifications to the Consumer Code requiring further transparency obligations by all traders, including thus luxury and fashion companies. Following the new articles L.112-2-1, L.122-3(6), L.222-3 and L.222-10-1 of the Consumer Code, traders are now held to an even stricter obligation of transparency when offering products and services to consumers in regards of prices and personal data collection.

In any case, the online store or marketplace is liable for providing proof of the existence and content of pre-contractual information, confirmation of the contract, compliance with the terms of delivery or terms of performance and consumer consent. If a clause in the contract states otherwise, it will be considered unfair and will thus be void.

Finally, it is usual for companies operating in Luxembourg to use more than one of the three official languages of Luxembourg (French, German and Luxembourgish) for their TCs although no explicit requirement in the Consumer Code imposes this with respect to 'distance contracts'. From a commercial perspective, a lot of Luxembourg professionals also choose to voluntarily provide an English translation of the relevant documents.

There have been no further recent developments in Luxembourg with respect to enforceability of online contracts that implicate e-commerce sites.

Law stated - 01 February 2023

Tax

Are online sales taxed differently than sales in retail stores in your jurisdiction?

Incomes on profits derived from sales online and in retail stores are taxed the same way, without any difference in tax basis or rates.

Regarding VAT, with the implementation of the VAT e-commerce package since 1 July 2021, sales of fashion goods transported to buyers (B2C) based in Luxembourg are subject to domestic VAT at the current standard rate of 16 per cent (standard VAT rate temporarily reduced from 17 per cent to 16 per cent for the year 2023), except for children's (up to 14 years old) clothes, which are subject to a super-reduced VAT rate of 3 per cent. Accordingly, sales in retail stores and online sales with transport of goods to Luxembourg made to buyers based in Luxembourg are subject equally to domestic VAT.

VAT compliance obligations borne by online sellers will differ depending on several factors, such as the physical flow of the fashion products (eg, imported from outside the EU or transported from one member state to another), the seller's place of establishment or the use of an electronic platform for the sale.

Law stated - 01 February 2023

INTELLECTUAL PROPERTY

Design protection

Which IP rights are applicable to fashion designs? What rules and procedures apply to obtaining protection?

Fashion designs can give rise to diverse IP rights, registered (such as trademarks, design rights and, in limited instances, patents) or unregistered (such as author's rights and unregistered designs as provided under Council Regulation No. 6/2002). In some circumstances, fashion designs can be protected by know-how and trade secrets. Such rights can also overlap in various situations.

Protection under author's rights

The protection granted through author's rights and trademark can apply to the same items but the aim and the conditions applicable to them differ.

Author's rights can be granted in Luxembourg without any registration process to any fashion design deemed original. The author must be able to demonstrate the originality of the design and its date of creation in case of litigation. For this reason, it is recommended that the author of the fashion design (including jewellery items) document their creations and specifically the date of creation and the aesthetic choices they personally made in the creation of the design (bearing in mind that the choices made should not be governed by any technical constraint). To this end, a different medium can be used such as submitting an i-depot to the Benelux Office for Intellectual Property (OBPI), using technologies that ensure that a document cannot be falsified, such as blockchain or non-fungible tokens. In any case, the duration of the protection granted under author's rights is 70 years from the death of the author.

Author's rights in Luxembourg comprise economic rights, which can be freely transferred, and moral rights, which can also be assigned, to some extent (except for the right to object to modification on the work giving rise to author's rights).

If the author is a legal entity or where the design is the result of the collaboration of various people, the ownership of the author's rights should be contractually identified for the purpose of avoiding any conflict arising from the question of the ownership of the rights.

Protection under trademarks and design rights

On the other hand, trademarks and design rights, which are subject to prior registration requirements, can also be used to protect fashion designs.

Trademarks and designs can be registered with the OBPI. The purpose of trademark rights is to identify the source or the origin of goods, whereas the purpose of design rights is to protect the appearance of the whole or part of a product resulting from features of, in particular, the lines, contours, colours, shape, texture and materials of the product and its ornamentation. Trademarks and designs can be constituted by mono-dimensional, two-dimensional and three-dimensional representations of the designs.

Irrespective of the types of products or services covered under the trademark or the design, their validity is subject to different and specific criteria, such as the sign or design being available and the trademark being distinctive and not descriptive of the goods and services designated under it.

The protection under trademark is granted for 10 years and is renewable, and the protection under design rights is granted for five years and is renewable four times for a maximum of 25 years.

Where the visuals to be registered as trademarks (logo) or designs are created by employees or subcontractors, the transfer of the IP rights on the creation should be expressly provided in the employment contract or the service provider agreement.

In the case of patents, which could be applied for in the context of the development of manufacturing processes, new fabrics and materials used for fashion and luxury goods, where the patentable invention is created by an employee, the rights on the patent are vested in the employer when the invention was created in the context of the employment relationship. Luxembourg patent law also provides for the obligation of the employer to compensate the employee with a fair part of the benefit achieved with the patent where the employer achieved a significant benefit because of the patent.

Law stated - 01 February 2023

What difficulties arise in obtaining IP protection for fashion goods?

Some difficulties can arise in obtaining the protection of fashion goods, as outlined below.

Protection under author's rights

For the protection of the fashion goods through the author's rights, the main issue is to evidence the originality of the design.

Luxembourg case law describes originality as reflecting the author's personality, which can be challenging to evidence when applied to fashion goods.

Protection under trademarks and design rights

Once a trademark is applied for, the OBPI verifies that the application submitted fulfils the absolute grounds for nullity of the trademark, and it is only after it that a period of opposition starts running (two months from the day the application if published). This period allows third parties holding prior trademarks or trademark applications to oppose to the registration of the new sign applied for. To avoid risks of opposition to the maximum extent possible, it is thus always advisable to conduct prior checks on the local trademark office targeted.

In any case, any party with an interest can always seek for the nullity of a trademark at a later stage.

Regarding designs, the faculty for prior design rights owners to introduce an opposition does not exist. Prior design owners can nonetheless seek for the nullity of the design at a later stage.

Besides the procedural aspects of the registration itself, the main difficulties for fashion goods in obtaining trademark and design protection resides in the conditions applicable to such protection.

Several difficulties may also arise when trying to protect the appearance of fashion goods through trademark and design law.

Trademark protection

To obtain protection as a trademark, a sign must be distinctive. When talking about distinctiveness of fashion designs (the whole design or mere parts of the design), the demonstration of such criteria is obviously challenging in comparison to word trademarks. Established EU case law holds that the average consumer is not accustomed to viewing trademarks representing design as an indication of origin of the product where they consist in the appearance of the whole or part of good.

Benelux trademark law expressly prohibits the registration of signs that consist of a shape or another characteristic that: results from the nature of the goods themselves; is necessary to obtain a technical result; and gives substantial value to the goods. The objective pursued with such criteria is to prevent the exclusive and permanent rights that a trademark confers from being used to indefinitely extend the duration of other IP rights, such as patents or designs rights, which can only be granted for limited periods. Demonstrating compliance with these conditions in relation to fashion designs registered as trademarks can thus be challenging as the trademark would consist in the shape of the product.

Designs rights protection

The following are excluded from the protection of design rights:

- features of the appearance of a product that are solely dictated by its technical function; and
- features of the appearance of a product that must necessarily be reproduced in their exact form and dimensions to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

To some extent, it can be difficult to avoid the design of a fashion item being dictated by its functionality, such as for parts of the design that are only meant to allow movement of the item once worn by people.

Law stated - 01 February 2023

Brand protection

How are luxury and fashion brands legally protected in your jurisdiction?

Verbal and figurative trademarks can be protected in Luxembourg through registration with the OBPI, giving rise to a Benelux trademark, or the European Intellectual Property Office (EUIPO), giving rise to an EU trademark.

To some extent, luxury and fashion brands can also obtain protection of their brand name through their corporate and commercial name.

The protection of luxury and fashion brands can also be granted through the registration of domain names, which, in case of litigation regarding the brand itself and any conflict with any third-party brand, could be used to evidence prior use should the brand in question not be registered as trademark yet.

Unregistered trademarks are not protected under Luxembourg law, except for the protection granted to well-known trademarks under article 6-bis of the Paris Convention.

Finally, luxury and fashion brands can always be protected by relying on the common rules of tort law and unfair competition rules.

Law stated - 01 February 2023

Licensing

What rules, restrictions and best practices apply to IP licensing in the fashion industry?

The rules, restrictions and best practices applicable to IP licensing in the fashion industry depend on the nature of the rights licensed.

Author's rights license and assignment agreements

Licensing author's rights in Luxembourg is governed by the Law of 18 April 2001 on author's rights, neighbouring rights and databases, as amended (the Author's Rights Law). Very often in practice, authors that are natural persons are free to choose whom to contract with but the contractual clauses and conditions are imposed on them.

The author's rights contracts are governed by the principle of contractual freedom and some specific requirements as to the form of the agreement.

In Luxembourg economical and moral rights (except for the right to object to modification of the work giving rise to author's rights) can freely be assigned or licensed. The licensing or assignment can even take place before the creation of the work giving rise to author's rights, which is specifically the case for commissioned works that the author can refuse to deliver based on their disclosure right. In any case, total assignment of future work is possible under Luxembourg law subject, however, to the principle of restrictive interpretation in favour of the author and to the requirement of special compensation for yet unknown forms of exploitation.

Regarding the form of such agreements, the Author's Rights Law specifies that the assignment and the license of economical rights can only be proven in writing. In the absence of a written agreement, the author will be considered as never having transferred or licensed the work.

Trademark and design license and assignment agreements

Regarding trademark and design rights license and assignment agreements, irrespective of the office of their registration (the OBPI or the EUIPO), trademark and design holders are free to choose their counterparties and to either license or assign their trademark or design for all or some of the products and services it designates and for all or part of the territory for which the protection has been granted.

It is thus important to expressly and clearly determine such elements in licensing and assignment agreements.

Although valid from a contractual perspective, the licence or the assignment should be recorded with the office of registration of the trademark or the design to be enforceable towards third parties.

Law stated - 01 February 2023

Enforcement

What options do rights holders have when enforcing their IP rights? Are there options for protecting IP rights through enforcement at the borders of your jurisdiction?

Author's rights enforcement

Author's rights holders can enforce their rights against any counterfeiting act with the District Court of Luxembourg sitting as a civil court, where interim measures can also be sought where the infringement suffered requires an urgent decision.

Trademark and design enforcement

Trademark and design rights holders can enforce their rights before the OBPI or the EUIPO (or both).

In particular, prior trademark holders can also oppose the registration of new trademarks in the registries where their own trademarks are already applied for or registered (with the OBPI or the EUIPO) if they believe the application

infringes their prior rights. Oppositions are to be introduced when the later trademark has not yet been definitively registered (during the application process).

Trademark and design holders can also seek the cancellation and revocation of trademark or design, which they believe infringes their own rights. Such procedures are to be introduced only against already registered trademarks.

The Luxembourg Customs and Excise Agency (Customs) is also particularly active with respect to the seizure of counterfeit products being transited across Luxembourg borders.

Where Customs suspect a good to be counterfeit, they stop the item and contact the 'official' brand company or manufacturer, directly or via their designated local legal counsel to confirm that the item is counterfeit and proceed to its destruction upon receiving confirmation. The monitoring carried out by Customs is done on the basis of a prior monitoring request of the brand company or manufacturer, which can either do it locally or at the EU level and also can designate specific local legal counsel as points of contact for Customs.

In addition to the destruction of the counterfeit items, the brand company or manufacturer can introduce civil claims, based on the tortious liability regime, and criminal complaints.

Law stated - 01 February 2023

DATA PRIVACY AND SECURITY

Legislation

What data privacy and security laws are most relevant to fashion and luxury companies?

The following data privacy and security laws are relevant to fashion and luxury companies:

- Regulation (EU) 679/2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the General Data Protection Regulation (GDPR)), which applies to Luxembourg directly;
- Luxembourg Law of 1 August 2018 concerning the organisation of the National Commission for Data Protection and the general system on data protection (the Data Protection Law) which complements the GDPR;
- Luxembourg Law of 14 August 2000 on e-commerce, as amended (the E-Commerce Law);
- Luxembourg Law of 30 May 2005 concerning the specific provisions for protection of the individual in respect of the processing of personal data in the electronic communications sector, and amending articles 88-2 and 88-4 of the Code of Criminal Procedure, as amended (the E-communications Law); and
- Luxembourg Law of 18 July 2014 on cybersecurity (the Cybersecurity Law).

Law stated - 01 February 2023

Compliance challenges

What challenges do data privacy and security laws present to luxury and fashion companies and their business models?

Data privacy and security laws and the new requirements and restrictions they have imposed on businesses have brought a greater awareness of and increased liability towards data (be it commercial, strategic, secret or personal) processed by businesses in the context of their activity.

As consumer-facing businesses, luxury and fashion companies have direct access to personal data and use it to build a sense of community and exclusivity around their brands. Be they physical shops or virtual shops, luxury and fashion companies collect different kinds of personal data, notably for the purpose of offering their clients exclusive sales and

products and proposing tailor-made services. Such preference data can be collected in shops directly or via the use of cookies placed on e-commerce websites (which must comply with applicable laws).

In this context, such business must ensure the protection of the personal data they process about their clients, including the amount of money spent by the clients and the frequency of their visit in the shops. Information used for the marketing and launch of new products should be handled and processed with due care and in accordance with data privacy and security laws.

The processing of personal data in this respect could be deemed to constitute large-scale consumer profiling, which obliges the controller (the luxury and fashion companies) to carry out data protection impact assessments and to appoint a data protection officer.

Moreover, specific requirements apply to video surveillance in physical shops for which clients and employees should be informed prior to respectively entering the shop and starting their work relationship. Further requirements apply to monitoring employees as provided under the Data Protection Law provisions amending the Luxembourg Labour Code.

It is also worth mentioning here that the Law of 30 November 2022 amending the Consumer Code for the purpose of transposing Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 (the Consumer Omnibus Directive) has brought modifications to the Consumer Code requiring further transparency obligations by all traders notably in regards of personal data collection when offering products and services to consumers using a digital service or content (which might be the case for certain luxury fashion goods).

Another important matter to keep in mind is that cybersecurity has over time become an important topic for luxury and fashion companies selling online.

Finally, the Law of 12 November 2004 on the fight against money laundering and terrorist financing, which applies to persons trading goods who receive payments in cash of €10,000 or more, provides for the obligation to verify the identities of those persons and declare suspicious transactions to the Luxembourg authorities that involve the processing of personal data related to the suspected clients. However, in accordance with the principle of no tipping off, persons (eg, those working in shops) receiving cash payments and filing a suspicion report must not inform the individuals whose personal data they collect and transfer to the Luxembourg authorities for the purpose of the anti-money laundering declaration of the suspicion. The 'no tipping off' obligation thus constitutes an exemption to the information obligation provided for under articles 13 and 14 of the GDPR.

As a final remark, it is interesting to mention that the European Commission on 23 February 2022 published a Proposal for a Regulation on harmonised rules on fair access to and use of data (Data Act). The proposal includes new rules on who can use and access data generated in the EU across all economic sectors with the aim of creating a fair and innovative data economy.

Law stated - 01 February 2023

Innovative technologies

What data privacy and security concerns must luxury and fashion retailers consider when deploying innovative technologies in association with the marketing of goods and services to consumers?

As a general principle, any company using personal data with any form of technology, be it innovative or not, must ensure that the processing of the information is lawful (ie, relying on at least one of the lawful bases enumerated under article 6 of the GDPR), proportionate, minimised and transparent.

Considering that innovative technologies such as artificial intelligence (AI) and facial recognition are more likely to result in high risks for the rights and freedoms of data subjects, the GDPR requires a data protection impact

assessment be carried out before the implementation of such technology.

Guidelines 3/2019 on processing of personal data through video devices issued by the European Data Protection Board (EDPB) in 2019 pointed out that considering that the use of biometric data, notably facial recognition, can involve high risks for data subjects' rights, it is crucial that the use of such technologies takes place in compliance with the principles of lawfulness, necessity, proportionality and data minimisation, as laid down under the GDPR . Prior to implementing such technologies, controllers should carry out specific impact assessments on fundamental rights and freedoms and consider less intrusive means to achieve the legitimate purpose of the processing.

The EDPB further indicates that three criteria must be taken into consideration to qualify the data collected as biometric data: (1) the nature of data: data relating to physical, physiological or behavioural characteristics of a natural person (which could be of a particular interest for fashion businesses for example); (2) the means and way of processing: technical or technological tools used to this end; and (3) the purpose of processing: data must be used for the purpose of uniquely identifying a natural person.

The EDPB concludes that the use of video surveillance including biometric recognition functionality (used by companies for their own marketing, statistical or even security purposes) 'will, in most cases, require explicit consent of all data subjects' as the sole available lawful basis for the contemplated processing.

In addition to the above, the Law of 11 August 1982 concerning the protection of privacy subjects requires that prior consent be obtained from individuals before their image can be recorded. It should thus be made clear that video-surveillance cameras are used in the shop or premises for the individuals to be free to refuse to enter the building to avoid the recording of their image.

In June 2021, the EBPD and the European Data Protection Supervisor (EDPS) called for a ban on use of AI for automated recognition of human features in publicly accessible spaces, and some other uses of AI that can lead to unfair discrimination (21 June 2021 – EDPB and EDPS joint opinion 5/2021 on the European Commission's Proposal for a Regulation laying down harmonised rules on artificial intelligence).

Finally, the European Commission recently published two supplementary pieces of legislation: (1) in April 2021, the Artificial Intelligence Act (AIA), which aims to regulate AI in order to propose a trustworthy AI that respects fundamental rights and, (2) in September 2022, the Artificial Intelligence Liability Directive applying to non-contractual civil law claims for damages caused by an AI system, where such claims are brought under fault-based liability regimes in September 2022. The AIA aims at regulating sectors that are considered strategic and involve services considered essential or sensitive, which must use AI to improve the comfort of their users, without exposing them to risks of misuse. With this in mind, the European Commission proposed a graduated risk approach, notably based on risk assessment including the pre-qualification of the risks inherent to the use and deployment of AI and the alignment of graduated and proportionate obligations in line with this pre-qualification.

These aspects should thus be taken into consideration when contemplating the use of innovative technologies.

Law stated - 01 February 2023

Content personalisation and targeted advertising

What legal and regulatory challenges must luxury and fashion companies address to support personalisation of online content and targeted advertising based on data-driven inferences regarding consumer behaviour?

Content personalisation and targeted advertising involves the processing of personal data for the purpose of analysing and understanding customers' needs and tastes. Therefore, where processing personal data for this purpose, luxury and fashion companies should ensure the lawfulness of their processing (ie, they rely on a valid legal basis under article 6 of the GDPR) and transparency (ie, they inform the consumers prior to processing their personal data) of the

processing and provide them with the option to object to it.

More specifically, when using cookies, e-commerce businesses must implement cookie banners displaying the kind of cookies used and the purpose of their use, and provide the website's users with the option to refuse the use of cookies during their navigation on the website. The guidelines issued notably by the French data protection authority give clear and complete information as to the legal framework applicable to the use of cookies.

Should the data collected be analysed and used globally for the purpose of analysing trends worldwide, luxury and fashion companies must ensure that, for transfers of data outside the European Economic Area, additional steps should be taken such as implementing safeguard mechanisms for the purpose of ensuring protection of the personal data being transferred, keeping in mind that a deeper analysis of the local legislation of the country where the personal data is transferred should be carried out and additional measures implemented in line with EDPB guidelines and recommendations issued further to the Court of Justice of the European Union's Schrems II ruling.

Law stated - 01 February 2023

ADVERTISING AND MARKETING

Law and regulation

What laws, regulations and industry codes are applicable to advertising and marketing communications by luxury and fashion companies?

There are no specific rules in Luxembourg for luxury and fashion companies regarding advertising and marketing communications. As with any other businesses, commercial communications must be made in a transparent way, avoiding any misleading information on the product, as provided under the Consumer Code. Restrictions on unsolicited commercial communications exist under the Law of 14 August 2000 on e-commerce, as amended (the E-Commerce Law) .

The Law of 23 December 2016 regarding sales or trade on sidewalks and misleading and comparative advertising, as amended (the Advertising Law) prohibits misleading advertising and regulates comparative advertising.

In a business-to-consumer context, articles L.224-4 and -5 (advertising in relation to consumer credit) of the Consumer Code could also apply depending on the offers made and the proposed payment conditions.

Law stated - 01 February 2023

Online marketing and social media

What particular rules and regulations govern online marketing activities and how are such rules enforced?

There are no specific rules applicable to online marketing activities and social media marketing, besides the rules regulating general and marketing communications.

Additionally, the Digital Markets Act, which entered into force on 1 November 2022, and the Digital Services Act, which entered into force on 16 November 2022, apply to online intermediaries or companies that host third-party content or sell third-party products. They specifically apply to social media platforms, which will see their liability towards the content posted on their platforms increased.

Law stated - 01 February 2023

PRODUCT REGULATION AND CONSUMER PROTECTION

Product safety rules and standards

What product safety rules and standards apply to luxury and fashion goods?

There are no specific product safety rules and standards applicable to luxury and fashion goods in Luxembourg.

The Law of 31 July 2006 on general product safety, as amended, as well as the Consumer Code provides for general product safety rules and standards, which manufacturers and producers should comply with.

Law stated - 01 February 2023

Product liability

What regime governs product liability for luxury and fashion goods? Has there been any notable recent product liability litigation or enforcement action in the sector?

There is no specific product liability applicable to luxury and fashion goods in Luxembourg.

Luxembourg product liability principles are divided in three regimes:

- a guarantee regime provided under the Consumer Code (articles L.212-1 to L.212-13);
- a contractual liability system set under the Civil Code (articles 1625 to 1649); and
- a tortious liability system provided under the law related to defective products liability of 21 April 1989, as amended.

Guarantee regime under the Consumer Code

The liability principles set under articles L.212-1 to L.212-13 of the Consumer Code provide for conformity guarantees, including the obligation to comply with the contractual specifications and to guarantee the buyer against defects.

These provisions have recently been amended by the Law of 8 December 2021 amending the Consumer Code. The goal is to strengthen the protection of consumers by providing even stricter requirements for professionals.

Characteristics of the conformity guarantee

Article L.212-1 of the Consumer Code states that the conformity guarantee applies to any sale contracts pertaining to movable tangible properties, including goods with digital elements, entered into between professionals and consumers.

The liability of the professional is not fault-based. Thus, as long as the claimant demonstrates that the product does not comply with the contractual provisions, the professional should be held responsible.

Pursuant to article L.212-4 of the Consumer Code, a product is deemed not to comply with the contractual stipulations when it is notably unfit for the purpose usually expected for similar goods or when it does not comply with its contractual description or qualities reasonably expected. The conformity guarantee has been strengthened by the recent Law of 8 December 2021, thereby increasing the obligation of the professional to comply with the sales contract and to deliver a good in line with what a consumer could generally expect in a similar situation.

Duration of the guarantee of conformity

The defect of conformity must be notified by the customer to the professional, by any means, within two years of the

delivery of the good (articles L.212-5 and L.212-9 of the Consumer Code), after which the consumer loses the right to claim a defect of conformity under the provisions of the Consumer Code.

The consumer must file their claim with the courts within two years of the above notification, failing which they are deprived of their right of action.

Contractual liability system

If the provisions of the Consumer Code do not apply (ie, in the case of contract between two professionals, or when the defects appear after the end of the legal guarantee provided under the provisions of the Consumer Code), the provisions of the Civil Code regarding contractual liability could apply.

Characteristics of the contractual liability for hidden defects

The contractual responsibility system set under articles 1625 to 1649 of the Civil Code, is solely based on the non-execution or violation of the contractual arrangements among the parties.

The liability of the seller could thus be engaged based on the demonstration of a breach of the contractual provisions by the seller.

As provided under article 1625 of the Civil Code, the seller should warrant the buyer against any hidden defect. Moreover, the defect suffered by the good should be serious enough to make a normal use impossible (article 1641 of the Civil Code).

The defect should also be hidden (ie, not obvious), which means that the buyer was not able to know its existence when the sale contract was entered into by both parties (article 1642 of the Civil Code).

Duration of the contractual liability for hidden defects

According to article 1648 of the Civil Code, the buyer should notify the hidden defect to the seller within a short time frame from the time they discovered, or should have discovered, the defect of the product. Pursuant to this article, the buyer must file an action for compensation within one year of the notification, failing which they will be deprived of their right of action.

Tortious liability system for defective products

In case of defect of the product, the liability of the producer could be engaged under the Luxembourg Defective Products Liability Law of 21 April 1989, which is a fault-based regime applicable to the manufacturer.

The legal action based on the Defective Products Liability Law does not prohibit the victim from filing proceedings based on the contractual liability provisions of the Civil Code, when the victim was party to a contractual relationship with the producer (articles 8 and 9 of Defective Products Liability Law).

Characteristics of the tortious legal system

Under the Defective Products Liability Law, a product is defective if it does not provide 'the safety one is entitled to expect'. Nonetheless, a product should not be considered defective simply because a more advanced product was put into circulation at a later date (article 2.3 of the Defective Products Liability Law).

Under this regime, the victim bears the burden of the proof, and should demonstrate the defect of the product, the

damage suffered and the existence of a link between the alleged defective product and the damage.

However, the Defective Products Liability Law provides the producer with a number of pertinent defences, including the fact that the defect that caused the damage did not exist by the time the product was marketed by the producer, or that the defect appeared later on.

Article 5 of the Defective Products Liability Law also provides that 'when the damage is jointly caused by a defect of the product and by the fault of the victim or by someone under the responsibility of the victim, the manufacturer is only responsible for the portion of the damage in which the defect of the product participated'.

Duration of the liability based on the tortious legal system

The legal action becomes time-barred three years after a victim became or should have become aware of the defect, of the identity of the producer and the damage suffered. In any case, it must 10 years (at the latest) after the product has been brought to market.

Finally, for both contractual and tortious liability, the manufacturer is not expected to provide an absolute level of security. However, with respect to the security of the product, the manufacturer should demonstrate that it fulfilled its duty of care.

In this regard, the Luxembourg Court of Appeal ruled that failure to take a precautionary useful measure engages the liability of its author, when the omitted measure affected the safety of a third person, where a normally diligent and prudent person would have acted positively (Court of Appeal, 23 December 1971).

There is no specific case law applicable to the question of product liability regarding luxury and fashion goods, but all the above principles are applicable, in particular regarding the kind of material and fabrics used for such goods and the potential chemicals used for their storage or transportation (eg, bug repellents, anti-mould products), which can be harmful to consumers' health and entail producers' and distributors' liability.

Law stated - 01 February 2023

M&A AND COMPETITION ISSUES

M&A and joint ventures

Are there any special considerations for M&A or joint venture transactions that companies should bear in mind when preparing, negotiating or entering into a deal in the luxury fashion industry?

There are no specific considerations for M&A or joint venture transactions that companies should bear in mind when preparing, negotiating or entering into a deal in the luxury and fashion industry.

However, as one of the main assets for luxury and fashion businesses is intellectual property, this should be closely monitored and focused on in the due diligence phase to ensure its validity and transfer, where necessary.

Since fashion and luxury brands are often closely linked to the person (or personality) of their founders or designers, the questions related to the use of founders' or designers' names, styles, personalities and trade secrets in future creations marketed by the brands should be made clear during the transaction and in the share or asset purchase agreement.

Considering the increased importance of e-commerce and, with it, of data collection and analysis, in a post-pandemic world, the due diligence for luxury and fashion businesses should also pay close attention to all rules applicable to e-commerce and data protection.

Law stated - 01 February 2023

Competition

What competition law provisions are particularly relevant for the luxury and fashion industry?

There are no specific rules applicable in Luxembourg to competition matters with respect to the luxury and fashion industry.

In the context of business-to-business relationships, competition is regulated in Luxembourg by the Law of 23 October 2011 on competition which, among other things, prohibits cartels and abuses of dominant position. In addition, article 101(1) of the Treaty on the Functioning of the European Union provides for a strict prohibition of agreements and concerted practices among undertakings that may harm fair competition by preventing, restricting or distorting it.

Although there is no specific provision in the Law of 23 October 2011 to regulate unfair competition, acts of unfair competition are regulated under the general tortious liability provisions of the Civil Code in addition to the provisions of the Consumer Code.

Law stated - 01 February 2023

EMPLOYMENT AND LABOUR

Managing employment relationships

What employment law provisions should fashion companies be particularly aware of when managing relationships with employees? What are the usual contractual arrangements for these relationships?

Depending on the nature of the tasks to be performed and particularly on the required degree of subordination vis-à-vis the company, the contractual relationship may either be an employment or an independent relationship. Although there is no statutory definition of an employment relationship, the following elements have been identified by case law as characteristics of an employment contract: (1) the performance of work by an employee, (2) the payment by the employer of a compensation for the work performed by the employee, and (3) the employee's subordination to the employer. The last criterium is the most decisive in the sense that the employment contract subordinates the employee to the employer, which gives instructions as to the performance of the work, supervises the execution thereof and controls the results. In other words, the employer has the power to direct the employee, which is not the case in an independent contractual relationship (such as under a service agreement).

Considering that classifications as an employee and as an independent worker are legally feasible, and notably in order to avoid any risk of requalification of the contractual relationship, fashion companies will have to carefully qualify and classify the contractual relationships they are entering into with a given candidate, depending on the factual situation at hand (ie, notably verify whether the foregoing three employment conditions are or could be met in practice).

Indeed, in case of litigation, a court will not be bound by the qualification the parties have given to their contractual relationship and may hence requalify the contract retroactively (from an independent contract into an employment contract or vice-versa). The court will notably verify the actual contractual context in light with several indicators (eg, modalities of the work performance, subordination link, fixed hours imposed by the company, exclusivity of the work for a company, submission of the person to disciplinary rules, provision of work tools, affiliation to the social security system, etc).

Companies active in the fashion business which are concluding employment contracts are subject to the compliance with the provisions of the Labour Code. The latter establishes, amongst others, the rules regarding remuneration, working time and annual leave and sets out the minimum sets of rules and entitlements to be respected. Whereas the parties to the contract may stipulate different terms in the employment contract, the contractual provisions may under

no circumstances be less favourable than the minimum provisions set out by the Labour Code.

The governing employment law principle is that employment contracts are concluded on a long-term basis and it is only by exception, and in certain specific situations, that an employment contract can be concluded for a fixed term. The Labour Code expressly provides that the recourse to a fixed-term employment contract is only permitted for the performance of a 'precise and temporary task'. Furthermore, a fixed-term contract may not be concluded for permanent positions, meaning positions, which are part of the company's day-to-day activities. The Labour Code provides for a sample list of scenarios for which a fixed-term employment contract can be concluded. Such list entails for instance that a fixed-term employment contract can be concluded in certain sectors of activity, where it is customary not to have recourse to a long-term employment contract because of the nature of the activity carried out or the temporary nature of these jobs – which is notably the case for models.

There is no collective bargaining agreement which specifically applies to employees in the fashion sector. Nonetheless, depending on the category of employees (eg, senior managers) and the type of employing company (eg, retail establishments), specific rules, deriving from the standard employment law provisions, might become applicable. The application of derogatory rules, if any, needs to be assessed on a case-by-case basis.

Law stated - 01 February 2023

Trade unions

Are there any special legal or regulatory considerations for fashion companies when dealing with trade unions or works councils?

There are no special legal or regulatory considerations for fashion companies when dealing with trade union or works councils. Any company, whatever the nature of its business, its legal form and its area of business, is required to put in place a staff delegation if it has employed at least 15 employees over a reference period of 12 months. Depending on the circumstances and the headcount of the company, the staff delegation may either have an information and consultation right, or a co-decision right.

Law stated - 01 February 2023

Immigration

Are there any special immigration law considerations for fashion companies seeking to move staff across borders or hire and retain talent?

As a general immigration rule, a difference must be drawn between EU citizens and third-country nationals.

EU-citizens are not subject to specific immigration formalities (save for certain declarations in case their stay on Luxembourg territory exceeds three months), since the applicable governing principle is that of free movement.

Third-country nationals on the contrary, are subject to specific immigration requirements, which vary depending on whether their stay will be or more or less than three months.

The third-country national's need for a visa must be verified and for those foreseeing to stay for more than three months, the third-country national must, before legally being allowed to enter Luxembourg territory, apply for a specific 'authorisation to stay', which depends on the reason of the third-country national's stay. indeed, different types of authorisations to stay are available (eg, as an employee, a highly qualified employee, a self-employed worker, a seconded employee or a student, etc). Regarding each and any of the available categories, different formalities will have to be respected, and the case may involve the handover of specific documents depending on the type of authorisation to stay the person is applying for.

Compliance with the requested formalities is of utmost importance, otherwise the applicant runs the risk of not being allowed to enter the Luxembourg territory and may even be expelled from the country. As a result of Brexit, the applicable rules regarding residence permits for third-country nationals will also apply to UK nationals.

Law stated - 01 February 2023

UPDATE AND TRENDS

Trends and developments

What are the current trends and future prospects for the luxury fashion industry in your jurisdiction? Have there been any notable recent market, legal or regulatory developments in the sector? What changes in law, regulation, or enforcement should luxury and fashion companies be preparing for?

There are no notable recent market, legal and or regulatory developments in the luxury fashion industry, or any particular changes in law, regulation or enforcement that specifically applies to luxury and fashion companies.

In terms of trends, the covid-19 pandemic has increased the demand for local and sustainable production, including in the fashion industry. Consumers want to use and buy in a more responsible way, including buying second-hand items and paying specific attention to the reputation of the manufacturer and its service providers.

Another outcome of the pandemic is that consumers are now more prone to buying online than visiting physical shops as the latter increases exposure to the virus. This has prompted luxury and fashion companies to re-evaluate their e-marketing strategies and implement online payment platforms and fast delivery to keep their clientele and attract new clients.

Law stated - 01 February 2023

Jurisdictions

Canada	McCarthy Tétrault LLP
France	Hogan Lovells
Germany	Hogan Lovells
Hong Kong	Hogan Lovells
Italy	Hogan Lovells
Luxembourg	Arendt & Medernach
Mexico	Creel García-Cuéllar Aiza y Enriquez SC
Netherlands	Bird & Bird LLP
Spain	Hogan Lovells
Switzerland	Kellerhals Carrard
Taiwan	Formosa Transnational Attorneys at Law
United Kingdom	Hogan Lovells
USA	Hogan Lovells