

Staff representation in companies

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TITLE I - THE STAFF DELEGATION

Part 1. - Powers and functioning of the staff delegation

Chapter 1. - Powers of the staff delegation

The Law of 18 May 1979 on the reform of staff delegations, as most recently amended by the Law of 9 May 2008, standardised the legal provisions relating to blue and white collar representatives and repealed previous laws and decrees. As part of the introduction of the Labour Code this new law has been integrated and figures now in Title One of Book IV of the Code.

Section 1. - General powers (Art. L. 414-1.)

The mission of the staff delegation is to protect and defend the interests of the staff of the undertaking in relation to working conditions, job security and the status of staff.

It should be noted, however, that staff delegations do not have competence in cases where the law grants specific competence to the joint works council.

In practice, the staff delegation will therefore be required, in particular, to:

1. give its opinion and put forward proposals on any issue related to the improvement of working conditions, terms and conditions of employment and social rights of the employees of the undertaking;
2. present individual or collective complaints to the employer;
3. prevent and resolve any individual or collective disagreements that may arise between the employer and the employees of the undertaking;
4. refer, where the aforementioned disagreements are not resolved, to the Labour Inspectorate any complaint or observation relating to the application of the legal, regulatory, administrative and contractual provisions relating to working conditions and protection of the staff in the exercise of their profession;
5. give its opinion on the drafting or amendment of the interior regulations or works rules of the establishment and closely monitor the observance of such rules;
6. propose amendments to the interior company regulations, amendments on which the management or, where applicable, the joint works council must take a decision within two months, of which the employee representatives must be immediately notified;
7. in establishments with a workforce of more than 150, participate in the training of apprentices in the establishment and in the running of training centres, if such exist;
8. contribute to the establishment and implementation of the apprenticeship scheme;
9. promote the integration of disabled accidented and handicapped persons and endeavour to create jobs appropriate to their physical and intellectual capacity;
10. participate in the management of the company welfare facilities in the establishment;
11. participate in industrial safety and environmental protection, and in the prevention of industrial accidents and occupational illnesses;
12. give its opinion prior to the creation, modification and cancellation of a supplementary pension scheme.

In addition, the head of the undertaking is obliged, where there is no joint works council, to consult the staff delegation, if such exists, , when he is considering creating part-time jobs in the undertaking or in one of its establishments, and when he is planning to use interim workers or temporarily borrow labour.

Article L.415-1 of the Labour Code expressly provides that the members of the staff delegation are bound to the interior regulation of the undertaking and can only leave their position to carry out the tasks which are conferred upon by the law with the approval of their manager and without any reduction in their pay.

Section 2. - Powers of young workers' representatives

Young workers' representatives have the task of advising the head of the undertaking and the principal delegation on all matters relating to the working conditions and protection of young workers and on matters relating to apprenticeships.

They have the right to have these matters included on the agenda of the meetings of the principal delegation.

Young workers' representatives have the right to attend the meetings of the principal delegation when the latter discuss matters relating to young workers.

A young workers' representative spokesperson has the right to attend all meetings of the principal delegation.

Under certain conditions, the young workers' delegates may organise consultation hours in accordance with Section 2.3.c) below.

Section 3. - Safety delegate (Art. L. 414-2.)

Even though one of the tasks of the staff delegation is to contribute to the prevention of occupational accidents and illnesses, Article 11 of the Law stipulates that each principal delegation and, where applicable, each divisionary delegation must appoint a safety representative from among its members or among the other workers of the undertaking.

Under Article L. 312-8. of the Labour Code, safety representatives are entitled to appropriate health and safety at work training. This training, which must take place during working time, is provided in addition to the training leave for members of the staff delegation. (Its content was determined by the Grand-Ducal Regulation of 27 September 2004 laying down training arrangements for delegates for staff safety)

The safety delegate records his findings in a special register. His report is countersigned by the head of the undertaking or by his representative, who accompanied him in his inspection tour. The register is kept at the office of the establishment where the inspection staff of the Labour Inspectorate can view it. The Law grants the same right to members of the delegation, who may exercise such right by crediting the time spent on this duty to their time-off rights.

If the findings recorded require immediate action on the part of the Labour Inspectorate, the safety representative is entitled to contact this authority directly. However, he must, at the same time, inform both the head of the undertaking or his representative and the principal delegation.

If the safety delegate deems it necessary, inspection tours may take place every week.

The duration and frequency of such inspections may be modified according to the extent of the sector and the complexity of the facilities to be inspected.

In administrative services, the number of inspection tours may not exceed two per year.

In principle, the safety delegate will be accompanied on his tours by:

- the head of the undertaking or his representative, where applicable, the safety engineer;

- the head of the department being inspected and, where applicable, the head of the maintenance service.

The safety delegate will be asked, where necessary, to accompany the inspection staff of the Labour Inspectorate during their department inspections and to assist them in the investigation of accidents.

The safety delegate must also be consulted and informed by the employer on:

1. the assessment of risks for health and safety at work, including risks concerning groups of workers at particular risk;
2. protective measures to be taken and, if necessary, protective equipment to be used;
3. declarations to be made to the Labour Inspectorate under Article L. 614-11.;
4. any action that may have substantial impacts on health and safety;
5. the appointment of staff chosen to deal with protection activities and the prevention of occupational hazards in the undertaking and/or establishment;
6. measures taken in relation to first aid, fire control and evacuation of staff, according to the nature of the activities and size of the undertaking and/or establishment, and taking into account other individuals present;
7. measures aimed at organising the necessary contacts with external services, particular in relation to first aid, emergency medical assistance, rescue and fire fighting.
8. use of resources within the undertaking and/or establishment, use of resources outside the undertaking and/or establishment to organise protection and prevention activities;
9. adequate training guaranteed for each worker in the interest of his health and safety.

The safety delegate has the right to ask the employer to take appropriate measures and to submit proposals to the latter in this respect, in order to eliminate any risk for workers and/or eradicate the sources of danger.

Section 4. - Equality delegate (Art. L. 414-3.)

Each principal delegation and, where applicable, each divisionary delegation appoints, immediately after taking up their duties, an equality delegate chosen from among its members and for the duration of its term of office.

The equality delegate has the task of ensuring equal treatment between the female and male staff of the undertaking in terms of access to employment, vocational training and career advancement, and in terms of pay and working conditions.

To this end, irrespective of the powers that may be granted under other laws, the equality delegate, acting alone or together with the staff delegation,, is specifically authorised to the following in the relevant areas assigned:

1. give his or her opinion and put forward proposals on any matter relating directly or indirectly to one of the aforementioned areas;
2. propose to the employer actions to raise awareness among the employees of the undertaking;
3. prepare and present the employer with a programme of measures aimed at promoting equal opportunities between men and women in terms of access to employment, vocational training and career advancement, and working conditions;
4. present the employer with any individual or collective complaint about equal treatment between men

and women;

5. prevent and resolve any individual or collective disagreements that may arise between the employer and the employees on the subject of equal treatment between men and women;
6. refer, where the aforementioned disagreements are not resolved, any complaint or observation to the Labour Inspectorate;
7. call a separate staff meeting of both sexes once a year;
8. monitor the equal training of apprentices in the undertaking;
9. contribute to the establishment and implementation of the apprenticeship scheme;
10. give consultations in an appropriate room for the employees of the establishment, either outside working hours or during working hours. In this latter case, the equality delegate must agree with the head of the establishment on the time and arrangements for these consultations, the duration of which is credited to the time-off rights as specified below;
11. give his or her opinion prior to any creation of part-time jobs in the establishment.

Section 5. - Special powers of the staff delegation

The Labour Code contains a series of provisions granting special powers to the staff delegation.

These include:

- a right to information and consultation on the life of the undertaking (Art. L. 414-4. (1) and (2))
- an obligation on the head of the undertaking to inform the staff representatives about the structure and likely development of employment within the undertaking and about decisions that may bring about substantial changes in the organisation of work (Art. L. 414-4. (1), (3) and (4))
- an obligation for the head of the undertaking to inform and consult the staff representatives on specific contracts concluded with young workers (contrat d'appui-emploi, contrat d'initiation à l'emploi, contrat d'initiation à l'emploi – expérience pratique) (Art. L. 414-4. (5))
- a right to display on notice boards reserved for the staff delegation (Art. L. 414-6.)
- the right to be assisted by experts who cannot be members of staff of the undertaking (Art. L. 412-2.)
- in addition, the staff delegation play a certain role in exercising the right granted by Article L. 414-7. whereby each member of staff is entitled to access his or her personal file.

5.1. Information and consultation on the life of the undertaking (Art. L. 414-4.)

Article L. 414-4. (1) and (2) provides for a simple right to information conferred upon the staff delegation in three areas, already existing in the initial version of the code, namely:

- **The running and life of the undertaking (formerly L. 414-4.)**
- **Information about the economic and financial development of the undertaking in companies limited by shares (formerly L. 414-5.)**

In the current version, these two articles are grouped together under Article L. 414-4. Article L. 414-5. now concerns more technical (definitions of terms used) and procedural issues. The only real new feature in this text is that the company must no longer just present figures of results but must also present the recent and

likely *development* of various company parameters (structure, pay, investment, etc.).

- **Risks for the health and safety of workers and, where applicable, protective measures to be taken.**

The directive however imposes a genuine duty of information and consultation under paragraphs (3) and (4) of Article L. 414-4. of the Labour Code about:

- **The situation, structure and likely development of employment, whereas the former text only stipulated "information" on matters relating to the staff, which, in actual fact, was more often than not non-existent.**
- **Decisions that may bring about substantial modifications in the organisation of work or employment contracts.**

It is therefore clear that the Directive is concerned with *anticipating* the difficulties that may be encountered by the undertaking, by establishing two levels of supervision. The first performed by the management of the company, the second by the employees, through their representatives, which enables each individual to take responsibility for the life of the undertaking which is therefore more predictable.

5.2. Displaying of delegation notices (Art. L. 414-6.)

a) In accordance with Article L. 414-6., the employer must provide the staff delegation and the equality representative with notice boards on which they can display notices, reports and statements at the condition, however, that they are directly related to the powers granted to staff delegation by law.

Such notice boards must be erected inside the undertaking, separately for delegation of workers and employees, in a place usually frequented by staff, i.e. as a general rule:

- close to staff entrances;
- close to the delegation office if such exists.

b) The same Article L. 416-6. grants additional rights to a special category of representatives, namely:

- representatives elected from a list submitted by a trade union that has obtained the absolute majority of the members that make up the delegation;
- representatives elected from a list submitted by a trade union that is nationally representative (OGB-L, LCGB, ALEBA).

Representatives meeting these criteria have the right to ask the employer to provide them with separate notice boards on which union notices must be displayed.

All notices displayed must be forwarded to the head of the undertaking for information.

Notice boards may only contain notices, reports and statements of position relating to the statutory powers reserved for representatives. Thus, notices of a political, controversial, biased or offensive nature shall be excluded.

Furthermore, representatives in this category have the right to:

- distribute union leaflets and publications to workers at locations and under conditions to be agreed with the head of the undertaking. It is clear that union notices, publications and leaflets cannot be of a political, controversial, biased or offensive nature;
- collect, where applicable, union contributions inside the establishment with the express restriction that such collections cannot undermine the smooth running of the establishment.

In practice, union contributions are often levied directly from salaries and wages.

If the employer deems that the conditions specified above in relation to the form and content of notices and publications are not satisfied, he will contact the Labour Inspectorate responsible for the monitoring and application of this law.

All prerogatives under Article L. 414-6. are reserved for the representatives of the principal delegation.

5.3. Right to use internal or external advisors

In establishments normally employing at least 150 workers, advisors may attend the meetings of the principal delegation in an advisory capacity to discuss certain matters (Article L. 412-2. of the Labour Code).

These advisors are appointed by the principal delegation by an absolute majority at the proposal of the trade unions which are most nationally representative and represented within the delegation, with the restriction that the number thereof cannot exceed one third of the members of the delegation.

If these bodies have made no proposals or if their proposals are not accepted, the advisors are appointed by the delegation by an absolute majority. The use of advisors cannot result in any additional financial cost for the undertaking.

In establishments normally employing fewer than 150 workers, the absolute majority of the members who make up the delegation may decide, at the request of the representatives or the head of the establishment, to refer specific matters to the joint examination of an employer's organisation and the trade union(s) which are most nationally representative and represented within the delegation.

5.4. Access to personal files of staff members (Art. L. 414-7.)

In undertakings where individual files are kept on staff members, the latter have the right to consult these twice a year in the presence, if they so wish, of a member of the delegation or the equality representative.

The employer is not required to create such files if they do not exist.

Corrections requested by the member of staff must be recorded in the file.

Chapter 2. - Status of the members of the staff delegation

Section 1. - Obligations of the members of the staff delegation (Art. L. 415-1.)

a) The members of the staff delegation are, in the same way as the equality representative, subject to the interior regulation of the undertaking.

b) They may only leave their position to carry out their delegation tasks with the approval of the head of the establishment or his representative.

It is understood that the latter will only oppose a legitimate request from a member of the delegation for serious reasons arising from the running and operation of the service.

c) Delegation members are, in the same way as the equality representative, automatically required, under penalty of criminal sanctions (Art. L. 417-4. (2)), to maintain professional secrecy over all matters relating to manufacturing processes.

In addition, the head of the undertaking may, on a case-by-case basis, classify as confidential certain information that he wishes to communicate to the members of the staff delegation. The latter are then bound by secrecy under the same conditions as above.

Members of the staff delegation who consider such classification to be unreasonable may, within eight days,

appeal to the Director of the Labour Inspectorate who will make a non-appealable decision about whether the information is indeed confidential in nature.

Section 2. - Delegations members' pay

Members of the staff delegation cannot, in carrying out their statutory mission, suffer any loss of pay. While carrying out delegation work, they must therefore be paid as if they had worked in their normal job.

For workers paid on a monthly basis, the observance of this rule does not pose any problem as they can perform their duties as members of the staff delegation by obtaining release from work for an adequate period of time.

The release from work will, as a general rule, be limited to the time required to participate in meetings and may, under certain circumstances, extend to a full day of 8 hours for shift workers.

If a delegation duty falls on a non-working day for the delegation member (e.g. day off), hours of attendance as delegation member are, in principle, taken off in lieu. If this arrangement disrupts the smooth running of the undertaking, the corresponding hours are to be remunerated without supplement.

If exceptionally, and with the approval of the head of the undertaking, the delegation member needs to carry out delegations duties outside normal working hours and no other arrangement (swapping of jobs) has been possible, these hours will be taken off in lieu. If this arrangement disrupts the smooth running of the undertaking, the corresponding hours are to be remunerated without supplement.

For other workers, reference will be made to the laws governing payment of members of the staff delegation by dividing the salary earned during working hours strictly speaking by the number of corresponding hours. The hourly rate thus obtained will be multiplied by the number of hours of delegation work.

The result of this calculation added to the salary corresponding to the hours actually worked will then represent the total salary for the period in question.

Full-time delegation members will be given permanent release from work and will continue to receive the pay that they had before taking on their new duties and, where applicable, will retain the right to promotion in the same way as other workers in the undertaking. It is clear that here we are talking about planned promotions specified in particular (for example) in a collective agreement.

Section 3. - Term of office

Members of the staff delegation are elected for a period of 5 years. They are eligible for re-election. Their term of office ends:

1. upon death;
2. if they are not re-elected in which case the term of office ends at the time the new delegation is established;
3. when the person ceases to be part of the staff that he is supposed to represent;
4. upon resignation from the position of delegation member;
5. when the trade union that put him forward as candidate has informed the head of the undertaking and the delegation that the person is no longer a member of that trade union.

An agreement to be drawn up between the head of the establishment and the staff delegations will determine the necessary measures for the reinsertion of the full-time delegation member into his former job or into an equivalent job on the expiry of his tenure. Alternate members are called up to replace the full members:

- permanently, to complete the term of office of a full delegation member whose duties have ended as a result of one of the scenarios listed above;
- temporarily, in the event of impediment of the full delegation member.

Section 4. - Exercise of office

4.1. Delegations hours (Art. L. 415-5.)

Generally speaking under Article L. 415-5. and solely for problems which must be resolved as soon as possible, the head of the undertaking is required to grant delegation members and the equality representative the necessary time to perform their duties during working hours and without loss of pay.

Furthermore, in establishments with a workforce of no more than 500, time-off rights are granted to delegation members at the rate of 40 hours per week for 500 workers represented.

Examples:

a) Workforce: 362

Time-off hours: $362 \times 40/500 = 28.9 = 29$ hours

b) Workforce: 351

Time-off hours: $351 \times 40/500 = 28.48 = 28$ hours

The number of hours is granted to all members of the delegation. The matter of the distribution of the hours must be resolved within each delegation concerned.

In establishments with a workforce of more than 500, full-time delegation members, released from all work and whose number is determined by Article L. 415-5. (3), are appointed by the delegation.

The delegation may, by an absolute majority of its constituent members, decide to convert one or more full-time delegation members, in accordance with paragraph 1 of Article L. 415-5. (2), into time-off rights, on the basis of 40 hours for each delegation member released.

The time-off rights may then be used by all members of the delegation, in particular to replace the remaining full-time delegation member(s) during absences.

Delegation members cannot receive a lower amount of pay than what they would have received if they had actually worked during delegation hours.

An agreement to be drawn up between the head of the establishment and the staff delegation determines the necessary measures for the reinsertion of the released delegation member into his former job or into an equivalent job on the expiry of his tenure.

In addition, the time-off rights specified under point b) above are increased for the equality representative:

- by 4 hours a month, if the establishment normally employs between 15 and 25 workers;
- by 6 hours a month, if the establishment normally employs between 26 and 50 workers;
- by 8 hours a month, if the establishment normally employs between 51 and 75 workers;
- by 10 hours a month, if the establishment normally employs between 76 and 150 workers;
- by 4 hours a week, if the establishment normally employs more than 150 workers. These additional

time-off rights are reserved for the exclusive use of the equality delegate.

4.2. Meeting hours (Art. L. 415-6.)

Article L. 415-6. grants the delegation the right to meet as often as is necessary to carry out their duties. At least 48 hours in advance unless a shorter period of time is agreed, the employer must have been informed about the meeting.

a) For principal delegation, 6 meetings a year are compulsory, of which 3 with the management of the establishment.

Six other meetings may be held during working hours, provided that the monthly frequency is observed. The time spent at these meetings will be paid as working hours.

Additional meetings (in other words more than one meeting per month) may take place outside of working hours and will therefore not be remunerated by the employer.

b) As regards the central delegations, there is no limit prescribed by the law in terms of the frequency of their meetings. The time spent at meetings of the principal delegation is paid by the employer according to the principles set out above under a).

c) Divisionary delegations

The law does not stipulate that divisionary delegations may meet during working hours, except in the scenario set out under d) 2. below.

Members of divisionary delegations will carry out their duties in accordance with Articles L. 415-1. and L. 415-5. of the Labour Code.

d) Article L. 415-7. specifies two types of special meetings:

1. Once a year, the principal delegation will meet together with the full members of the principal delegations to hear, in the presence of the head of the undertaking or his representative, a report on the activities undertaken by the various principal delegation. The Chairman of the principal delegation will call this meeting.

2. Equivalent meetings will be held at establishment level. At least once a year, at the initiative of the Chairman of the principal delegation, the principal delegation will meet together with the full members of the divisionary delegations. On this occasion, the delegation members will hear, in the presence of the head of the undertaking or his representative, a report on the activities undertaken by the various divisionary delegations.

e) In accordance with Article L. 415-8., the Chairman of the principal delegation may, once a year, call the principal delegation to a plenary meeting with all employees of the establishment.

It is clearly understood that this general meeting will be held outside of working hours.

The head of the undertaking will be invited to this meeting but he is not obliged to attend or be represented at the meeting.

4.3. Consultation hours (Art. L. 415-9.)

Article L. 415-9. gives principal delegations the right to organise consultation hours for the employees of the establishment which will take place inside the establishment in the rooms set aside for the delegation.

a) If the delegation does not have a full-time delegation member as provided for in Article L. 415-5. (2) (see above under Section 2.1. c), these consultation hours will take place either outside of working hours or during working hours in which case the time spent by members of the delegation on these consultation hours will be credited as time-off rights.

b) If the delegation includes one or more full-time delegation members, consultation hours may be organised during working hours by full-time delegation members.

The latter must organise consultation hours among themselves without calling on other delegation members to replace them in the event of absence or impediment.

If there is only one full-time delegation member, consultation hours which cannot be provided by the latter will not take place unless the release from work granted to one or more full-time delegation member(s) has been converted into time-off rights, in which case the replacements are to be credited to the latter.

c) In establishments normally employing more than 25 young workers, the young workers' delegates may organise one consultation hour per week especially for young workers.

This consultation is provided by a member of the young workers' delegates specially appointed by his colleagues. He will be assisted by one of the full-time members of the principal delegations. If there is no full-time delegation member, one of the members of the board of the principal delegation must be released from work for one hour per week for this task which will be credited to the time-off rights.

The delegation must previously agree with the head of the establishment on the arrangements for organising consultation hours.

Delegation members must arrange their consultation hours for staff so that the latter can present their wishes and complaints outside of working hours.

4.4. Training leave (Art. L. 415-10.)

The employer is required to grant delegation members and the equality delegate a certain number of hours off to enable them - without loss of pay - to participate in training initiatives aimed at improving their economic, company and technical knowledge in their role of staff representatives.

In establishments normally employing between 15 and 50 workers, full members of staff representative are entitled, each during their term of office, to one week's training leave, with the related salary expenses being paid by the State.

In establishments normally employing between 51 and 150 workers, full members of staff representatives are entitled, each during their term of office, to two weeks' training leave, with the salary expenses relating to 1 week of training leave being paid by the State.

In establishments normally employing more than 150 workers, full members of staff representatives are each entitled to one week's training leave per year.

The equality delegate has 2 half days of training leave per year, the related salary expenses being paid by the State, for establishments in which the total number of workers is no more than 150.

The duration of training leave cannot be allocated towards the period of paid annual leave. It is equivalent to a period of work.

4.5. Confidentiality obligation

Members of the staff delegation and advisors are bound, under the terms of new Article L. 415-2., by a genuine obligation of secrecy concerning all economically sensitive information such as, for example, manufacturing processes.

The secrecy obligation also extends to all information expressly classified as confidential by the head of the undertaking.

To protect certain information deemed sensitive, the head of the undertaking may refuse to pass on

documents. If the staff representatives regard the withholding of such information as unreasonable, the law offers an administrative and then judicial procedure.

Appeals are restricted to a very short period. Members of the delegation have 8 days in which to appeal to the Director of the Labour Inspectorate who himself has 8 days in which to make a reasoned decision by arbitrating between the interests of each party. Within 15 days of the decision being notified, an application may be made to the Administrative Court to set aside the decision.

Chapter 3. - Special protection against dismissal

Article L. 415-11. grants special protection to:

- full and alternate delegation members both throughout the duration of their term of office and during the first six months following the expiry or termination of their term of office;
- delegate for staff safety and the equality delegate;
- candidates for the post of delegation member, as from the submission of the application and for a period of three months.

The special protection granted to delegation members, delegate for staff safety, equality delegate and delegation member candidates is a ban on the employer from dismissing them. Any such dismissal announced by the employer will have no legal effect. The dismissal or, where applicable, the invitation to the prior interview will be null and void.

("The dismissal of a candidate for the post of staff delegation member, in violation of Article 35 of the Law of 18 May 1979 (*currently Art L. 415-12.*) prohibiting any dismissal of a candidate for the post of delegation member as from the submission of applications, may be considered as a ploy by the management of the company to influence the result of the vote and to undermine the democratic nature of the elections and any such action shall entail the nullification of the elections." *Bintz et al v. Express; Conseil d'Etat 23/12/1984 N-7417*).

In this context, it is helpful to remember that, according to established precedent, an alteration of an essential part of the employment contract is equivalent to a dismissal. Such is the case, in particular, of demotion or downgrading or a transfer accompanied either by a reduction in salary or by a substantial change in working conditions.

However, paragraph 2 of Article L. 415-11. gives the head of the undertaking the possibility of suspending a delegation member who commits serious misconduct.

Such action has the effect of suspending the performance of the employment contract. The person concerned can no longer enter the establishment and will not receive any salary throughout the duration of this sanction.

Suspension represents a provisional measure until the employment tribunal has resolved on the application to terminate the employment contract submitted by the employer.

If the employment tribunal refuses to grant this request by the employer, the suspension is automatically cancelled and its effects will be automatically abolished, in other words the delegation member concerned may resume his job and the salary lost during the suspension must be paid to him retrospectively.

It should be noted that a delegation member who has been suspended may obtain, from the President of the employment tribunal and by means of a special procedure, the provisional maintenance of his pay until the dispute is settled for good.

Given the complexity of these procedures, it is recommended, in such situations, to contact one of the authors of this publication before imposing a sanction against a delegation member.

Chapter 4. - Organisation and functioning of the staff delegation

Section 1. - Board

The staff delegation appoints from among its members, by a secret ballot and according to relative majority rules, a Chairman, Vice-Chairman and Secretary. In the event of a tied vote, the eldest is elected.

A board is established within the staff delegation responsible for the dispatching of everyday matters and for preparing meetings, composed as follows:

- 3 members, when the staff delegation comprises at least 9 members;
- 5 members, when the staff delegation comprises at least 12 members;
- 7 members, when the staff delegation comprises at least 16 members;
- 9 members, when the staff delegation comprises at least 22 members.

The Chairman, Vice-Chairman and Secretary are ex officio members of the board of the staff delegation which is elected by a secret ballot according to proportional representation rules.

In terms of relations between the head of the undertaking or his representative and the principal delegation, the intermediary will, as a general rule, be the Chairman of the principal delegation concerned.

Section 2. - Agenda

The matters to be discussed by the staff delegation are specified in an agenda which is approved by the board of the staff delegation and sent to members at least five days before the meeting.

The board is required to include on the agenda any matters specified in a request submitted by at least one third of the members of the delegation, three days before the meeting. If, in this case, the request was submitted after the agenda has been sent to delegation members, the Chairman of the delegation must inform delegation members of such within twenty-four hours.

Section 3. - Meetings

The staff delegation meets at the written invitation of its Chairman.

The Chairman of the staff delegation must convene the delegation at least six times a year.

He is also obliged to convene the delegation whenever at least one third of the full members comprising the delegation so request in writing. Applicants must indicate the matters that they wish to see included on the agenda for the meeting.

For the purposes of the application of the provisions of the paragraph above, fractions equal to or greater than a half are rounded up to the next unit while fractions less than a half are rounded down to the next unit.

The head of the establishment or his representative may be invited by the staff delegation to take part in these resolutions but without the right to vote.

The Minister for Labour may convene the delegation for the purposes that he sees fit. He may also appoint an official of his choice, whose observations must be heard during the meetings.

The head of the establishment or his representative must be invited to attend meetings convened by the Minister of Labour.

Delegation meetings are held in camera.

Section 4. - Decisions

Decisions and resolutions of the staff delegation are taken by a majority of members present.

The Secretary of the delegation keeps the minutes of each meeting.

The minutes of the meeting are read and approved at the start of the following meeting. A copy of these is sent to the head of the undertaking.

The board of the delegation is responsible for publishing a notice displayed on the notice board provided for this purpose.

Section 5. - Travel expenses

The employer is obliged to pay for the travel and subsistence expenses incurred by the members of the staff delegation and by the equality representative provided that such expenses are directly related to the performance of duties within the establishment, except those incurred in relation to training leave (Art. L. 416-6.).

The arrangements for the payment of these expenses must be agreed by each undertaking.

Comment: In principle, travel and subsistence expenses are only to be paid if they are exceptional in nature and necessarily exceed the costs incurred during a normal working day.

Section 6. - Room and equipment

The employer is required to make available, at no cost, to the staff delegation, including the equality representative, a room situated inside the establishment in which to hold meetings and consultations.

In addition, it must provide full-time members of the staff delegation with a permanent furnished room and the necessary office equipment for delegation work (paper, envelopes, stamps, telephone, pencils, etc.).

If the full-time delegation members so request, the employer will also provide administrative support for the secretarial work of the delegation.

The room and equipment made freely available to the delegation remain the property of the undertaking and the employer must see to its upkeep (heating, cleaning, lighting, etc.). The delegation is only obliged to keep the room and equipment in good condition.

It is understood that all these facilities can only be used for purposes for which the delegation has competences.

Chapter 5. - Appeals and criminal sanctions

1. The Labour Inspectorate is responsible for monitoring the application of the provisions of the law on the reform of staff delegation and its implementing measures.

Disputes arising from the application of these texts fall within the remit of the Employment Tribunal, except disputes relating to the electorate and to the legality of electoral operations which will be settled by the administrative courts.

2. The provisions of the law in question are no obstacle to arrangements and agreements which are more favourable to the employees.

3. Article L. 417-4. provides criminal sanctions against all those who stand in the way of the formation of staff delegation or obstruct their smooth operation or obstruct the appointment of an equality representative or the performance of his or her duties.

Part 2. - Guidelines by the ITM on the election of the staff delegation

Chapter 1. – General information

Section 1. Definitions and Glossary of abbreviations used

- **LAW:** modified Act of 31st July 2006 introducing the “*Code du Travail*”, Book IV “Staff Representations”, Title One “Staff delegations”;
- **GDR:** the modified Grand-Ducal Regulation of 21st September 1979 on electoral operations to designate staff delegates;
- **ITM:** Inspection du Travail et des Mines, Labour and Mines Inspectorate;
- **CDD:** fixed-term contract;
- **CDI:** permanent contract;
- **Staff:** all wage earners of an establishment/company;
- **Employee:** wage earner of an establishment/company;
- **Workday – working day:** legal work days, from Monday to Saturday;
- **Operating days:** a day, where for your company, is a day where staff normally works, might be i.e. from Monday to Friday or from Tuesday to Saturday.

Section 2. - Support by the ITM

The Staff of our Department “Représentations des Salariés” at the Direction of ITM is at your disposal for any enquiries.

At your service in this Department:

- Mr Pierre LORANG, Ingénieur Technicien Inspecteur Principal 1^{er} en rang, Inspecteur Principal du Travail and supervising the Division of Staff representations;
- Mr Sandro BIRASCHI, Inspecteur Principal 1^{er} en rang and Inspecteur Principal du Travail;
- Mrs Jill ERNSDORFF, employee and responsible for the back office.

Any postal mail, email and/or fax must be sent to this department:

Inspection du Travail et des Mines
Service des Représentations des Salariés
Boîte postale 27
L-2010 Luxembourg

☎ : 247 – 86280
📠 : 29 11 94 96 69
✉ : drs@itm.etat.lu

<http://elections.itm.lu>

Chapter 2. - Introduction

Section 1. – Introduction and generalities

The elections for new staff representation being set on November 13th 2013, the Division of Staff Representations of the Labour and Mines Inspectorate (ITM) updated this handbook in order to help the person in charge to organise, co-ordinate and close the social election procedure successfully.

In this context, it is essential to raise a certain number of questions and take position because their interpretation might be controversial.

However, this handbook does not have the ambition to prejudge a decision of the competent legal authorities, neither the intention of competing institutions, federations and organisations that have published or will publish guidelines on the subject.

On the contrary, it respects these authorities that have knowledge of the executive decisions and approve every extra initiative, while showing the desire to see, as a result, one interpretation in the electoral process in November 2013 and for the upcoming social elections.

We split this Handbook in different chapters:

- the “**Chapter 3. - Action plan**” (page 22) providing general information on the elections;
- the “**Chapter 4. Preparatory phase**” (page 24) with a description of everything you need to know and prepare before announcing the elections in your company;
- the “**Chapter 5. Pre electoral preparatory phase**” (page 29) which tells you what to do from the moment of the announcement of elections up to the elections themselves;
- without naming it specially, we now come to the elections themselves. For the elections there are two different voting procedures, the majority system (page 34) and the proportional representation system (page 39). The previous chapter and this one were split into two sections with a common part of preparations of the elections for both systems and then
 - the electoral operating phase, describing the elections as such and
 - the post electoral phase telling you how to count the ballot;
- the **Subchapter 3. Post electoral phase common to the two vote systems** (page 46) tells you how to set-up the report, the announcement of the results and how to handle a situation where an elected candidate refuses his/her office;
- and the part **Establishment of the new delegation** (page 47) tells you what to do before the newly elected staff delegation establishes itself officially.
- This handbook ends with a chapter **Appendix** as of page 48

The explanations give a general view, step-by-step, of the progress of the electoral operations with the ballot date fixed on November 13th 2013. This date has been fixed by the Minister of labour and employment in a ministerial regulation of September 2nd and published in the official gazette (Mémorial B 89 page 1814).

The dates of the timetable are shown in the recommended action plan.

The ITM reminds employers that elections for a renewal of staff delegation or new elections for the appointment of the staff delegates have to be organised in the following 4 situations:

- 1° In principle between October 15th and November 15th of every 5th civil year, on a date fixed, for the whole renewal and elections of the staff delegations, by the Minister of labour and employment;
- 2° Except this period, and on the initiative of the Minister of labour and employment, if on a list, the effective members are not in number or there are no deputies to occupy the vacant seat(s);
- 3° if the staff of an establishment reaches the minimum number required to set up a delegation;
- 4° In case of an injunction by the director of ITM to the employer, if there has been no election of the expected delegation(s).

We sincerely hope that every person organising the coming elections will find, in this manual, good advice for the accomplishment of his legal duty, for his own interest, for the interest of his staff and their trade unions as well as in the interest of the authority of control, the ITM. The “Division des Représentations des Salariés” remains at your disposal, if necessary.

Section 2. - Internet

This handbook and all the attached documents, forms, legal acts and regulations as well as other important updated information can be found and downloaded on the ITM Internet site: <http://elections.itm.lu/en/home.html>. These internet pages are updated in three languages, English, German and French. Simply choose your preferred language by clicking on the flag you will find in the upper left corner of each page. Some of the forms you will find on these pages will have to be published in your establishment, some will have to be filled in and some of the documents will have to be sent as copy to ITM, which is the legal control authority of the electoral process (Art. L.417-2 of the LAW).

You do also have the possibility to sign up for our “**Newsletter**” which will keep you informed about every step you need to prepare or implement during the upcoming procedure of November 2013 and of course inform you about updates on our webpages.

Available forms can be found in PDF (Acrobat Reader) and in different Word versions and languages (F, GB and D). Of course, we are not perfect and would appreciate if you could point out to us any possible errors for the downloadable forms and documents. This would help us to correct these mistakes on our pages. Thank you in advance.

Section 3. - Synoptic Tables

The two following timetables give you a general view on the **obligatory progress** of the electoral operations. The first one is for the establishments that work from Monday to Friday or following a continuous system, in fact, all establishments working on Mondays; the other is applicable for establishments working from Tuesday to Saturday (where Monday is not a working day).

The two timetables do not take into account a possible ministerial authorisation of the postal vote which will then fix individually and by a decree the respective deadlines. (See the chapter ***Postal Voting*** page 51). As these ministerial authorisations are individually done, all information on dates and the progress on postal voting are purely informative. The dates you will have to stick to will be the ones you will find in your authorisation.

A voting procedure stretched out on several consecutive days or a dispute concerning the electorate or the regularity of the electoral operations would need adopting these timetables as well. Actualised timetables for elections taking place in between the period of the 5 civil years where social elections have to be organised, will be made available on our above mentioned internet site. Our department of Staff representations is at your disposal for any questions on elaborating such a timetable.

Timetable for Elections of the Staff Delegations on November 13th 2013 Companies working from Monday to Friday or in continuous working system

Tuesday October 01st (the first of the month during which the first announcement has to be made)

Census of how many delegates have to be elected.

Friday October 11th (at least one month prior to the elections)

Posting of the election notice, by the head of establishment, announcing the date, place and time of the beginning and closure of the poll as well as the numbers of delegates to be elected;

Copy of this notice to be forwarded to the Direction of ITM;

Deadline for requesting the ministerial authorisation allowing the postal voting for the absent employees; request to be introduced either by the head of the establishment or by the staff delegation.

Tuesday October 22nd (three weeks prior to the elections)

Deadline for the deposit for inspection of the electoral lists of the employees accepted in the active and/or passive electorate;

Posting announcing that within 3 days complaints can be introduced against these lists;

Immediate transmission of a copy of the electoral lists and of the posting to the Direction of ITM.

from Wednesday October 23rd to October Friday 25th (within 3 working days of the date of deposit)

Deadline for any objections, to be brought (in writing) to the attention of the head of establishment, against the above electoral lists.

Tuesday October 29th, 6:00 PM (15 calendar days prior to the opening of the ballot)

Date and time limit for the deposit of candidatures;

Possible time extension of three days in case where the number of candidates is insufficient (**Monday November 04th 6:00 PM**) by information and announcement with copy to the ITM;

Determination and allocation of a common number of order to the trade unions and groups of electors, by the Director of ITM, following a due request.

from Friday November 08th to November Tuesday 12th

Posted announcement of the candidacies in the establishment (if there is a postal voting authorisation or a stretched out vote, the date of the posted announcement must be advanced accordingly).

Wednesday November 13th (day of poll fixed by ministerial regulation)

Poll day involving:

- a) opening of the ballot office at the time fixed in the first announcement;
- b) elections / ballot;
- c) closure of ballot office at time fixed in the first announcement;

- d) ballot count (immediately after closure);
- e) report of the electoral operations (immediately after closure);
- f) immediate transmission of the copy of this report to the Direction of ITM.

from Thursday November 14th to Monday November 18th November (during the 3 consecutive days after the poll)

Posted announcement, by the head of establishment, of the list of elected delegates (effective and deputies).

Tuesday December 03rd (within 15 days after having posted the results)

Deadline for appeal, by registered letter, addressed to the Director of ITM, the postal stamp being determinative.

Wednesday December 04th (not prior to the termination of the 15 days that follow the last day of the posted results)

The delegation cannot be officialised prior to this date and, in case of any appeal made, not prior to the decision of the Director of ITM or the administrative court.

Timetable for Elections of the Staff Delegations on November 13th 2013 Companies working from Tuesday to Saturday

1. Tuesday October 01st (the first of the month during which the first announcement has to be made)

Census has to be made to determine how many delegates have to be elected.

2. Saturday October 12th (at list one month prior to the elections)

Posting of the election notice, by the head of establishment, announcing the date, place and time of the beginning and closure of the poll as well as the numbers of delegates to be elected;

Immediate transmission of this notice to the Direction of ITM;

Deadline for requesting a ministerial authorisation allowing the postal voting for absent employees; request to be introduced by head of establishment or delegation.

Tuesday October 22nd (three weeks prior to the elections)

Deadline for the deposit to inspection of the electoral lists of the employees accepted in the active and/or passive electorate;

Posting announcing that within 3 days complaints can be introduced against these lists;

Immediate transmission of a copy of the electoral lists and the notice to the Direction of ITM.

from Wednesday October 23rd to Friday October 25th (within 3 working days of the date of deposit)

Deadline for any objections, to be brought (in writing) to the attention of the head of establishment, against the above electoral lists.

Tuesday October 29th, 6:00 PM (15 calendar days prior to the opening of the ballot)

Date and time limit for the deposit of candidatures;

Possible time extension of three days in case the number of candidates is insufficient (**Saturday November 02th 6:00 PM**) by information and announcement with copy to the ITM;

Determination and allocation of a common number of order to the trade unions and groups of electors, by the Director of ITM, following a due request

from Saturday November 09th to Tuesday November 12th

Posted announcement of the candidacies in the establishment (if there is a postal voting authorisation or a stretched out vote, the date of the posted announcement must be moved up).

Wednesday November 13th (day of poll fixed by ministerial decree)

Poll day involving:

- a) opening of the ballot office at the time fixed in the first announcement;
- b) elections / ballot;
- c) closure of ballot office at time fixed in the first announcement;
- d) ballot count (immediately after closure);
- e) report of the electoral operations (immediately after closure);
- f) immediate transmission of the copy of this report to the Direction of ITM

from Thursday November 14th to Saturday November 16th (during the 3 consecutive days after the poll)

Posted announcement, by the head of establishment, of the list of elected delegates (effective and deputies).

Tuesday December 3rd (within 15 days after having posted the results)

Deadline for appeal, by registered letter, which should be brought forward to the Director of ITM.

Wednesday December 4th (not prior to the termination of the 15 days that follow the last day of the posted results)

The delegation cannot be settled prior to this date and, in case of any appeal made, not prior to the decision of the Director of ITM or the administrative court.

Chapter 3. - Action plan

Responsibility for the Poll Organisation

It is important to know that the management of the establishment is responsible for the set up of the staff delegation (Art. 1. (1) of the GDR) and that all hindrance to the LAW and its GDR shall be punishable by a fine of up to 15.000 €, punishment that could be doubled in case of similar offence (Art. L.417-4 of the LAW).

Even if the LAW or GDR do talk about **one** substitute of the head of establishment, the ITM has no objection in the different phases of the electoral period being run by different persons especially appointed by the head of establishment to take the responsibilities. However, it is necessary that the staff knows these persons (by posted announcement for example), and if this person should be off for any reason, a new person has to be delegated to assume a good process of the elections.

Furthermore, the LAW does not specify whether a delegation of power and the responsibility to organise the elections can only be given staff of the company or if other, external persons (for example qualified staff of a fiduciary being appointed as president of the electoral office by the head of establishment) can have an active

role during the electoral procedure. The ITM does not have any objections. However, the employees of the company must not bear any disadvantages by such a delegation of power (i.e. by having to leave their normal place of work at their own transport costs to go to another office). Even if the head of establishment delegates the organisation of the elections, he is not exempted from his responsibility, and he could face legal action for fettering the LAW or/and GDR.

Which employers are obliged to organise the election of a principal staff delegation in their establishments?

To give an answer to this question, a joined view of the LAW and GDR must be given. While the LAW speaks of 15 employees working in the company on a regular basis (Art. L.411-1 (1) of the LAW), the GDR specifies when and how the census is done (Art.44 of GDR).

Considering the social elections that will take place on November 13th 2013, every employer who has at least 15 members of staff under employment contract on October 1st 2012 and at least these same 15 are still under contract on October 1st 2013, is considered having to organise the election of a staff delegation.

Which employers are obliged to organise the election of a divisionary staff delegation in their establishments?

The necessity for the organisation of an election of divisionary staff delegations in an establishment occurs if the following 3 criteria are fulfilled:

- a demand of the principal delegation within 3 months following its election;
- the establishment is made up of at least 3 divisions;
- each such division occupies regularly at least 100 members of staff.

Employers are, if necessary, invited to inform the Direction of ITM and the trade unions represented in the principal delegation of such elections and their results.

Which employers are obliged to organise the election of a central staff delegation in his company?

A central delegation must be set up in a company if several establishments fall under the LAW and form a unique company. Employers are, if necessary, invited to inform the Direction of ITM and the trade unions represented in the principal delegation of such an election and its results.

When does a delegation of young staff need to be elected?

If the establishment regularly occupies at least 5 young workers (not having reached the age of 21 years) and is compelled to organise an election for a principal delegation election, then the employer has the responsibility to organise the election of a delegation of young staff.

The number of delegates composing this delegation and the election mode of this delegation are governed by Art. L.411.5 of the LAW. (For details, please see in Appendix in "[Young staff delegation](#)" page 48)

Which persons must be taken into account to define the numerical importance of the company, to determine how many staff delegates have to be elected in your establishment?

An example to calculate the numerical importance of an establishment is shown at page 50 in the appendixes.

- Are to be taken into account for the determination of the number of staff in the company, **all** members of staff, except apprentices. The head of establishment, if registered as employee of the company at the "*Centre Commun de la Sécurité Sociale*", also has to be considered as being a staff member and does count in establishing the number of employees.

- Part time employed workers count in full as from 16 hours per week. Below this, the number of part time workers are determined by using the following formula:

$$\frac{\text{Total of hours inscribed in the contract of employment for all concerned part timestaff}}{\text{Legal or conventional weekly work time}}$$

- Fixed-term contract staff, interim staff and staff at the company's disposal, with the exception of replacements for absent staff or staff whose contract is suspended, are taken into account to calculate the numeric importance of an establishment, in the proportion to their attendance during the 12 passed month. This average has to be calculated according to the hours present in order to give an exact view of the situation.

We do not count "reintroduction work placement" (stage de reinsertion), CIE or CAE or pupils, students and trainees.

Concerning temporary work companies (interim contractors).

For a better readability of this handbook, a whole chapter concerning temporary work companies can be found in the appendix, at page 50.

At which date is the counting validly done?

This has often led to misunderstandings, but a recent judgement ("*Cour Administrative – 18.06.2004 – N° 18019 du rôle*") confirmed the view of the ITM. We have to make the difference between two totally different counting:

1. To determine if an establishment falls under the application of the LAW, please refer to "**Which employers are obliged to organise the election of a principal staff delegation in their establishments?**" page 23.
2. To determine the number of staff delegates and substitutes to be elected, we have to take the first day of the month of the posted announcement informing about the date of election. **For this counting, we do not take in account the one year seniority of the concerned staff.** Are taken in account **all** the staff members of the establishment, except the apprentices, which are, under the above conditions (see "Which persons must be taken into account to define the numerical importance of the company, to determine how many staff delegates have to be elected in your establishment?" page 23) bound to the establishment with a contract of employment on the 1st of the month wherein the notice for the election is posted (see the example in Appendix "**Example of counting to establish the numeric importance of an establishment**" page 50).

Chapter 4. Preparatory phase

- For the needs of the posted announcement of the election notice (that must take place at least 1 month prior to the elections), calculate the numerical importance of staff in order to determine:
 - if you have to proceed in organising the staff elections (see "**Which employers are obliged to organise the election of a principal staff delegation in their establishments?**" page 23);
 - the number of effective delegates and substitutes to elect (see "**What is the number of effective delegates and substitutes to be elected?**" page 25);
 - the electoral system to adopt (see "**Under what system the elections take place?**" page 28).
- Establishment of the alphabetical lists (also called electoral lists) of staff admitted to the active and passive electorate (3 weeks prior to the elections).
- Establishment of a distinct list for the young staff delegation (if needed) admitted for the active and

passive electorate for the young staff delegation.

What is the number of effective delegates and substitutes to be elected?

This number depends on the number of staff in the establishment according to the data in the following list that indicates the number of effective delegates to elect (the same number of substitute have to be elected).

Staff Effective members to elect

| | | | |
|----|---|-----|---|
| 15 | - | 25 | 1 |
| 26 | - | 50 | 2 |
| 51 | - | 75 | 3 |
| 76 | - | 100 | 4 |

Simple majority voting system

| | | | |
|------|---|------|----|
| 101 | - | 200 | 5 |
| 201 | - | 300 | 6 |
| 301 | - | 400 | 7 |
| 401 | - | 500 | 8 |
| 501 | - | 600 | 9 |
| 601 | - | 700 | 10 |
| 701 | - | 800 | 11 |
| 801 | - | 900 | 12 |
| 901 | - | 1000 | 13 |
| 1001 | - | 1100 | 14 |
| 1101 | - | 1500 | 15 |
| 1501 | - | 1900 | 16 |
| 1901 | - | 2300 | 17 |
| 2301 | - | 2700 | 18 |

Proportional voting system

etc.: (see art. L.412-1 of the LAW)

Who are the electors (active electoral right)?

All staff members

- without distinction of sex and nationality,
- aged 18 on the day of elections,

- bound to the establishment by a contract of employment or apprenticeship and occupied for at least 6 months on the day of the elections.

Can managers, directors or heads of staff be part of the electorate?

Even if the article L-413-3 of the LAW does not expressly exclude the persons mentioned above, we have to ask ourselves on the reason of their exclusion of the passive electorate in accordance with the article L-413-4 of the LAW.

These persons finally are the organs of the employer. Therefore, they might not participate **objectively** (validly) to the creation of an institution for the interest of the staff. The ITM considers that those persons should abstain from participating in the ballot. But in the election lists, they have however to be listed with active electoral rights, as the LAW does not forbid them to participate actively in the election.

Are the apprentices and persons working under 16 hours per week allowed to participate in the election?

This question is justified by the fact that the legislator excludes them from the size of the headcount of the company which determines the number of delegates to elect, respectively asks the employer to execute a special calculation. Is it conceivable that a person excluded totally or partly from the headcount of the company could act as a staff member with active electoral rights? Since the above mentioned article L-413-3 of the LAW only requires from the staff that avail themselves of the capacity of electors the qualities of staff member, a certain length of service and a certain age, and that these two categories of persons mentioned above fulfil the conditions of being member of the staff, the persons working under 16 hours per week and apprentices have to be considered as having the electoral rights, if they fulfil the other (length of service, age) conditions required by the LAW.

Who is eligible for the passive electorate?

All staff members without distinction of sex, who:

1. are at least 18 years old, at the day of elections;
2. have been employed by the undertaking without interruption for a year at least, at the day of elections;
3. are either Luxembourg national, or a national of a member state of the Agreement on the European Economic Region, or national of a non-member state of the Agreement on the European Economic Region holding the legal alien resident¹;

and who

4. fulfil the other conditions of legal eligibility, namely:
 - a) is not a relative or ally up to the 4th degree with the employer;
 - b) is not director, manager or head of staff.

From its way of wording "occupied in the establishment" in this context of the texts, ITM thinks that the apprentices should be excluded from the passive voting rights (exception the young staff delegations).

How does ITM interpret the terms "uninterrupted" or "without interruption" as far as the seniority of a member of staff in the company is concerned?

A distinction must be made between an interruption of a work contract (termination) and a suspension in time of this contract. A parental leave, maternity leave, sports holiday, cultural holiday, etc... suspends the contract, but does not interrupt it. These suspension periods are taken in account for the length of service calculation of

¹ The law says that citizens of non-member states of the AEER have to have a working permission, but the modified act of August 29th 2009 concerning the free circulation of citizens and immigration changed the system of work-permits with a system of legal alien resident.

the active and passive electorates.

These periods are not only taken in account to calculate the length of service, but staff members, whose work contracts are suspended, are **accepted at the active and passive electorate** during this suspension (means even if they are on parental leave, for example), if they fulfil the above mentioned conditions.

This is not the case however for a “holidays without pay” or for a woman who, after her maternity leave, has used her right of reemployment at her ancient employer on a new job-vacancy after having chosen to make a break after expiration of her maternity leave. These cases must be considered as an interruption of contract and the thus elapsed time is not considered for the length of service of the concerned staff. Of course, these people, in an interruption of contract, do not participate in the elections, neither with active nor with passive voting rights.

Which is the first date a candidature might be validly introduced?

Neither the LAW nor the GDR do mention any date, but the Court of Labour (N° 342/2009) decided that a candidature could only be validly introduced after the announcement (latest one month prior to the elections) of the details of the elections has been made in the establishment.

What happens to length of service during company transfers?

Staff members taken over during company transfers following conventional ceases, mergers or splits keep with the new employer their length of service acquired in their old companies for the calculation of the passive and active electoral rights.

How consider a loan of work-force that becomes a work contract with the same employer?

When a staff member receives a contract of employment at the end of his mission after having worked in a company with a loan of workforce contract or a CDD, the length of time spent in the company during his interim contract has to be counted in the computation of his length of service.

What about staff in notice period or with fixed term contract (CDD)?

Staff members under notice period are to be considered as electors and eligible if they fulfil the other conditions for the active and passive electorate. Even employees with work exemption have the right to use their electoral rights. Fixed term contract staff members, if they fulfil the other (length of service, age) conditions required by the LAW, are eligible for their electoral rights. This does not mean however that, if members of this staff would be elected member of the staff delegation, this would change something to the fact and the term of expiring of their contract.

How does ITM interpret the terms of “director”, “manager” or “head of staff” excluded from passive voting rights?

We have to make a difference from staff owing a title of director or manager and the functions within the company these people finally have. The manager who has to be considered within this LAW or the GDR is to be seen as the manager the ministry of middle class (*Ministère des Classes Moyennes*) needs in case of setting up a company and not the manager who is in charge of a dozen of staff members within the company or a supermarket. That’s why ITM says that staff, even having titles of director, manager or supervisor and so on and who do not **really have rights of deciding to hire and/or fire other staff**, should be admitted to passive voting rights. In fact, this decision might need to be taken case by case, where you should examine the exact functions of these persons in your company and if, in some case, there could be, for this person, a conflict of interests when having to represent staff while being an organ of the managing part of the company. In any case, the electors would finally decide, while voting if they think this person is able to be a member of the staff delegation or if they think he's too close to management.

The fact that somebody is shown on the electoral lists as having or not having the passive voting rights could only be a reason of appeal against the elections and the electoral procedure if an appeal against these persons

on the electoral lists had already been made in the foreseen timetable and that the head of establishment or his delegate did not react (in the sense the compliant thought he should) on this first appeal.

What about the electoral rights of interim staff members or staff members at the disposal of the company?

Even if these staff members are partly considered in the counting to fix the number of staff delegates to be elected (see also "**Which persons must be taken into account to define the numerical importance of the company, to determine how many staff delegates have to be elected in your establishment?**" page 23 and "**Example of counting to establish the numeric importance of an establishment**" page 50), neither the interim staff member nor the staff member at the disposal of the company have any electoral rights in the user company (art. L.413-6 of the LAW).

What about the passive electoral rights of part time staff members?

We have to make a difference between part time staff having one single job and those working for more than one establishment. Those having only one employment are fully admitted to the passive voting rights, in case they fulfil the other conditions of passive voting rights.

Part time staff members having more than one employment at the same time do have the passive voting rights with the establishment, where they have the largest number of weekly working hours. If this is the same in different establishments, they do have their passive voting rights with the company for which work they do have the biggest seniority (longest time of service).

In case the company, with which the part time employee has the longest time of service, does not need to apply to this law having to set up the election of a staff delegation, the part time worker is eligible in the one having to set up a staff delegation (art. L.413-5 of the LAW).

Under what system the elections take place?

In principle, elections are made to the poll of lists using the proportional representation voting system.

However, establishments occupying not more than 100 wage earners on the 1st of the month of the first posted announcement, the ballot is carried out following a relative majority or simple majority voting system.

In both cases, a single delegation is set up for the whole staff by a single ballot.

If needed, the relative majority voting system must be done for the young staff delegations (see details in chapter "**Young staff delegation**" page 48).

This handbook is divided into 2 parts. First, the part that will inform you on the elections according to the **relative majority voting system** (see page 34) and second on the **proportional voting system** (see page 39). Feel free to skip pages that do not concern you, in order to not mismatch voting systems and procedures.

When do electors and candidates have to fulfil age and length of service conditions?

The condition concerning the age and time of service as well for the active as for the passive voting rights is the date of the elections.

We have to take care that a candidature from a staff member, who will be 18 years old the day of elections, but is minor the day of deposit of his candidature, has to be signed by one of the candidate's parents or his tutor to be valid. This is also true for the elections of young staff delegations, where there is no inferior limit of age to have the active or passive voting rights.

What about the vote by proxy and postal voting?

Because vote by proxy is strictly forbidden by the law, it devolves upon the wish of the outgoing delegation or of the employer to request a ministerial authorisation for the postal voting. This request has to be introduced

latest one month prior to the date of election. You find a template for such a request in the chapter forms & templates.

This text is interpreted very strictly by ITM and the Court in that sense that the ballot papers have to be given personally from the president of the ballot office to the elector. If this is done by a third person, you risk that your elections, in case of complaining, will have to be reorganised (*Tribunal Administratif 20 février 2004 N°17458 du rôle* and *Cour administrative 4 et 8 mars 2011 N°28068C et 28093C du rôle*).

It is important to mention that in case the postal voting is authorised, some dates in the timetables do change. In the appendixes "**Postal Voting**" page 51, you will be able to find some information and an idea about the ministerial authorisation concerning the procedure of postal voting.

What should I know when spreading the days of the poll on several days?

Since the workers must have the possibility to express their vote during their normal working hours, companies working on shifts are allowed to spread the elections on several days (usually 3), where the last day of the poll has to be the day fixed for elections by the Ministerial Regulation (ministerial regulation of September 2nd and published in the official gazette (Mémorial B 89 page 1814)). It is this same regulation authorising the spreading of the poll on more than one day.

It seems evident that dates of the timetable (publishing date of candidatures/nominations) must therefore be consequently adjusted as it is for postal voting authorised by the minister who has the labour in his attributions.

Chapter 5. Pre electoral preparatory phase

Posted announcement of an election notice to the attention of the staff.

An election notice must inform the staff of the establishment, at least one month prior to the election date, of:

- Date and place of the election;
- Time when the operations will start and end (the time of the opening of the electoral office has to be at least one hour and long enough for all the electors to express their vote during their normal working time. This one hour limit is also requested if it could be foreseen that most/all voters would participate to the elections by using the authorised postal voting procedure);
- The number of delegates and substitutes to elect;
- Place and dates where the concerned people will be able to get to know the candidates;
- Passive electorate conditions.

Forms are available in the chapter forms & templates:

- for the vote under the relative majority system;
- for the vote under the proportional system;
- for the vote of a young staff delegation.

A copy of this/these posted announcement(s) has to be sent the same day of publishing to ITM².

² Electronic transmissions (email or fax) are authorised. However, the internal announcement in the establishment has to be done by paper posting, even if it is supported by new technology means.

Deposit, to the inspection of staff, of the electoral lists and a posting notice informing on the possibility of recourse to objections against these lists.

Three weeks prior to the day of elections, these alphabetical lists have to be deposited in order to be given a check by any interested people.

We suggest that these lists contain the names and surnames of **all staff members** in the concerned establishment (directors, managers, head of staff as well as new recruits) and that a simple “yes” or “no” should appear in the columns of active or passive electors in order to give information on the staff member’s electoral status (please see the template in the chapter forms & templates).

Neither the LAW nor the GDR do inform us about how to put married women in these alphabetic lists. We propose to use the name women normally use in their day-to-day life, mentioning "married XYZ", this to simplify the searching of names in the lists.

An announcement, to be posted the same day, to the attention of the staff will inform them that any objection against these lists will have to be presented to the head of the establishment or its delegate in the 3 days following the deposit of these lists (please see the template in the chapter forms & templates).

A copy of this deposit (the lists) and the posted announcement has to be sent the same day to the ITM³.

In case there are elections for the young staff delegation to be organised, a separate list and announcement for this election has to be made and copies of the list and the announcement to be made the same day for the ITM.

What about the protection of personal data?

In order to comply to the modified act of 2nd August 2002 relative to the protection of people in relation with treatment of personal information, you need to fill in the form about complying and respecting this act (please see the template in the chapter forms & templates) and send it latest when publishing the electoral lists to the CNPD (*Commission Nationale pour la Protection des Données*).

You must NOT forward or send a copy of the electoral lists via mail to your staff!

Constitution of an electoral office.

The GDR allows, since its latest modification on 17th July 2008, the constitution of more than one single electoral office for a single election.

For the day of elections, there has to be at least one principal electoral office and one or more supplemental electoral offices that have to be set up. There has to be a separate electoral office in case there is a young staff delegation to be elected.

The head of the establishment or his delegate, who could be, if necessary, a person that does not belong to the company (such as a fiduciary, a law firm...) acts as the president of the main (principal) electoral office. A representative of the management will lead the supplemental electoral offices as a president. The assessors are appointed among the staff by the outgoing delegation or, in case either there is no outgoing delegation or this delegation did not nominate assessors, among the electors by the head of the establishment and, in case of objection, by the director of the ITM.

Neither effective delegates or substitutes of the outgoing delegation nor new candidates to the position of delegate of staff are allowed to sit in any of the electoral offices as assessors. Even if the GDR does not exclude

³ Again, electronic transmissions (email or fax) are authorised. However the internal deposit in the establishment has to be done on paper, even if it is supported by new technology means. You must NOT forward or send a copy of the electoral lists via mail to your staff! However you can do so for the announcement of the deposit of the lists.

the above mentioned persons from the office of president of any of the electoral offices, we think it not a good idea to have them act in any role of the electoral offices.

Members of the electoral office have to count faithfully the ballots and have to preserve the secrecy of the ballot.

If there is one principal and one or more supplemental electoral offices, the results of the different offices are collected by the main electoral office in charge to summarize the result and calculate the allocation of the seats. Individual results must not be published.

Members of the electoral offices, are they admitted to execute their active voting rights?

Of course as well the president as the assessors of any of the electoral offices are allowed to exercise the active voting right, as far as they do comply with the other rules needed for this eligibility.

You should try to place the assessors (and the president(s)) of the different electoral offices the way that they are admitted to exercise their active voting rights in the office, in which they do exercise their job as assessor or president. If this is not the case, they have to be added by the head of establishment to their electoral office of duty. He must not forget to cross them from the initial ticking/pointing lists in the office they were foreseen.

We recommend that the duty holders of the electoral offices do exercise their active voting rights, if they want to, at a moment where the crush allows their voting, by asking other electors to be patient and stay outside the office for a moment.

If they want to exercise their active rights, the members of an electoral office **must** do this during the normal opening hours of their office!

If a supplemental assessor for example is needed (to replace an absent colleague) in an electoral office, on whose ticking lists he is not foreseen, this has to be reported to the president of the main electoral office during the pre-electoral phase (see "**The functioning of an electoral office, preparation phase**" page 32). The president of the main electoral office has to immediately get this person crossed from the lists in the office where she was foreseen to vote, then gets in touch with the office that initiated the request and the assessor can then be added to the ticking lists of his office. This is also true, if needed, for the replacement of a president of a supplemental electoral office. These actings have to be noted down in the report of the elections of all concerned electoral offices.

Is there an obligation to exercise the active electoral right?

No, it is a **right** to be able to participate in electing a staff delegation and not an **obligation**. Somebody who does not want to participate in the elections is allowed to do this without any former acts.

We do recommend members of the electoral offices not to interfere in any way in asking electors (by phoning) to come and exercise their electoral rights.

Who can be witness or observer in an electoral office?

No witness and no observers are admitted to the electoral offices, neither during the voting process nor while the counting of the ballot takes place. The only exceptions to this rule would be if the Minister of labour or the director of ITM delegates one of their civil servants to observe the ballot.

What do the electoral offices need to take care about?

Each president of an electoral office has to take care that his office has everything needed to run the elections:

1. electoral cabins (at least a place in the office where the elector could vote separated from other operations but without having to leave the initial office);

2. a ballot box able to contain without problems the ballot bulletins of his office;
3. several copies of the instructions to the voters to be put up in each electoral cabin and at the entrance of the office;
4. pencils/pens to vote (one for each cabin);
5. table and chairs for the president and the assessors;
6. two ticking lists with those staff members admitted with active electoral voting rights to this electoral office. If the postal voting has been authorised, two lists with the names of those staff members, which were admitted to the postal voting procedure. These names must not be found on the normal ticking lists;
7. one or more envelopes containing the ballot papers. On the envelope(s) is written the number of bullet papers they contain;
8. the ballot papers are folded twice, in right angles with a stamp outside each ballot paper. There have to be 10-15% more ballot papers than electors foreseen for the office;
9. empty envelopes able to contain the used, the blank and the not valid ballot papers;
10. the papers needed for the ballot counting:
 - a. forms for the counting (please see the template in the chapter forms & templates);
 - b. a report form, which is different for a main and a supplemental electoral office (please see the template in the chapter forms & templates) and the form for publishing the results of the elections.

The functioning of an electoral office, preparation phase.

The assessors and the president have to be present at their electoral office at least 30 minutes before the opening time of the office. They have to execute some preparing work, while the office stays closed:

1. the president verifies if both assessors comply with the legal rules to be admitted to this duty. If needed, the president calls immediately for an supplemental assessor;
2. they count the ballot papers and write down the number in the report. They verify that all bulletins are stamped outside; if not, the ballot paper with the missing stamp has to be destroyed immediately;
3. the president verifies, before closing the ballot box, that it is empty;
4. they put the instructions to the electors onto the right places;
5. they verify that each cabin has a pencil/pen in good working condition;
6. in case the election in this office is spread in different stages, the ballot box has to be closed/sealed after each single stage, kept securely in a closed office and only opened when all three office members are present;
7. **the ballot box, which has to be made in a way that nobody could retrieve one or more ballot papers until the official closing of the electoral office, must not be opened during the whole electoral process. It can only be opened at the definite closing of the electoral office, at the foreseen and announced time in the first announcement!**

The functioning of an electoral office, electoral phase.

At the announced time, the office is opened.

The voter who shows up tells his name and, if needed, has to identify himself with his passport, establishment badge or any other document showing his picture.

The assessors verify that he's on the ticking lists and tick him on these lists as voter having come to vote. A person that is not found in these lists is not admitted to vote.

Is a person listed for the postal voting admitted to participate in the ballot?

If somebody shows up in the electoral office and in case he can't be found on the ticking list, the assessors have to verify if he might be a postal voter. If he is, he has to hand out to the president of the electoral office his postal voting documents, at least the envelope containing his ballot paper. These documents are destroyed immediately, the person added to the ticking list and admitted to the vote.

If he can't hand out the needed documents to the president, the president of a supplemental office has to check with the president of the main electoral office if this person has not sent back his postal voting. If he has not, he is added to the ticking lists and admitted to the vote.

These facts have to be written down in the report of the supplemental office.

Is somebody who shows up in the wrong electoral office admitted to the vote?

A voter who shows up in the wrong electoral office is asked to go to the office he's inscribed.

If the two offices are in different buildings, the electoral office where the voter showed up immediately gets in touch with the main electoral office. The president of the main electoral office then contacts the office this voter was expected to go to, asks if he did not already show up there, and if not, asks that this voter is crossed out of the ticking lists. He then gets in touch again with the office that requested the change and authorises that the voter can be added to their ticking lists and admitted to the vote. This has to be mentioned in all concerned electoral office reports.

The effective voting.

The person admitted to the vote is handed out, by the president of the electoral office, his ballot paper, stamped outside and he/she goes to a not occupied voting cabin.

He/she proceeds to the voting, folds back his ballot paper as it was handed out, with the stamp outside, shows the ballot paper to the president of the electoral office and puts it in the ballot box. He/she is not allowed to open his ballot paper after having expressed his/her vote and outside the cabin. If he/she does, the president of the electoral office destroys the ballot paper and hands out a new one to the elector.

A voter who made a mistake while voting informs the president of the electoral office and hands his ballot paper to the president who has to destroy the ballot paper immediately prior to handing out a new ballot paper to the elector.

The voter who has put his ballot paper in the ballot box has to leave the electoral office immediately and is not admitted to it anymore.

The president of the electoral office has to take care that in his office there are never more people than the office is able to manage without problems.

What does the electoral office has to check regularly?

During the ballot, the electoral office has to verify regularly that:

- inside the cabins there are no handbills, leaflets, papers or other objects except those they have put there;
- the instructions to the voters are correctly fixed where they should be and readable. If needed, they have to be replaced and the old ones have to be destroyed;
- the pen/pencils are still available and working correctly;
- the two ticking lists are in sync.

Generalities about ballot counting.

- At the time fixed in the first announcement, the electoral office is closed and shut.
- The assessors count the number of voters (ticked persons on their lists) and write down the number into the report;
- The ballot papers not used are counted and the number is written into the report.
- The unused ballot papers are put into the envelope foreseen to contain them, this envelope is closed and the number of bulletins it contains is written onto the envelope prior to opening the ballot box.
- The number of destroyed ballot papers is written into the report.
- In case it is a main electoral office or a supplemental electoral office **proceeding the ballot counting**:
 - the president opens the ballot box, shuffles the ballot papers and counts them without opening any of them. The number of bulletins is written down into the report (and should correspond with the number of voters counted earlier by the assessors!).
 - then the real ballot counting starts (see later within the description of the voting system you'll go to use).
- In case where **the ballot counting is not done in the supplemental electoral office**, the president, together with his two assessors will go to hand over his ballot box, his report and the envelope containing the unused ballot papers to the president of the main electoral office (see later within the description of the voting system you'll go to use).

Chapter 6. Vote under the majority system

In establishments employing not more than 100 staff members, the election/poll is carried out under the relative majority system. A delegation is set up for the whole staff by mean of the unique ballot.

The appointment of young staff delegates, if needed, is also done using this voting system.

How are the nominations presented validly?

The presentation of the candidates is made in the form of isolated candidatures/nominations.

Are admissible candidates who are presented by:

- one of the most representative national trade unions described in article L.161-5 of the “Code du Travail”;
- trade unions justifying a representativity in an important defined economic sector such as described in article L.161-6 of the “Code du Travail”;
- trade unions as defined in article L.161-3 of the “Code du Travail”, provided such organisations represent an absolute majority of members of the outgoing delegation when nominations are made;
- support of 5 electors

Contrary to the 4th point above, are receivable for a young staff delegation, nominations presented by only 3 electors for this delegation.

Every application has to be accompanied by a signed statement by the candidate who testifies that he accepts his nomination.

Nominations must be returned personally, at the latest on the 15th calendar day at 6:00 PM prior to the day of elections, to the head of establishment or his nominated deputy or by registered letter at least two days prior to this deadline. Once the deadline past, nominations will not be receivable anymore.

ITM interprets the regulation the way that an elector may support several candidates without exceeding the number of effective candidates and substitutes to be elected and even for a candidate to be able to support other nominations, or even his own nomination.

A template of a deposit of isolated candidature can be found in the chapter forms & templates.

Results of the previous operations.

After the expiration of the time limit for the deposit/presentation of the candidatures and after their validation by the head of establishment, the different actions operated under the pre-electoral procedure will have generated one of the following situations observed that calls for a continuation determined in juxtaposition:

1. The number of candidates exceeds the number of effective delegates and substitutes to elect. This is the normal case and it will be needed to proceed to elections.
2. The number of candidates exactly fits the number of effective delegates and substitutes to elect: those candidates are proclaimed elected without any other formality provided that they reached an agreement on who will be effective and in what order they will be substitutes. The head of establishment makes a report. A template of such a report is available in the chapter forms & templates. If the candidates do not reach an agreement, it will be needed to proceed to elections (see 1. above).⁴
3. The number of candidates is smaller than the number of effective delegates and substitutes to elect: the head of establishment informs the candidates and by means of posted announcement, the electors and grants a further 3 days. A copy of this new announcement – please see the template in the chapter forms & templates – has to go immediately to ITM. After these 3 further days we have one of the following cases:
 - 3.1. The number of candidates exceeds the number of effective delegates and substitutes to elect (see 1. above).
 - 3.2. The number of candidates fits exactly the number of effective delegates and substitutes to elect (see 2. above).⁵

⁴ This pragmatism solution proposed by ITM in their handbook since 1993 and used by hundreds if not thousands of establishments is no longer valid due to a decision of the „tribunal administratif du 11 mai 2011 N° 28597 du rôle“. In fact, the GDR does not foresee an arrangement between candidates in the majority voting procedure if the number of candidates is equal or below the number of effective delegates and substitutes. Thus, following this decision, in these cases, ballot should be organised.

⁵ See the annotations 4 above.

3.3. The number of candidates is smaller than the effective delegates and substitutes to elect:

3.3.1. If there is no valid nomination, the head of establishment has to make a report that he transmits with related documents to the director of ITM. Please see the template in the chapter forms & templates. As a result, the delegation will be appointed by the Minister of labour and employment.

3.3.2. If the number of candidates is smaller or just equal the number of **effective** delegates to elect, these are proclaimed elected and the head of establishments reports this to ITM and announces the names of the delegates to the staff.

3.3.3. If the number of candidates is bigger than the number of effective staff delegates to elect but still smaller than the number of effective delegates and substitutes to elect, you have to proceed to elections (see point 1. above)

What needs to be respected in case of a poll situation?

Some information concerning the posted announcement of the nominations.

You have to get on a same sheet and in bold characters:

1. in alphabetical order, the names, surnames and occupation of all the nominations declared valid;
2. a box to contain the voting has to be arranged after every line with a name;
3. instructions for the electors.

Please see the template in the chapter forms & templates.

The making of the ballot papers / poll bulletins.

The poll bulletins are identical to the posted announcement, but normally in smaller dimensions. While indicating the number of effective delegates and substitutes to elect, they don't hold any more instructions for the electors.

They have, for a same poll, to guarantee the identity of:

- the paper
- the format
- the printing

Besides, they also have to be folded in 4, in a right angle, and stamped overleaf prior to the poll by means of stamp given by the head of establishment.

Please see the template in the chapter forms & templates.

Subchapter 1. Electoral operating phase for majority system

Concerning the progress of the vote.

For a detailed description, please read chapter "**The functioning of an electoral office, electoral phase**" at page 33. Here an abridged version:

1. An assessor (even better both assessors) checks, on the ticking lists, the names of the electors that show up to vote. These lists have to be made by the head of establishment for the different electoral offices.

2. The president hands over the vote bulletin folded in 4 in right angles and stamped overleaf. A bulletin damaged inadvertently can be replaced by a new one; the unusable bulletin has to be destroyed without delay!
3. Certifying the correct deposit in the ballot box of the bulletin expressing the vote, bulletin regularly folded in 4, the stamp outside.

What are the essential regulations to be respected during the poll?

Every elector disposes of as many suffrages (votes) as there are effective delegates and substitutes to elect.

The elector can attribute one suffrage to every candidate up to the amount of the total of suffrages that he disposes. The elector does not need to use all his suffrages, but must not go beyond the number he is allowed to use.

Each cross (+ or x) put into the specific box behind the name of a candidate counts as a suffrage for this candidate. All other symbols ("✓", "o" or "*" f. ex.) could be interpreted as a sign to make the bullet paper recognisable and can lead to a void bullet paper.

Warning:

A cross drawn outside the specific boxes leads to the void of the bulletin.

Subchapter 2. Post electoral phase in majority operating

Relative to the count of the ballot.

What do I need to consider if there are more than one electoral office?

In case you have set up one main electoral office and one or more supplemental electoral offices, the ITM proposes you to set up the following procedures:

None of the electoral offices is allowed to start calculating the ballot as long as any of the other offices is still opened to voters.

If **only the main electoral office makes the count of the ballot**, the president of a supplemental ballot office, together with both of his assessors, immediately hands out the sealed ballot box, the envelope with the non-used ballot papers, the ticking lists and the report to the president of the main electoral office. After having counted the ballot papers contained in the ballot box in presence of the members of the supplemental ballot office and verified the number corresponding to the counted voters on the ticking lists of that electoral office, the members of the supplemental office are freed after their ballot box was sealed again. Their office has ended.

During this operation, the voting procedure in the main electoral office should be suspended.

The main electoral office should not open his ballot box as long as any of the supplemental offices did not hand over theirs. After having counted the number of ballot papers in his own ballot box, the president of the main electoral office mixes his bulletins with the ones of the supplemental offices prior to start the counting of the ballot.

If **the counting of the ballot is done in each electoral office individually**, only the numbered bullets below from 1 to 9 are those to be executed by the supplemental electoral offices.

The president of a supplemental electoral office whose office finished the count of the ballot, hands over, accompanied by at least one of his assessors, the closed envelopes, each showing the number of bulletins they contain with the ballot papers grouped by valid, the void, and the unused bulletins, the ticking lists which were signed by the assessors, the counting papers, the complaints and the remarks written down in the report of the

electoral office as well as the report of the counting itself (please see the template for such a report in the chapter forms & templates) signed by all three members of the supplemental electoral office to the president of the main electoral office.

During this operation, the voting procedure in the main electoral office should be suspended.

Only the main electoral office is allowed to summarize the results and attribute the seats, after having collected all the reports of the supplemental electoral offices and counted his own ballot. The results of the single electoral offices must not be published.

Till the deadline of appeal against the elections or the electoral process, all the documents of the supplemental electoral offices have to be kept separately in a safe place, so that in case of appeal, the director of the ITM or/and a judge of the administrative court could trace a possible error.

Before the installation of the new elected staff delegation and the handing over of the documents concerning the elections to be kept by the new staff delegation till the term of their office (art. 42 of the GDR), the ballot papers of the supplemental electoral offices have to be mixed with the ones of main electoral office and all documents of the supplemental electoral offices have to be destroyed.

The ballot counting as such.

1. Opening of the ballot box by the president.
2. Counting, without unfolding, by the president, of the bulletins contained in the ballot box (urn), the number of bulletins is written into the report and should be the same as the counted voters on the ticking lists.
3. Shuffling of the ballot papers by the president, prior to their opening.
4. All ballot papers are controlled on their validity (see "**Which bulletins are not valid?**" page 39).
5. The criticised/doubtful ballot papers are kept aside to be examined by the electoral office members. If they are said **void**, they are signed by all three members of the electoral office (the bulletins which were found empty (blank) in the ballot box are not signed).
6. If any comments were made concerning one or more ballot papers, the concerned ballot papers have to be numbered and the comments have to be written into the report.
7. The numbers of blank, void and valid ballot papers have to be noted into the report.
8. The president declares the nominal suffrages. The two assessors note accordingly, reliably and separately the voting in the foreseen forms.

A template of the table of counting can be found in the chapter forms & templates.

9. Closing and registration, in the report by the electoral office, of the numbers of voters, and the number of nominal suffrages for every candidate.
10. Operations concerning the assignment of the seats:
 - the candidates who obtained most of the suffrages are elected.
 - Equality of the suffrage benefits the oldest candidate (civic age and not the time he is staff member in the establishment).

For the allocation of seats and the report, please see the template in the chapter forms & templates.

Which bulletins are not valid?

Have to be declared void (invalid):

1. ballot papers other than those handed out by the president of the electoral office;
2. those which express more suffrages than allowed (number of effective and substitute members to elect);
3. those where shape and/or dimensions have been deteriorated;
4. those which contain any identification sign (paper inside, deletion or any other kind of signs).

All these bulletins are not taken in account to determine the number of valid suffrages.

For the end of the operations, please go directly to page 46, common final part of the 2 voting systems.

Chapter 7. Vote under the proportional representation system

In the companies with more than 100 staff members, a delegation has to be elected following the rules of the proportional representative voting system.

How are the nominations presented validly?

In case of the proportional representative voting system, the presentation of the valid candidates is made in the form of lists, every isolated candidate is considered as list itself.

The admissibility of these lists depends on the regularity of two factors:

- a. their consistent introduction;
- b. their content, this means the indications that must appear.

Are admissible lists which are presented either by:

1. one of the most representative national trade unions described in article L.161-5 of the "*Code du Travail*";
2. trade unions justifying a representativity in an important defined economic sector such as described in article L.161-6 of the "*Code du Travail*";
3. trade unions as defined in article L.161-3 of the "*Code du Travail*", provided such organisations represent an absolute majority of members of the outgoing delegation when nominations are made;
4. support of a group of staff in the establishment that represent at least 5% of the headcount to be represented, without exceeding 100 wage earners.

Every list has to be accompanied by a signed statement by each of the candidates to testify that they accept their application.

Every list of candidates has the designation of a proxy that the presenters of the list have chosen to hand over the list to the head of establishment or his delegate.

Every list has to hold a denomination.

The list indicates **in alphabetical order** the names, surnames and occupations of the candidates as well as the trade union or group of electors that presented it.

No-one may appear on more than one list neither as a candidate, a nominator nor a proxy. Should someone be

on more than one list, the nomination on the list bearing the earliest date of deposit shall be the valid; if all lists holding a same person bear the same date, all shall be null and void. We have to know that the administrative Court decided that in case of someone being on more than one list, it is this person's declaration to be null and void and not the whole list.

A list cannot hold more candidates than effective or substitute seats to be taken.

Lists must be returned by the proxy, at the latest on the 15th calendar day at 6 PM prior to the day of elections, to the head of establishment or by registered letter at least two days prior to this deadline. Once the deadline past, nominations will not be receivable anymore.

The ITM, by analogy with the jurisprudence in matters with the Mixed Committee of the company, interprets the GDR in order to allow a person to be candidate, proxy and even nominator on a same list, even if the wish of the legislator seems not to have been to allow the auto-presentation.

A template of a deposit of a list of candidates is available in the chapter forms & templates.

What about the number of order to a list; who gets one, who asks for it and who appoints them?

The appointment of order numbers to the lists is done by a drawing operated by the Prime Minister with the trade unions delegates, especially:

- the most representative national syndicates, that obtain a number of order by a first draw;
- a second draw is arranged between the other professional organisations, syndicates or groups having presented a request.

The appointment of an order number in conformity with these dispositions is not liable to recourse according to the rules of the electoral matter.

The Prime Minister communicates to the Minister of labour and employment the numbers of order appointed. The drawings gave the result you find at the end of this handbook ("**List numbering**" page 53) and the report of the drawings can be found on our internet pages.

The trade unions and the groups of wage earners that have not asked or received a number as of the grand-ducal regulation of 13th July 1993, have to use the number of order appointed, on request, by the director of ITM. A template for such a request can be found in the chapter forms & templates.

Results of the previous operations.

After the expiration of the time limit for the deposit/presentation of the lists of candidatures and after their validation by the head of establishment, the different actions operated under the pre-electoral procedure will have generated one of the following situations observed that calls for a continuation determined in juxtaposition:

1. The number of candidates exceeds the number of effective delegates and substitutes to elect. This is the normal case and it will be needed to proceed to elections.
2. The number of candidates exactly fits the number of effective delegates and substitutes to elect: those candidates are proclaimed elected without any other formality provided that while handing in the list, the proxy has designated the effective delegates and in the order they will replace, the substitutes. The head of establishment makes a report. A template of such a report is available in the chapter forms & templates. If there is no such agreement, it will be needed to proceed to elections (see 1. above).
3. The number of candidates is smaller than the number of effective delegates and substitutes to elect: the head of establishment informs the candidates, and by means of posted announcement, the electors and grants a further 3 days. A copy of this new announcement – please see the template in the chapter forms

& templates – has to go immediately to ITM. After these 3 further days, we have one of the following cases:

- 3.1. The number of candidates exceeds the number of effective delegates and substitutes to elect (see 1. above).
- 3.2. The number of candidates fits exactly the number of effective delegates and substitutes to elect (see 2. above).
- 3.3. The number of candidates is smaller than the effective delegates and substitutes to elect:
 - 3.3.1. If there is no valid nomination or list, the head of establishment has to make a report that he transmits with related documents to the director of ITM. Please see the template in the chapter forms & templates. As a result, the delegation will be appointed by the Minister of labour and employment.
 - 3.3.2. If there is more than one list or the proxy did not, while handing in the list, designate the effective delegates in in the order they will replace, the substitutes, you have to organise elections (see 1. above).
 - 3.3.3. If the proxy did, while handing in the list, designate the effective delegates in in the order they will replace, the substitutes, the candidates are proclaimed automatically elected and the head of establishment makes a report which will be transmitted with related documents to the director of ITM. Please see the template in the chapter forms & templates.

What needs to be respected in case of a poll situation?

Some information concerning the posted announcement of the nominations.

You have to get on a same sheet and in bold characters:

1. the lists, ordered by order number of the lists. Inside the lists, in the order they have been nominated (alphabetic order!) the names, surnames and occupation of all the nominations declared on valid lists;
2. above each list a box foreseen to receive the list voting. This box is black and has an inner circle of the same colour than the paper;
3. two boxes to contain the nominal votes have to be arranged after every line with a name;
4. instructions for the electors.

A template with such an announcement can be found in the chapter forms & templates.

The making of the ballot papers / poll bulletins.

The poll bulletins are identical to the posted announcement, but often in smaller dimensions. While indicating the number of effective delegates and substitutes to elect, they don't hold any more instructions for the electors.

They have, for a same poll, to guarantee the identity of:

- the paper
- the format
- the printing

Besides, they also have to be folded in 4, in a right angle, and stamped overleaf prior to the poll by means of stamp given by the head of establishment.

Please see the template in the chapter forms & templates.

Subchapter 1. Electoral operating phase for proportional system

Concerning the progress of the vote.

For a detailed description, please read chapter "**The functioning of an electoral office, electoral phase**" at page 33. Here an abridged version:

1. An assessor (even better both assessors) checks, on the ticking lists, the names of the electors that show up to vote. These lists have to be made by the head of establishment for the different electoral offices.
2. The president hands over the vote bulletin folded in 4 in right angle and stamped overleaf. A bulletin damaged inadvertently can be replaced by a new one; the unusable bulletin has to be destroyed without delay!
3. Certifying the correct deposit in the ballot box of the bulletin expressing the vote, bulletin regularly folded in 4, the stamp outside.

What are the essential regulations to be respected during the poll?

Every voter disposes of as many suffrages (votes) as there are effective delegates and substitutes to elect.

The elector has the choice between:

1. the attribution, by making a cross (+ or x) of one or two suffrages to every candidate of one, or several, or all the lists until he used all the suffrages he had. The elector does not need to use all his suffrages, but must not go beyond the number he is allowed to use. Each cross (+ or x) put into the specific box behind the name of a candidate counts as a nominal suffrage for this candidate. All other symbols ("✓", "o" or "*" f. ex.) could be interpreted as a sign to make the bullet paper recognisable and can lead to a void bullet paper.
2. to check, by making a cross (+ or x) or putting in black the circle in the box heading the list. Doing so, he gives one suffrage to each candidate on this list. If the number of candidates on the list the elector voted for is smaller than the number of suffrages the elector had, the elector may use the remaining suffrages by making a cross (+ or x) to those candidates he would like to give nominal votes on this same list or to candidates on other lists, watching to not give **a maximum of two suffrages** per candidate.

Warning:

All filled circles, even incompletely and any cross, even unfinished in the area reserved for it, express validly the vote, unless it seems like it was an attempt to be identified.

A cross drawn outside the specific boxes leads to the void of the bulletin.

A ballot paper containing more suffrages than there are effective and substitute members to elect or giving more than two suffrages to one candidate (suffrage of the list (circle heading the list) and two nominal suffrages) is void.

Subchapter 2. Post electoral operating phase in proportional operating

What do I need to consider if there are more than one electoral office?

In case you have set up one main electoral office and one or more supplemental electoral offices, the ITM

propose you to set up the following procedures:

None of the electoral offices is allowed to start calculating the ballot as long as any of the other offices is still opened to voters.

If **only the main electoral office makes the count of the ballot**, the president of a supplemental ballot office, together with both of his assessors, immediately hands out the sealed ballot box, the envelope with the non-used ballot papers, the ticking lists and the report to the president of the main electoral office. After having counted the ballot papers contained in the ballot box in presence of the members of the supplemental ballot office and verified that the number corresponds to the counted voters on the ticking lists of that electoral office, the members of the supplemental office are freed after their ballot box was sealed again. Their office has ended.

During this operation, the voting procedure in the main electoral office should be suspended.

The main electoral office should not open his ballot box as long as any of the supplemental offices did not hand over theirs. After having counted the number of ballot papers in his own ballot box, the president of the main electoral office mixes his bulletins with the ones of the supplemental offices prior to start the counting of the ballot.

If **the counting of the ballot is done in each electoral office individually**, only the numbered bullets below from 1 to 15 are those to be executed by the supplemental electoral offices.

The president of a supplemental electoral office whose office finished the count of the ballot, hands over, accompanied by at least one of his assessors, the closed envelopes, each showing the number of bulletins they contain with the ballot papers grouped by valid, the void, and the unused bulletins, the ticking lists which were signed by the assessors, the counting papers, the complaints and the remarks written down in the report of the electoral office as well as the report of the counting itself (a template of such a report can be found in the chapter forms & templates) signed by all three members of the supplemental electoral office to the president of the main electoral office.

During this operation, the voting procedure in the main electoral office should be suspended.

Only the main electoral office is allowed to summarize the results and attribute the seats, after having collected all the reports of the supplemental electoral offices and counted his own ballot. The results of the single electoral offices must not be published.

Till the deadline of appeal against the elections or the electoral process, all the documents of the supplemental electoral offices have to be kept separately in a safe place, so that in case of appeal, the director of the ITM or/and a judge of the administrative court could trace a possible error.

Before the installation of the new elected staff delegation and the handing over of the documents concerning the elections to be kept by the new staff delegation till the term of their office (art. 42 of the GDR), the ballot papers of the supplemental electoral offices have to be mixed with the ones of main electoral office and all documents of the supplemental electoral offices have to be destroyed.

The ballot counting as such.

Please do read also the chapter "**Generalities about ballot counting**" page 34.

1. Opening of the ballot box by the president.
2. Counting, without unfolding, by the president, of the bulletins contained in the ballot box (urn), the number of bulletins is written into the report and should be the same as the counted voters on the ticking lists.
3. Shuffling of the ballot papers by the president, prior to their opening.

4. All ballot papers are controlled on their validity (see "**Which bulletins are not valid?**" page 46).
5. The criticised/doubtful ballot papers are kept aside to be examined by the electoral office members. If they are said **void**, they are signed by all three members of the electoral office (the bulletins which were found empty (blank) in the ballot box are not signed).
6. If any comments were made concerning one or more ballot papers, the concerned ballot papers have to be numbered and the comments have to be written into the report.
7. The ballot papers not criticised/doubtful or thought to be valid are classified in three categories:
 - a. The piles with the ballot papers containing **only** list voting (one pile per list);
 - b. The pile with ballot papers containing list voting and nominal suffrages (only if there are incomplete lists). The electoral office has to check that the number of suffrages given is not larger than the number of suffrages at the disposal of each voter, else the ballot paper is void and the points 5 and 6 above to be reviewed;
 - c. The pile containing ballot papers with **only** nominal suffrages. The electoral office has to check that the number of suffrages given is not larger than the number of suffrages at the disposal of each voter, else the ballot paper is void and the points 5 and 6 above to be reviewed.
8. The numbers of blank, void and valid ballot papers have to be noted into the report.
9. The ballot papers with the list voting are counted (pile sub. a.) for each list separately and the assessors write down the number in the forms of counting (please see the template in the chapter forms & templates). A list voting gives as many suffrages to the list as this list contains candidates.
10. If necessary, the pile sub. b. is divided in piles for each incomplete list, the number of bulletins for each list are counted and the assessors write down the number in the forms of counting (please see the template in the chapter forms & templates). A list voting gives as many suffrages to the list as this list contains candidates. Then the president of the electoral office declares the additional nominal suffrages of each ballot paper. The two assessors note accordingly, reliably and separately the voting in the same forms than previously used.
11. Then the president of the electoral office declares the nominal suffrages from pile sub. c. of each ballot paper. The two assessors note accordingly, reliably and separately the voting in the same forms than previously used.
12. We recommend verifying regularly the countings of the two assessors. If the number of ballot papers is large enough, the counting should be done in stages with intermediate results (to be consolidated later).
13. A double count has to be done:
 - **For each candidate:** The total of the suffrages obtained by the candidate is the sum of the nominal suffrages he got added to the number of suffrages obtained for his list (by darkening the boxes in head of list): This counting is needed for the classification of the candidate inside each list.
 - **For each list:** The sum of all the suffrages (calculated above) of a list. This counting is used for the calculation of the allocation of the seats among the different lists.

A template of the table of counting can be found in the chapter forms & templates.

14. Closing and registering, in the report by the electoral office, of the numbers of :
 - nominal suffrages of every candidate (sub. a.)

- suffrages of the list of every single list (sub. b.).

15. Any comments (other than those above) should be written in the report.

16. Operations concerning the assignment of the seats (only the main electoral office should do this calculations!):

a) Calculation of the value of 5% of the valid voices and elimination of the lists for which the number of suffrages was inferior to this value

b) Determination of the electoral number (Né) with the formula:

Né = next following Integer (entire numeric) superior to the quotient of the following division:

$$\frac{\text{Sum of all validly expressed suffrages of all the lists}}{\text{Number of effectif staff delegates to elect} + 1}$$

Attention: Even if the quotient obtained by this operation was to be an integer number, you have to take the **next following integer** in order to determine Né!

c) Determination of the number of seats (Ns) for each list with the formula:

Ns is the number of times the electoral number is contained in the number of suffrages obtained by a list.

$$N_s = \frac{\text{Number of suffrages obtained by the list}}{Né}$$

This formula, while taking each time the number of suffrages counted for each list, has to be done for each list, which, after having eliminated the list having got less 5% (see a)) of the correctly expressed suffrages, stay available to get seats.

Attention: Ns is never rounded up, you have to always use the integer part of the quotient.

d) If the thus allocated number of seats (see c) is inferior to the number of effective seats to allocate, an additional allotment of the seats has to be done. For doing so, you have to use the following formula:

$$N_s = \frac{\text{Number of suffrages obtained by the list}}{\text{Number of seats already obtained} + 1}$$

This formula, while taking each time the number of suffrages counted for each list, has to be done for each list, which, after having eliminated the list having got less 5% (see a) of the correctly expressed suffrages, stay available to get seats.

The list with the biggest quotient gets the seat.

Attention: Only **one seat is allocated** by each of these calculations. If there are still vacant seats, you have to redo this calculation.

A template in the chapter forms & templates is available to help you doing these calculations. Together with this form you will find some examples of such calculations. On our internet pages you may also download an excel spread sheet that could help making these calculations.

The president and the assessors of a main electoral office should get familiar with these calculations before the day of elections.

Overall notices:

A list takes as many substitute seats as it got effective seats allocated.

In every list, the respective seats are assigned to the candidates that have obtained the highest number of individual suffrages inside the list.

Equality of the suffrages benefits the eldest candidate (civic age and not the time he is staff member in the establishment).

If a list obtains more delegates than it has presented candidates, the number of seats remaining to assign is distributed between the other lists. Therefore, we proceed to new additional allotment calculations (see 10.d) above). This, by analogy with the art.226 of the co-ordinated act of 31st July 1924 regarding the electoral law. This is true as well for the effective and the substitute seats of incomplete lists.

Which bulletins are not valid?

Have to be declared void (invalid):

1. ballot papers other than those handed out by the president of the electoral office;
2. those which express more suffrages than allowed (number of effective and substitute members to elect);
3. those on which a candidate got more than two suffrages (a list suffrage + two nominal suffrages);
4. those where shape and/or dimensions have been deteriorated;
5. those which contain any identification sign (paper inside, deletion or any other kind of signs).

All these bulletins as well as the blank ones are not taken in account to determine the number of valid suffrages and seat allocations.

Subchapter 3. Post electoral phase common to the two vote systems

Report.

Presentation and signature, by the president and the assessors of the main electoral office, of a report on the electoral operations and the results of the ballots.

A copy has to be sent immediately to the direction of ITM⁶.

Announcement and transmission of the results of the elections.

The ITM suggest that a copy of the results of the elections should also be sent, immediately after the counting, to the trade-unions which have presented the nominations. Such a result form is to be found with the forms on our internet pages.

During the 3 days following the ballot, names of the elected effective delegates and substitutes must be posted as an announcement to all staff. It is not indicated to publish the report, but only the result of all the lists and their candidates.

Such an announcement has also to take place in case of proclaimed elected delegates. This announcement, even if there was no real ballot and in order to avoid all other problems with dates in the timetable, has to be posted **at least** during the period foreseen in this timetable, i.e. the three days following the date where the elections would have taken place.

⁶ Electronic means for data transmission (email or fax) are authorised.

What has to be done if an elected candidate does not accept his office?

An elected candidate may refuse his office during the 6 following days to the above announcement **by writing to the president of the main electoral office**. He will be replaced by the candidate, who, on the same list (in case of proportional voting system, else in normal order) has got the next following biggest number of suffrages. The number of substitutes will be completed during this period by the one who, on the same list (in case of proportional voting system, else in normal order), has got the biggest number of suffrages among the non-elected candidates.

A new report has to be written and a copy of this report has to be immediately sent to ITM (with a copy of the written dismissal of the candidate). The name of the candidate nominated to replace the candidate who refused his office has to be published as described above.

After the 6 days following the first announcement, the number of substitutes is no longer completed.

An elected candidate who refuses his mandate of an effective member can NOT take a seat as a substitute.

Establishment of the new delegation Legal electoral matters

Objections (appeal) concerning the elections and/or the electoral operations are dealt with the director of ITM. They must be introduced by registered letter, or they will not be valid, within 15 days following the last day of posted announcement of the elected effective and substitute delegates. ITM decides:

- within 15 days
- by motivated decision
- after audition or convocation of the interested parties.

When receiving a valid appeal, the director of ITM informs all concerned parties:

- the head of the establishment who has to inform the president of the main electoral office;
- the elected candidates;
- the not elected candidates;
- the one(s) who introduced the appeal

an fixes a date for auditioning.

The two appeal authorities (*Cour Administrative du 20 mars 2008 N° 24148 du rôle*) are the administrative order jurisdiction statutes in emergency and within the month

- in last authority, and
- as judge after all.

It has to be appealed within 15 days after notification of the decision of the director of ITM.

The three possible recourses suspend the establishment of the new delegation.

Jurisdictional decisions effects

Annulment of the elections pronounced by the pre-qualified authorities implies the renewal within 2 months as from the date of annulment (see art.41 of the GDR). The whole procedure has to be started (with first announcement) again.

Establishment of the new delegation

As there is a delay to make appeal concerning the elections or the electoral procedure, the official establishment of the new delegation can't take place prior to the 15th day following the last day of posted announcement of the results of the ballot, respectively prior to the decision of the ITM or the decision of the administrative court of justice, in case there was an appeal.

The first meeting of the newly elected delegation has to be convened in best possible time by the president of the outgoing delegation (*Jurisprudence C.S.J. du 30.06.2005 N° 29039 du rôle* and art L.416-3 of the LAW). If there is no outgoing delegation, the first meeting is convened by the president of the main electoral office or the head of establishment. On the agenda of this meeting (art L.416-2 of the LAW) has to be the setup of the delegation and its office as of art. L.416-1 of the LAW. All appointments, except the one of the safety delegate, have to be made among the **elected effective members** of the delegation. A substitute delegate can't get a nomination as a chairman or secretary or any other post in the delegation. This is also true for one-man delegations.

The delegation's secretary writes a report (art. L.416-5 of the LAW) on the appointments, and without any further delay, communicates this information to the head of establishment, by posting to the staff members and with a copy to ITM. A template can be found in the chapter forms & templates.

Every modification of the appointments or of the delegation as such has to be forwarded to all people mentioned above.

The new delegation is designated for a maximum period of 5 years (up to new social elections as of the LAW) and, up to the end of their period of mandate, has to keep all relative papers about the election procedure.

Appendix

Young staff delegation:

Counting of the numeric importance of the young staff

When an establishment has regularly at least 5 young staff members (not having there 21 years accomplished) and that the establishment needs to have a principal staff delegation, the head of establishment has to organise the election for a young staff delegation.

The election for young staff delegation is always done under the simple majority voting system; whatever the numeric importance of the establishment might be (details on the procedure see "**Chapter 6. Vote under the majority system**" page 34).

The young staff delegation is composed by:

1 delegate, if the number of young staff members is ≥ 5 and ≤ 25 ;

2 delegates, if the number of young staff members is > 25 and ≤ 50 ;

3 delegates, if the number of young staff members is > 50 and ≤ 100 ;

4 delegates, if the number of young staff members is > 100 .

For each effective young delegate, a substitute young delegate has to be elected.

For counting the numeric importance of young staff, the legislator does not make any difference between minor or not minor staff. Have to be counted, in order to establish the numeric importance of the young staff delegation, all adolescent staff which have not accomplished their 21 years and which are under contract of employment. Thus, those among young staff members (minor or not) with a contract of apprenticeship do not count while fixing the numeric importance of the young staff delegation.

- An establishment counting regularly 25 apprentices and 4 young staff members (all not being 21 years old) does not need to organise elections for a young staff delegation.
- However, an establishment with 40 apprentices and 25 young staff members (all not being 21 years old) will have to elect a young staff delegation with one effective delegate, even when the total number of young staff is > 50.

Who can be in the active electorate to appoint the members of the young staff delegation?

The adolescent:

- without distinction of sex;
- without distinction of nationality;
- not having his 21 years accomplished;
- that has been working in the company for at least 6 months on the day of the election.

Please read also below the interpretation of ITM about active and passive voting rights for apprentices.

Who is eligible as member of the young workers delegation?

The adolescent:

- without distinction of sex,
- who is either Luxembourg national, or a national of a member state of the Agreement on the European Economic Region, or national of a non-member state of the Agreement on the European Economic Region holding a B or C work permit issued in compliance with the law and regulations governing the employment of foreigners. However, nationals of a non-member state of the Agreement on the European Economic Region employed on the basis of a work permit other than of type B or C may be elected, but their number may not exceed one-third of the membership of the staff delegation; any elected in excess of such proportion shall be replaced as appropriate by Luxembourg nationals, nationals of a member state of the Agreement on the European Economic Region or nationals of a non-member state of the Agreement on the European Economic Region holding a B or C working permit who have not been elected, but who, on the same list, have obtained the greatest number of votes;
- of at most 21 years accomplished;
- who has been working in the company for at least 6 months on the day of the election.

While using the word “adolescent” in art L.411-5 (2) of the LAW, the legislator decided that not only major staff, but also minors should participate with active and passive voting rights in the election of young staff delegation. Even apprentices, formally excluded while counting the numeric importance of the young staff delegation, do participate with active and passive voting rights at the election of young staff delegation (compare art L.413-3 of the LAW). This way, you might find the curious situation to have much more young staff with active and passive voting rights than headcount while counting the numeric importance of the young staff delegation (see example above).

While talking election procedure for the young staff delegation, please see “**Chapter 6. Vote under the majority system**” at page 34, but remember that for presenting a candidate for the young staff delegation, candidates do not need 5, but **only 3 young electors**.

If there is a need to setup a young staff delegation, there has to be at least a main electoral office independent from the one(s) of the other delegation's elections. A young staff member fulfilling the other requirements of the LAW can take part in both elections.

Example of counting to establish the numeric importance of an establishment

| Category of staff: | Presence in the establishment: | Counted for the numeric importance of the establishment: | Notice / Reference: |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Number of staff under full-time or part-time contract of employment, with contractual work-time \geq 16 hours/week | 230 | 230 | Count ALL staff, i.e. even directors and managers if not independent workers (CDI, Sick-leaves, pregnancy-leaves parental holidays included). |
| Number of hours worked per week by part-time staff with contractual work-time < 16 hours/week | 667 hours | 17 | $667 / 40 = 16.68$ The number of worked hours is divided by the legal or conventionally fixed working hours for the establishment per week. |
| Time of presence of staff under CDD, employed by an interim contractor or on loan but not in replacement of staff on sick-leave, pregnancy-leave or parental holidays etc. during the last twelve months prior to the 1 st of the month where the announcement of the election date took place. | 44833 hours | 24 | We use the following averages: working hours per month: 173 hours/month (in the normal case where the staff in the establishment works 40 hours/week. In case of a conventionally fixed lower rate, please adapt the calculation worked months per year: 12 months holiday leave in hours per year: 200 hours/year You have to use: $(173*12) - 200 = 1876$ ⁷ for dividing the number of hours worked |
| Total | / | 271 | The sum has to use the rounded numbers one by one. |

Concerning Temporary work companies (interim contractor)

Temporary Work Company (interim contractor): moral of physical person, whose commercial activity consists in hiring a paying staff in order to put them at the temporary disposal of user companies to accomplish exactly defined and non-lasting workload.

For the computation of staff occupied by the interim contractor, permanent employees of this company and workers, who have been linked to it by a mission contract during a total period of at least 10 months during the year prior to the computation date, must be taken in account (art. L.411-2 of the LAW).

The period in order to determine the numeric importance of interim staff, providing the date of election is on 13th November 2013, is from 1st October 2012 up to 30th September 2013. Are counted all interim staff that was under contract in the interim contractor company during at least 10 months, equivalent to 216 working days full time (equal 1728 hours) or part-time. If part-time hours worked by a part-time interim staff are equal

⁷ For a conventionally fixed 36 hours/week work, you would have to use $(1876 * \frac{36}{40})$

or larger than 691 hours, these staff members are entirely counted. If part-time hours worked by a part-time interim staff are less than 691 hours, the hours worked by this staff member are added to the other part-time interim staff members whose total hours are below 691 hours during this 12 months period. This sum is divided by 1563. The quotient resulting from this division is rounded and added to the number found when counting the full-time interim staff and the basic staff of the interim contractor in order to find the numeric importance of the staff delegation to be elected in a temporary work company.

Who has active voting rights among interim staff?

The normal conditions for active voting rights are suitable as well for interim staff as for normal staff (see page 25). While setting up the list with electors, ITM recommends using, at the date of publishing of these lists, all those interim staff, who, normally the day of election, would have an uninterrupted length of service with the interim contractor for a period of at least 6 months. Not to be considered as interruptions are the periods between two missions which are smaller or equal to 3 calendar days. The electoral right should be denied to all those interim workers whose working relationship ended between the publishing date of the lists and the day of election or if his length of service was interrupted for more than 3 days in this period.

Who has passive voting rights among interim staff?

The normal conditions for passive voting rights are suitable as well for interim staff as for normal staff (see page 26). While setting up the list with eligible staff, ITM recommends using, at the date of publishing of these lists, all those interim staff, which normally, the day of election, would have an uninterrupted length of service with the interim contractor for a period of at least 12 months. Not to be considered as interruptions are the periods between two missions which are smaller or equal to 3 calendar days. The right to be elected should be denied to all those interim workers whose working relationship ended between the publishing date of the lists and the day of election or if his length of service was interrupted for more than 3 days in this period.

An interim staff member, whose name could not have been removed from all ballot papers prior to the opening of the electoral office(s) and who would have been elected, has to be, by mentioning this fact in the report, replaced by the candidate, who, on the same list (in case of proportional voting system, else in normal order), has got the next following biggest number of suffrages. The number of substitutes will be completed during this period by the one, who, on the same list (in case of proportional voting system, else in normal order), has got the biggest number of suffrages among the non-elected candidates.

Active and passive voting rights for permanent staff at interim contractors

See page 25 for active and page 26 for passive voting rights.

These explanations are a summary of guidelines worked out between ULEDI and ITM on date of 17th September 1998. The interpretation of the LAW and the GDR has not changed since, so we wonder why agreements found for the social elections in 1998 should not stay valid for those in 2013 and other upcoming ones.

Postal Voting.

The postal voting could be authorised by the Minister of labour and employment for those staff of an establishment, for whom it is known that they will not be present in the establishment on the election day due to the organisation of work at the establishment or because of illness, an accident at work, maternity or other leave (art L.413-1 (5) of the LAW). A template of such a request for authorisation can be found in the part forms & templates.

We think you should, in case you've asked for the authorisation for the postal voting, inform all staff members (via the first announcement) about this and ask them to request their eligibility to participate in the postal voting from the head of establishment or his deputy. This way, you can't be told later that you forgot somebody on the list.

It is important to know that the Minister having the labour in his attributions could, if needed or wanted, modify or adopt his authorisations. The information below is based on recent ministerial authorisations for

postal voting and should be used for information only. In case of postal voting authorisation, it will be the individual ministerial authorisation you need to stick to and not the text below.

The period of publishing the candidatures, which in the GDR is fixed to three operating-days prior to the election day, is now taken to 9⁸ calendar days prior to the election day. This is the same day where the postal voting mail has to be sent out. This mail must contain:

- a notice with the instructions about the postal voting (copy of the ministerial authorisation for example);
- the ballot paper, folded in 4 and in an open envelope, the so called neutral envelope, which only indicates “élections pour les délégations du personnel”;
- a second envelope, open as well, indicating the address of the president of the main electoral office. In the left upper corner, the statute of the staff member (staff member or young staff member), below this information a space left free for the readable signature of the elector and his number on the electoral lists (ticking lists for postal voters). As the costs have to be taken over by the establishment, on the right upper side, at the space of the stamp, the information “Part payé par le destinataire”. This second envelope has to be able to carry the neutral one without having to fold this last one again.
- a copy of the notice of candidatures or at least the instructions to the voters who are given on these announcements;

After having expressed his vote, the postal voter has to:

- fold back the ballot paper as it was, stamp outside;
- put the ballot paper in the neutral envelope and close this one;
- put this neutral envelope in the second envelope indicating the address of the president of the main electoral office;
- close this envelope;
- put his **readable** signature in the space left free for it;
- introduce the postal voting by registered letter at a post office giving it enough time to arrive at the main electoral office prior to the closing time (which has to be indicated to the postal voter by adding the first announcement to the notices of his letter f. ex.). No envelope will be admitted after the closing of the electoral office. If however some did arrive late, these have to be kept closed and will be destroyed the day of handing out the electoral file to the newly elected staff delegation. For establishments, where the postman only shows up late in the morning, the opening hours should be chosen accordingly.

The postal elector who lives outside the country of Luxembourg may **get** and **hand back** the postal voting documents from and to the president of the main electoral office against signatures. The handing back has to be done prior to the closing of the electoral office.

⁸ As in case of need to grants a further 3 days for introducing of valid candidature, this date would be Friday November 1st and this being a public holiday, thus being postponed to Monday November 4th, ITM asked the Minister of Labour to change his Regulation to 8 days instead of 9 for the upcoming elections of November 13th 2013.

At the day of election, the electoral office will open the envelopes. The ballot papers will be put, without opening them, into the ballot box and shuffled with the ballot papers of the electors who came physically to vote prior to counting the ballot. If an envelope contains more than one ballot paper, the voting is void, the envelope and the ballot papers, without opening them have to be destroyed and this has to be mentioned in the report.

The postal voters are ticked on the ticking lists by the assessors while the president of the electoral office introduces their ballot papers in the ballot box. The number of postal voters has to be written into the report.

A voter who has sent back or handed out his postal ballot paper is not admitted to the voting procedure in the electoral office.

List numbering.

The drawings gave following results. Regarding their requests, the different unions and groups were given these descriptions:

- Liste n° 1 OGBL - Onofhängege Gewerkschaftsbond Lëtzebuerg / Confédération syndicale indépendante du Luxembourg
- Liste n° 2 LCGB – Lëtzebuenger Chrëschtliche Gewerkschafts-Bond
- Liste n° 3 ALEBA
- Liste n° 4 SEA Syndicat des Employés de l'Aviation
- Liste n° 5 NGL-SNEP
- Liste n° 6 SYPROLUX
- Liste n° 7 FNCTTFEL - Landesverband
- Liste n° 8 CLSC – CONFEDERATION LUXEMBOURGEOISE DES SYNDICATS CHRETIENS
- Liste n° 9 Neutrale Verband Gemeng Lëtzebuerg N.V.G.L.

TITLE II - THE JOINT WORKS COUNCIL AND EMPLOYEE REPRESENTATION IN LIMITED COMPANIES

Besides staff delegation, the Law of 6 May 1974, as supplemented in the Labour Code, introduced the concept of joint works council and organises employee representation in limited companies.

Chapter 1. - Joint works council

Section 1. - Scopes of application (Art. L. 421-1.)

1. Companies concerned

Joint work council must be formed in all private-sector industrial, craft and commercial undertakings, established on Luxembourg territory and which have employed on average at least 150 employees over the last 36 months.

Employees working part-time, on an apprenticeship scheme or intermittently must be included in the workforce calculation if they are normally employed for at least 16 hours a week in the undertaking.

For employees whose working hours are lower than the threshold specified in the previous paragraph, the workforce is calculated by dividing the total number of hours specified in their employment contracts by the statutory working hours or the contractual working hours.

Employees with a fixed-term contract and those made available to the undertaking are included in the workforce calculation proportionally to the time that they have spent at the company over the last twelve months.

However, employees with a fixed-term contract or with a contract for a specific task, and employees made available by another undertaking are excluded from the workforce calculation where they replace an absent employee or an employee whose employment contract is suspended.

For the purposes of calculating the staff employed by the temporary employment agency, account is taken, firstly, of the permanent employees of that agency and, secondly, of the workers who were bound to the latter by contracts for a specific task over a total duration of at least 10 months during the year preceding the calculation date.

Furthermore, joint work council legally established in an undertaking will validly complete its mandate, regardless of the increase or decrease in the number of workers of the undertaking.

Notwithstanding the date of the next elections, undertakings are invited to set up a joint work council as soon as the workforce reaches the figure specified in the Labour Code. The fact that an undertaking is made up of several separate legal entities does not exclude the possibility that it may be regarded as an economic entity to be considered as a single undertaking within the meaning of the Labour Code. There is an economic unit when despite the existence of legally different companies, there is common management and working conditions or similar working conditions. Complementarity, overlapping of activities, common management and a pool of interchangeable employees with the same company status are the characteristic features of an economic unit. Administrative Court 9 February 1999 (Cedel.)

2. Composition of the joint work council (Art. L. 422-1.)

2.1. Composition

The joint work council is composed equally of employer representatives and of staff representatives.

Its numerical composition depends on the number of staff employed by the undertaking with a minimum of 3 members and a maximum of 30 members.

| Number of staff | full members | alternate members |
|------------------------------|--------------|-------------------|
| from 150 up to 499 workers | 6 | 6 |
| from 500 up to 1000 workers | 8 | 8 |
| from 1001 up to 1500 workers | 12 | 12 |
| from 1501 up to 5000 workers | 14 | 14 |
| more than 5001 workers | 16 | 16 |

When parity in terms of full members is no longer assured, additional by-elections are held in order to restore such parity. Newly elected members will complete the term of office of the outgoing members.

2.2. Appointment of members of the joint council (Art. L. 422-2. et seq)

Employer representatives are appointed by the head of the undertaking according to the procedures that he sees fit. They are appointed for the statutory term of office of the joint work council. A full employer representative can only be replaced and removed from office according to the procedures set out in the Labour Code.

Staff representatives are elected by a secret list ballot, according to proportional representation rules, by the staff delegation or committees, from among the staff who have been employed at the undertaking for at least one year.

However, staff working part-time simultaneously in several undertakings are only eligible in the undertaking in which they work the most hours. In the case of equal working hours, they are eligible in the undertaking in which they have the longest service.

If the undertaking in which the employee has the longest service does not fall within the scope of application of the legal obligation to set up a staff delegation, the employee will be eligible in the undertaking that is bound by this obligation.

The staff delegation will appoint its committee members by ballot.

Note that the safety representative is not an active elector in the elections of the staff representatives within the joint committee and the Board of Directors.

Members of the joint works council may include Luxembourg nationals and nationals of other Member States of the European Economic Area, regardless of sex, who have reached the legal age and who are not prohibited, in full or in part, from exercising the rights listed in Article 31 of the Criminal Code.

Unlike the elections for staff delegation members, the elections for the appointment of staff representatives in joint works council are not held on a date fixed in advance.

It is the responsibility of the head of the undertaking to determine the date of the elections, which must nevertheless be held before the end of the month that follows the conclusion of the elections for the staff delegation.

If an undertaking is established or where the number of employees reaches the figure requiring the creation of a joint work council, the members of the joint work council must be appointed within a period of 3 months.

An undertaking is established when it starts to operate. Furthermore, to work out when the number of staff reaches the threshold provided in the Labour Code, a moving average is calculated over 36 months from the time when the figure of 150 is reached for the first time. The first block of 36 months consists of the 36 months immediately preceding the moment when the number 150 is reached.

Section 2. - Powers of the joint works council

The powers of the joint work council are exercised in two specific areas, namely: - industrial and staff-related powers - economic powers.

The joint work council has the following powers according to the matter concerned:

- decision-making power
- a right to information and consultation - a right of supervision.

Generally speaking, in exercising its powers, the joint work council ensures the strict observance of equal treatment between men and women, in terms of access to employment, vocational training and career advancement, and in terms of pay and working conditions

1. Decision-making power

The joint work council has decision-making power in the following industrial and staff-related areas:

- 1) the introduction or implementation of technical facilities aimed at monitoring the behaviour and performance of the worker at his workstation;
- 2) the introduction or modification of measures concerning the health and safety of workers and the prevention of occupational illnesses;
- 3) the establishment or modification of general criteria concerning personnel selection in terms of recruitment, promotion, transfer, dismissal and, where applicable, the key criteria for early retirement of workers;
- 4) the establishment or modification of general criteria concerning the appraisal of workers. The obligation to inform and to hear the opinion of the committee is limited to decisions of a certain importance. Furthermore, the information and consultation must come before the decision of the head of the undertaking;
- 5) the establishment or modification of works rules or regulations, taking due account, where applicable, of the collective agreements in force;
- 6) the awarding of bonuses to workers whose initiatives or technical improvement proposals have helped the undertaking to forge particularly useful partnerships, without prejudice to the laws and regulations governing patents and inventions.

2. Right to information and consultation (Art. L. 423-2. et seq)

2.1. Monthly information

The head of the undertaking is obliged to notify the staff delegation of information that may help its constituent members to understand the running and life of the undertaking, including recent developments and the likely development of the activities of the establishment and of the undertaking and its economic situation. Such notification is performed on a monthly basis in undertakings with a joint work council.

2.2. Half-yearly information

The head of the undertaking is required to inform and consult with the joint work council in writing, at least

twice a year, on the economic and financial development of the undertaking.

To this end, he presents to the joint work council an overview of the activity performed by the undertaking, its turnover, the aggregate results of production and operation, orders placed, the development of the structure and the amount of staff salaries and investments made.

The expression "the development of the structure and the amount of staff salaries" must be placed in its context which is that of the economic and financial development of the undertaking. The information to be supplied on this subject is sufficient if it contains absolute or relative aggregate figures for the various categories of salaries and professions. The specific identification of data is excluded.

When the undertaking is established in the form of a company limited by shares, the management is required to forward to the joint work council, before they are presented to the general meeting of shareholders, the profit and loss account, the annual balance sheet, where applicable, the report of the board of directors or of the management and any other document due to be submitted to the general meeting of shareholders.

2.3. Annual information

- The head of the undertaking must inform and consult with the joint work council, at least once a year, on current and foreseeable labour requirements in the undertaking and on the measures - in particular, training, development and retraining - which may, where applicable, be necessary for the workers of the undertaking. In addition the head of the undertaking has the obligation to inform and consult the joint work council on specific contracts concluded with young workers (contrat d'appui-emploi, contrat d'initiation à l'emploi, contrat d'initiation à l'emploi – expérience pratique) (Art. L. 414-4. (5))

At the start of each year, the joint work council will receive an activity report from the competent occupational physician.

This report will provide details about the work of the occupational physician throughout the past year in the undertaking concerned.

In undertakings established in the form of a company limited by shares, the joint work council is also kept informed about economic and financial developments and of the recent and foreseeable activities of the establishment and of the undertaking before this information is forwarded to the staff delegation. To this end, the head of the undertaking must submit to the delegation an overall report on the activity of the undertaking, its turnover, the aggregate results of production and operation, orders placed, the development of the structure and the amount of staff salaries and investments made.

2.4. Specific information and consultation

The joint work council must be informed and consulted on any economic or financial decisions that may have a substantial impact on the structure of the undertaking or on the level of employment.

This applies in particular to decisions concerning:

- the volume of production and sales;
- the production programme and orientation;
- the investment policy;
- plans to stop or transfer the undertaking or parts of the undertaking;
- plans to restrict or extend the undertaking's activity;

- plans to merge the undertaking;
- plans to change the organisation of the undertaking;
- the creation, modification and cancellation of a supplementary pension scheme;
- use of temporary work and temporary borrowing of labour.

The information and consultation specified above must concern the repercussions of the measures being considered on the volume and structure of the workforce and on the terms and conditions of employment and working conditions of the staff. It will also concern industrial measures, in particular vocational training and re-training measures taken or planned by the head of the undertaking.

The head of the undertaking is obliged to consult beforehand with the joint works council or, failing this, with the competent staff delegation if such exists, when he is considering creating part-time jobs in the undertaking or in one of its establishments.

Furthermore, the Labour Code specifies that joint work council has consultative powers in the area of measures relating to production or administrative facilities, equipment and manufacturing processes and methods.

Thus, the head of the undertaking must inform and consult with the joint works council prior to any important decisions relating to:

- 1) the construction, transformation or extension of production or administrative facilities;
- 2) the introduction, improvement, renovation or transformation of equipment;
- 3) the introduction, improvement, renovation or transformation of working methods and manufacturing processes, with the exception of trade secrets.

He is required to inform the joint work council about the effects of the measures listed in the paragraph above on working conditions and environment.

The information to be supplied by the head of the undertaking can only, in principle, relate to the period of time during which the joint work council exists. However, if the intelligibility of this information requires explanations and clarifications concerning facts and information relating partly or entirely to the period prior to the creation of the joint work council, these must also be supplied.

What exists at the time of creation of the joint work council remains lawfully acquired and can only be disputed by a decision taken by the joint work council according to the procedures set out in the Labour Code.

The information to be supplied by the head of a subsidiary undertaking or branch or a multinational company is limited to this subsidiary or branch, unless the intelligibility thereof requires additional information on the group as such.

The information and consultation must, in principle, be prior to the decision being contemplated.

This does not apply, however, when there is a risk to the operation of the undertaking or part of the undertaking or may compromise the execution of a planned operation. In these cases, the head of the undertaking must give the delegation, within three days, all the necessary information and explanations.

3. Right of supervision

The joint work council supervises the management of the company welfare facilities set up in the undertaking for employees or their family, including measures aimed at providing or facilitating accommodation for workers.

To this end, it receives a management report from the head of the undertaking at least once a year.

Supervision of the management of the company welfare facilities is an act of approval or disapproval. The joint work council cannot substitute for the body responsible for management itself but has the power to criticise any decision taken by the management body.

Where the Labour Code is silent on how to assess the importance factor, it can be assumed that the assessment of the degree of importance of a decision lies, in principle, with the head of the undertaking, although the latter risks being exposed, if he abuses this right, to a complaint that he is obstructing the normal operation of the joint work council.

As the concept of company welfare facility is difficult to clearly define in company law, it is up to the joint work council to decide, on a case-by-case basis, on what constitutes a company welfare facility.

In the exercise of its powers, the joint works council ensures the strict observance of equal treatment between men and women, particularly in terms of access to employment, vocational training and career advancement, and in terms of pay and working conditions.

4. Use of external advisors

When the absolute majority of a group so requests, advisors - who may or may not be members of staff - may participate in an advisory capacity in the meetings of the joint work council. The number thereof cannot however exceed half of the representatives comprising the group.

When an advisor, requested by the absolute majority of a group, is not accepted by the trade union or unions which are most representative, respectively the competent professional organisations for this group, he cannot perform his role as advisor in the joint work council.

In such a case, the trade union or unions in question will inform the Chairman of the joint work council as soon as possible.

The participation of advisors in a meeting of the joint work council is to be announced in writing to the Chairman of the joint work council - indicating names and roles - at least two clear working days before the meeting. If the employer side wishes to have an advisor participate in a meeting of the joint work council, it will include this matter on the agenda, indicating the names and roles of the advisor(s).

Advisors are appointed by the employer organisations or by the trade unions which are most nationally representative.

Nobody can be a full or alternate member and advisor of two undertakings pursuing activities and purposes of the same nature.

Nobody can be an advisor of the joint work council of an undertaking pursuing activities and purposes of the same nature as the undertaking in which he is employed.

Section 3. - Functioning of the joint works council (Art. L. 424-1. et seq)

1. Functioning of the joint works council

1.1. Chairman and Secretary

The joint works council is chaired by the head of the undertaking or his representative.

A secretary is appointed from among the staff representatives on the joint work council. He is assisted by an administrative secretary appointed by the head of the undertaking from among the staff.

The Chairman receives correspondence sent to the joint work council as such. The Chairman sends either the

original correspondence or a copy thereof to the secretary of the delegation.

Correspondence is jointly signed by the Chairman and the secretary of the delegation, except for invitations which are signed by the Chairman alone.

1.2. Meetings of the joint works council

The head of the undertaking or his representative must convene the joint work council at least once a quarter.

He is also required to convene the joint work council whenever at least one quarter of the representatives making up the joint work council sends him a written request to that end.

The party seeking a meeting of the joint work council will propose a meeting date to the other party which is required to respond within two weeks of the request. This response will contain the meeting date, which must be chosen within the month following the notification of the response.

The head of the undertaking or his representative and the secretary jointly set the agenda for the meeting of the joint works council and must forward this to the members of the joint work council at least 5 days before the meeting. They are required to include on the agenda any matters specified in a request submitted by at least one quarter of the members of the delegation 3 days before the meeting. If, in this case, the request was submitted after the agenda was forwarded to the members, the head of the undertaking or his representative must notify the members of the joint work council within 24 hours.

Meetings of the joint works council are held in camera during working hours. The Labour Code guarantees members of the delegation that they will continue to be paid for the time spent at meetings.

The head of the undertaking must make an appropriate room available to the joint work council as well as the necessary equipment for the meetings and the secretarial work of the joint work council.

2. Deliberations of the joint works council

The decisions and opinions of the joint works council are adopted when they obtain the absolute majority of the votes of the group of employer representatives and that of the group of staff representatives. The decision taken is the result of the separate vote of the group of employer representatives and that of the group of staff representatives. Consequently, separate opinions that have not obtained the qualified majority required in each group do not represent opinions of the delegation.

Disagreement between the group of employer representatives and the group of staff representatives on a decision to be taken in accordance with the decision-making powers granted to the joint work council by the Labour Code, may be referred by one of these groups to the conciliation or arbitration procedure set out in Chapter III of Title IV of the Labour Code regarding the powers and functioning of the National Conciliation Office.

Where, in cases of effective consultation, the group of employer representatives and the group of staff representatives issue separate opinions, these opinions must be brought to the attention of the Board of Directors or, where applicable, to the manager or managers.

Where the undertaking is not established in the form of a company limited by shares, the opinions referred to in the paragraph above must be brought to the attention of the head of the undertaking, unless the latter participated in the deliberations and in the adoption of these opinions.

In all cases, the head of the undertaking, the Board of Directors or the manager are required to give a substantiated account of the actions taken in response to the opinions issued by the joint work council.

The deliberations of the joint work council must be recorded in minutes countersigned by the Chairman and the secretary of the delegation. The minutes specify the decisions taken along with the documents which are necessary to have a full understanding of these.

They must therefore include:

- a description of the problems;
- the arguments on which the decisions taken are based;
- the decisions themselves.

The minutes are prepared by the administrative secretary who simultaneously forwards them to the Chairman and to the secretary of the delegation for possible observations and signature. They are then sent as soon as possible to all members of the joint work council.

The staff representatives are required to report regularly to the staff delegation members and to the equality representative on the activities undertaken by the joint work council.

They hand over to the equality delegate an updated list of the general criteria mentioned in points 3 and 4 of section 2-1 above, even if the employer assigns a confidential nature to these. In this latter case, the equality delegate is required to keep these criteria secret, unless it refers to the Labour Inspectorate those which violate the principle of equal treatment.

Section 4. - Status of joint work council members

1. Term of office of staff delegations

Joint work council members are appointed for a period of five years. Their term of office is renewable.

The duties of a joint work council member end upon death, voluntary resignation, loss of eligibility and termination of the employment contract.

Where a full member ceases his duties for one of the reasons listed in the paragraph above, or is prevented from attending a meeting, he is replaced by an alternate member.

Members of the joint works council and advisors who may attend delegation meetings are required to keep secret any confidential information classified as such in the minutes of the meeting by the head of the undertaking or his delegation. The head of the undertaking or his representative must previously inform the members of the delegation of the confidential nature of various items of information and documents. The confidential nature of such information and documents is to be recorded in the minutes of the meeting.

Members of the joint work council who consider the classification referred to in the paragraph above to be unreasonable may appeal within eight days to the Director of the Labour Inspectorate who will rule on the merits and give a non-appealable decision on the confidential nature or otherwise of the information.

The time spent by full and alternate members at meetings of the joint work council is paid as working hours.

Under no circumstances may it be allocated towards the period of annual paid leave.

In addition to the physical operating expenses and salaries of the delegation members, the undertaking must pay the subsistence and travel expenses incurred by members of the joint work council in the performance of their duties. A member of the joint work council is entitled to allowances for subsistence expenses and allowances for travel expenses, where his attendance at a meeting of the joint work council causes him to incur costs that he would not have incurred if the meeting had not taken place. In principle, meetings must take place during normal working hours. If they take place outside of normal working hours, the time spent at the meeting and the necessary travel time can be taken off in lieu without any loss of salary.

The employer of an advisor is required to help the latter to perform his duties and to release him from work for which he will not be paid. It can only refuse these releases from work when they may disrupt the normal running of the undertaking.

Any advisor who believes that the refusal to release him from work is unjustified may appeal within forty-eight hours to the Director of the Labour Inspectorate who will rule on the merits and give a non-appealable decision.

2. Special protection against dismissal

The dismissal of a full or alternate member of the joint work council must be referred, for approval, to the delegation of which he is part.

The delegation rules in accordance with the provisions of Article L. 424-5., paragraph (1). In the event of disagreement, the dismissal can only proceed if it is authorised by the court with jurisdiction over service contracts.

In the event of serious misconduct, the head of the undertaking has the right to order the immediate suspension of the individual concerned pending the final decision of the court with jurisdiction over employment contracts.

Within eight days of the notification of the suspension, the worker may refer the matter, by simple application, to the President of the court mentioned in the paragraph above who, ruling on a summary basis and having heard the parties summoned, will decide whether to continue or suspend his pay pending the final resolution of the dispute. This decision can be appealed under the same conditions as judgments delivered by the court with jurisdiction over service contracts. It is provisionally enforceable, if necessary, on the basis of the original judgment and before it is recorded. If the final decision rejects the dismissal, the suspension is cancelled and its effects are automatically withdrawn. Any other dismissal of a full or alternate member of the joint work council must be referred, for approval, to the delegation of which he is part. The delegation resolves in accordance with the laws governing decision-making - there is agreement if there is an absolute majority of votes of the group of employer representatives and those of the group of staff representatives. In the event of disagreement, the dismissal can only proceed if it is authorised by the court with jurisdiction over employment contracts.

The provisions above also apply to the dismissal of former members of the joint work council in the six months following the end of their term of office and of joint work council candidates as from the submission of applications and for a period of three months.

Chapter 2. - Employee representation in limited companies

Section 1. - The introduction of staff delegation in limited companies

1. Scopes of application (Art. L. 426-1.)

Staff delegation in the Board of Directors must be introduced by any undertaking having the form of a limited company established on the territory of the Grand Duchy and normally employing at least 1,000 workers over the last three years.

Similarly, staff delegation in the Board of Directors of the limited company is compulsory for any company established on the territory of the Grand Duchy in which the State has a 25% stake or which has a State concession in relation to its principal activity.

The Grand-Ducal Decree of 11 August 1974, supplemented by the Grand-Ducal Decree of 8 April 1989, lists the companies to which the above applies, namely Compagnie Grand-ducale d'Electricité du Luxembourg (CEGEDEL), Compagnie Luxembourgeoise de Navigation Aérienne (LUXAIR), Compagnie Luxembourgeoise de Télédiffusion (CLT-UFA) and Société Européenne des Satellites (SES).

Companies and undertakings created and operating on the basis of an international law treaty are excluded from the scope of application of the Labour Code.

2. Board of directors of limited companies

2.1. Members of the board of directors

By way of derogation from Article 51 (1) of the Law of 10 August 1915 on commercial companies, the legislator stipulated that the Board of Directors of limited companies must have nine directors.

In limited companies normally employing at least 1,000 workers over the last three years, the law provides that one third of the directors making up the Board of Directors must represent the staff of the undertaking.

For limited companies in which the State has a stake of at least 25% or which have a State concession in relation to its principal activity, the Board will comprise one director representing the staff for every one hundred workers employed by the company. The total number of directors representing the staff cannot however exceed one third of the directors of the company nor be lower than three.

2.1. Appointment of staff delegation

The directors representing the staff on the Board are appointed by the staff delegation of the undertaking by means of a list ballot according to the proportional representation system.

Their appointment is made, at the latest, in the month preceding the expiry of the term of office as director as defined in the articles of association of the company.

The directors to be elected must be part of the staff employed in the undertaking and be connected to the latter by an employment contract showing at least two years' service.

For undertakings in the steel industry, Art. L. 426-5. of the Labour Code enables the trade unions which are most nationally representative, following consultation of the signatory parties of the collective agreement(s) applicable to the undertaking, to directly appoint three of the directors representing the staff. These directors may be appointed from outside the staff employed in the undertaking. The distribution of seats will be agreed beforehand between these trade unions. Failing interunion agreement, it is up to the Minister for Labour to appoint the directors from among the staff of the undertaking.

Section 2. - Office of director representing the staff

1. Term and termination of office (Art. L. 426-7.)

The directors representing the staff are appointed for a period equal to that of the term of office of the other directors. Their term of office is renewable.

Their term of office ends upon death, voluntary resignation or termination of the employment contract. It may also end if revoked either by the staff delegation members or by the trade union or by the Minister for Labour whose mandate they hold.

2. Responsibility of the director representing the staff

The director representing the staff is responsible for errors in his management.

3. Protection against dismissal (Art. L. 426-9.)

The director representing the staff cannot be dismissed throughout the duration of his tenure without the authorisation of the competent employment tribunal. However, if the director commits serious misconduct in the performance of his professional activities, the head of the undertaking may order the immediate suspension of the individual concerned pending the final decision of the competent employment tribunal (see on this subject Chapter 1, Section 4, point 2).

4. Incompatibilities with other duties

No director may sit on more than two boards of directors.

Under no circumstances can they be simultaneously directors of companies that pursue activities and purposes of the same nature.

Furthermore, they cannot be employed by another undertaking performing activities of the same nature as the company concerned.

5. Right to convene the Board of Directors

In the limited companies to which this chapter refers, the directors comprising at least one third of the members of the Board may, when announcing the agenda of the meeting, convene the Board if the latter has not met for more than three months. The Chairman of the Board is required to include on the agenda of the next meeting any matters raised in a request submitted by one third of the members of the Board of Directors.

Chapter 3. - Elections of staff delegation in joint work council and Boards of Directors

Section 1. - Electoral operations

1. Organisation of the ballot

Staff delegation sitting on joint work council and on Boards of Directors will be elected by a secret list ballot according to proportional representation rules, by the delegation(s), from among the staff employed in the company.

Elections for the appointment of staff delegation on joint work council will be held before the end of the month following the publication of the result of the elections of the staff delegation members or, where applicable, the validation of the elections by the Director of the Labour Inspectorate. However, if an undertaking is established, the members of the joint work council are appointed within a period of three months. The same applies when the number of workers employed in the undertaking over the last three years has been at least 150. Elections for the appointment of staff delegation on the Board of Directors will be held no later than the month preceding the expiry of their term of office, in accordance with the articles of association of the company.

Staff delegations on the Board of Directors are simultaneously elected without prejudice to the date on which they take up their duties.

Elections are organised and managed by the head of the undertaking or by a representative whom the former will appoint for this purpose.

Election-related documents are kept by the joint works council or by the Board of Directors until the expiry of its term of office.

All costs incurred by elections will be borne by the head of the undertaking.

At least one month before the elections are held, the head of the undertaking or his representative must, by means of notices posted, inform the workers of the undertaking about the date and place of the elections and the time at which these operations will begin and end. Between the start and end of the operations, there must be sufficient time - at least one hour - to enable each elector to cast his or her vote.

The notice will also indicate the number of staff delegation to be elected, the place where interested persons may read the names of candidates and the conditions for putting one's name forward as candidate.

2. Electoral lists

The head of the undertaking or his representative establishes for each ballot the alphabetical list of employees who meet the conditions for putting their name forward as candidate.

Members of the joint works council may include Luxembourg nationals and nationals of other Member States which are signatories of the European Economic Area Agreement, as well as nationals of non-signatories of the European Economic Area Agreement but who hold a type B or C work permit issued in accordance with the laws and regulations governing the employment of foreign labour.

However, nationals of non-signatories of the European Economic Area Agreement, employed under a work permit other than a type B or C permit (doesn't exist since the law about immigration of August 2008), may be elected up to the limit of one third of the members comprising the staff representation. Those elected in excess will be replaced, where necessary, by Luxembourg nationals, by nationals of a Member State which is a signatory of the European Economic Area Agreement or by nationals of non-signatories of this Agreement, who hold a type B or C work permit, who are not elected, but who, on the same list, obtained the largest number of votes.

Membership is open to individuals who meet these conditions regardless of sex and who have reached the legal age and who are not prohibited, in full or in part, from exercising the rights listed in Article 11 of the Criminal Code.

In addition, staff delegation must have worked continuously at the undertaking for at least one year.

Staff working part-time simultaneously in several undertakings are only eligible in the company in which they work the most hours. In the case of equal working hours, they are eligible in the undertaking in which they have the longest service.

If the undertaking in which the employee has the longest service does not fall within the scope of application of the legal obligation to set up a staff delegation, the employee will be eligible in the undertaking that is bound by this obligation.

A company employee can only be appointed director representing the staff if his employment contract started at least two years prior to his appointment and correspond to an actual job. He does not lose the benefit of this employment contract.

Fifteen clear days before the election day, electoral lists are deposited by the head of the undertaking or his delegation for inspection by interested parties.

By no later than the same day, employees are informed, by means of notices displayed on the notice board, that any complaint in relation to the lists deposited must be submitted within 3 working days of such deposit.

A copy of the notice is forwarded, on the same day on which it is deposited, to the Labour Inspectorate.

Complaints submitted against electoral lists are referred, within a period of 3 clear days, for decision by the head of the undertaking or his delegation who will hear the observations of the interested parties. Decisions are notified to interested parties within eight days of the depositing of the lists.

3. Submission of applications

Candidates are put forward on lists proposed by electors. Each isolated application is considered to form a list on its own.

Each list must be accompanied by a declaration signed by the candidate or candidates certifying that they agree to be put forward as a candidate.

Lists must be handed over to the head of the undertaking or to his representative no later than the fourth working day in the undertaking preceding the elections at 6 p.m. After this cut-off time, applications can no longer be received.

Each list of candidates bears, as identification, the name of the representative whom those submitting the list have chosen to hand over the list to the head of the undertaking or his representative. Each list must bear a name. If different lists bear the same names, representatives are asked to make the necessary distinctions, failing which these lists are identified by a sequential letter by the head of the undertaking or his representative. This identification must be performed before the end of the period granted for candidates' declarations.

The list indicates, in alphabetical order, the surname and first name of the candidates and those of the electors submitting the list. No person may appear on more than one list neither as candidate nor as submitter nor as representative.

If identical declarations about candidates included on lists are deposited, the earliest alone is valid. If they bear the same date, all are invalid. A list cannot include a higher number of candidates than the number of full and alternate members to be appointed.

The head of the undertaking or his representatives records the lists in the order in which they are submitted. He will refuse to record any list which does not meet the requirements stated above. On the deadline for the submission of applications, the head of the undertaking or his representative draws up the list of candidates.

Where the number of candidates does not exceed the number of full representatives and alternate representatives to be elected, or where the number of candidates put forward is less than the number of full representatives and alternate representatives to be elected, these candidates are declared elected without further formality, on condition, however, that only one list of candidates has been submitted and that the representative for this list has expressly identified, firstly, the full representatives and, secondly, the alternate representatives in the order in which they must replace the full representatives.

The head of the undertaking or his representative draws up a report.

If no valid application has been submitted in the period specified, or if the number of applications is less than the number of posts to be filled, the head of the undertaking or his representative informs the electors accordingly and grants them an additional period of three days.

If, at the expiry of the period specified in the paragraph above, no valid application has been submitted, the head of the undertaking or his representative draws up a report which he sends with the related documents to the Director of the Labour Inspectorate. Full representatives and alternate representatives are then automatically appointed by the Minister of Labour from among the eligible workers, at the proposal of the Director of the Labour Inspectorate.

Valid applications are notified to electors.

The notification reproduces on the same sheet the surnames, first names and work attachments of the candidates from all valid lists which have been recorded. For each list, the order of presentation of candidates is maintained and lists are classified according to the order determined by lots drawn by the head of the undertaking or his representative, assisted by two staff delegation members as witnesses. An Arabic numeral, corresponding to the sequence number, is entered in bold at the top of each list.

The notification also reproduces instructions for electors.

4. Voting procedure

On the day of the vote, an election committee is formed comprising a Chairman and two assessors.

The head of the undertaking or his representative acts as Chairman of the election committee.

Two employees, to be appointed by the staff delegations, perform the duties of assessors. However, the post of assessor cannot be filled either by outgoing staff representatives or by new candidates to the post of staff delegation or by members of staff delegation.

Members of the election committee are required to count votes accurately.

At the opening of the ballot, one of the assessors does a roll-call of the electors on the list that have been drawn up by the head of the undertaking or his representative. He checks off the names of the electors who respond to the roll-call.

Each elector who responds to the roll-call receives from the Chairman a ballot paper, folded in four at right angles and stamped on the reverse.

Ballot papers are identical to the notification, except that they may be smaller in size and do not reproduce the instructions for electors. They state the name of the full representatives and the alternate representatives to be elected.

A box reserved for the vote is situated at the top of each list. It is black and has in the centre a small circle with the colour of the paper. Two other boxes are situated after the surname and first name of each candidate.

The papers used for the same ballot must be identical in respect of the paper, format and print.

The use of any other papers is forbidden.

Ballot papers must be stamped on the reverse before the ballot using a stamp provided by the head of the undertaking.

Any elector who accidentally damages the ballot paper provided may request another from the Chairman by handing over the first ballot paper which is immediately destroyed.

Each elector has as many votes as there are full representatives and alternate representatives to be elected.

The elector may cast two votes for each of the candidates up to the total number of votes that he has.

Any elector who fills in the circle in the box situated at the top of a list votes for this list in full and thus casts a vote for each of the candidates on this list.

Each cross (+ or x) entered in one of the reserved boxes after the name of a candidate constitutes a vote for this candidate.

Any circle filled in, even if incomplete, and any cross marked, even if imperfect, validly constitutes a vote, unless the intention to make the ballot paper recognisable is evident.

Any cross marked in a place other than the reserved box nullifies the ballot paper.

Electors must refrain from making any other inscription, signature, erasure or sign whatsoever on the ballot paper.

The elector may cast all the votes that he has to one of the lists or allocate votes to different lists. After voting, the elector shows the Chairman of the election committee his ballot paper duly folded back in four and stamped on the outside and places it in the ballot box.

No proxy voting is allowed. The ballot paper is to be handed over by the elector in person. It cannot be handed over by third parties or by post.

5. Counting the votes

At the time fixed for the close of the ballot, the ballot box is opened by the Chairmen in the presence of the two assessors. The delegation counts, without unfolding them, the ballot papers contained in the ballot box. The number of voters and the number of ballot papers are entered in the report. Before opening ballot papers, the Chairman mixes them up.

Votes cast globally to a list in full (list votes) or to individual candidates (named votes) are taken into account in calculating the proportional distribution of seats between lists and in allocating seats in lists. The vote cast in the box situated at the top of a list counts for as many list votes as there are candidates.

The Chairman of the election committee announces the list votes and the named votes. The two assessors count the votes and each keep a separate note of these. Spoilt ballot papers are not included in determining the number of votes.

The following ballot papers are spoilt:

1. all ballot papers other than those which have been handed over to electors by the Chairman of the election committee;
2. ballot papers which cast more votes than there are representatives to be elected and those which cast no vote;
3. ballot papers whose forms and dimensions have been altered, which contain on the inside some form of paper or object or whose author could be recognised by a sign, erasure or mark of some kind.

The committee establishes the number of voters, the number of spoilt ballot papers including blank ballot papers and valid ballot papers, the number of list votes obtained by each list of candidates and the number of named votes obtained by each candidate. It records these figures in the report.

When all ballot papers have been counted, the assessors examine them and present their observations or complaints, if any.

Ballot papers which have been the subject of complaints are added to valid ballot papers if they have been accepted as such by a committee decision.

Cancelled or disputed ballot papers other than blank ballot papers are initialled by the members of the committee. Complaints and committee decisions are recorded in the report.

6. Allocation of seats

In order to determine the distribution of seats, the total number of valid votes obtained by the various lists is divided by the number of full representatives to be elected, plus 1.

The term "electoral number" is the whole number which is immediately higher than the quotient thus obtained.

Each list is allocated as many full representative seats and as many alternate representative seats as the number of times the electoral number is contained in the number of votes obtained by this list.

When the number of full representatives and alternate representatives thus elected is still lower than the number of full representatives and alternate representatives to be elected, the number of votes on each list is divided by the number of full representative seats that it has already obtained, plus 1. The full representative seat and the corresponding alternate representative seat are allocated to the list which obtains the highest quotient. The same process is repeated if there are still available seats.

In the event of equal quotient, the available full representative seat and the alternate representative seat are allocated to the list that obtained the most votes.

The respective full representative and alternate representative seats are allocated, in each list, to the candidates who have obtained the largest number of votes.

Alternate representative seats are allocated to candidates who rank, in terms of number of votes obtained, after the full representatives.

In the event of a tied vote, the seat goes to the eldest candidate.

Where the number of candidates exceeds the number of members to be elected, those who have obtained the most votes are elected.

In the event of a tied vote, the seat goes to the eldest candidate.

A report, signed on the spot by the Chairman and the assessors, is drawn up on the electoral operations and the results of the ballot.

The names of the full and alternate representatives elected are displayed for three days in the establishment.

If an elected candidate refuses to take up this post, he is replaced by the person who obtained the highest number of votes on the list. The post must be refused within six days of the publication of the result of the elections.

Complaints against elections must be submitted within eight days of the ballot for decision by the Director of the Labour Inspectorate.

If the election is declared invalid by the Director of the Labour Inspectorate, fresh elections must be held within one month of the date of invalidation.