

Law of 31 May 1999 governing the domiciliation of companies

- **amending and supplementing certain provisions of the amended Law of 10 August 1915 on commercial companies;**
- **amending and supplementing certain provisions of the amended Law of 23 December 1909 which establishes a trade and companies register, as amended;**
- **amending and supplementing the Law of 28 December 1988 regulating access to the occupations of skilled tradesman, merchant, manufacturer and certain liberal professions, as amended;**
- **supplementing the Law of 12 July 1977 on holding companies;**
- **amending and supplementing certain provisions of the Law of 5 April 1993 on the financial sector, as amended;**
- **supplementing the Law of 6 December 1991 on the insurance sector, as amended**

(Mém. A 1999, No 77)

as amended

– by the Law of 1 August 2001 relating to the changeover to the euro on 1 January 2002 and amending certain legislative provisions;

(Mém. A 2001, No 117)

– by the Law of 13 November 2002 transposing into Luxembourg law Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of *avocat* on a permanent basis in a Member State other than that in which the qualification was obtained and

1. amending the Law of 10 August 1991 on the legal profession, as amended;
2. amending the Law of 31 May 1999 governing the domiciliation of companies;

(Mém. A 2002, No 140)

– by the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings and amending divers other statutory provisions;

(Mém. A 2002, No 149)

– by the Law of 2 August 2003 amending

- the Law of 5 April 1993 on the financial sector, as amended;
- the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”), as amended;
- the Law of 31 May 1999 governing the domiciliation of companies, as amended.

(Mém. A 2003, No 112)

– by the Law of 21 June 2007 amending

1. the Law of 13 November 2002 transposing into Luxembourg law Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained and:
 1. amending the Law of 10 August 1991 on the legal profession, as amended;
 2. amending the Law of 31 May 1999 governing the domiciliation of companies, as amended;
2. the Law of 29 April 1980, as amended, regulating the provision of services in the Grand Duchy of Luxembourg by lawyers entitled to exercise their activities in another Member State of the European Communities;

3. the Law of 31 May 1999 governing the domiciliation of companies, as amended

(Mém. A 2007, No 101)

– by the Law of 13 July 2007 on markets in financial instruments and transposing:

- Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Directive 93/22/EEC;
- Article 52 of Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;

and amending:

- the Law of 5 April 1993 on the financial sector, as amended;
- the Law of 20 December 2002 relating to undertakings for collective investment, as amended,
- the Law of 12 November 2004 on the fight against money laundering and terrorist financing;
- the Law of 31 May 1999 governing the domiciliation of companies, as amended;
- the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”);
- the Law of 6 December 1991 on the insurance sector, as amended;
- the Law of 3 September 1996 concerning the involuntary dispossession of bearer securities;
- the Law of 23 December 1998 concerning the monetary status of the Banque centrale du Luxembourg;

and repealing:

- the Law of 23 December 1998 relating to the supervision of securities markets, as amended;
- the Law of 21 June 1984 on financial futures, as amended.

(Mém. A 2007, No 116)

– by the Law of 18 December 2009 concerning the audit profession and:

- transposing Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC,
- organising the audit profession,
- amending certain other legal provisions, and
- repealing the Law of 28 June 1984 on the organisation of the profession of company auditor, as amended.

(Mém. A 2010, No 22)

– by the Law of 28 April 2011

- transposing Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management;
- transposing for credit institutions Directive 2009/49/EC of the European Parliament and of the Council of 18 June 2009 amending Council Directives 78/660/EEC and 83/349/EEC as regards certain disclosure requirements for medium-sized companies and the obligation to draw up consolidated accounts;
- completing the transposition of Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes and the payout delay;
- amending the Law of 5 April 1993 on the financial sector, as amended;

- amending the Law of 17 June 1992 relating to the accounts of credit institutions, as amended;
- amending the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”);
- amending the Law of 31 May 1999 governing the domiciliation of companies;
- amending the Law of 13 July 2007 on markets in financial instruments, as amended;
- amending the Law of 11 January 2008 on transparency requirements in relation to issuers of securities;
- amending the Law of 10 November 2009 on payment services

(Mém. A 2011, No 81)

– by the Law of 27 May 2016

amending, with the view of reforming the legal publication regime regarding companies and associations,

- the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended;
- the Law of 10 August 1915 on commercial companies, as amended;
- the Law of 21 April 1928 on non-profit organisations, as amended;
- the Grand-ducal Decree of 24 May 1935 supplementing the legislation on suspension of payments, on composition with creditors to prevent bankruptcy by establishing a controlled management regime, as amended;
- the Grand-ducal Decree of 17 September 1945 revising the law of 27 March 1900 on the organisation of agricultural associations, as amended;
- the Law of 24 March 1989 on the Banque et Caisse d’Epargne de l’Etat, Luxembourg, as amended;
- the Law of 25 March 1991 on economic interest groupings, as amended;
- the Law of 25 March 1991 on divers implementing measures of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG), as amended;
- the Law of 17 June 1992 relating to the annual and consolidated accounts of credit institutions, as amended;
- the Law of 8 December 1994 relating to: - the annual and consolidated accounts of insurance and reinsurance undertakings governed by the laws of Luxembourg - the obligations in relation to the drawing-up and publication of accounting documents of branches of insurance undertakings governed by foreign laws, as amended;
- the Law of 31 May 1999 governing the domiciliation of companies, as amended;
- the Law of 22 March 2004 on securitisation, as amended;
- the Law of 15 June 2004 relating to the investment company in risk capital (SICAR), as amended;
- the Law of 13 July 2005 on institutions for occupational retirement provision in the form of a SEPCAV and an ASSEP, as amended;
- the Law of 13 February 2007 relating to specialised investment funds, as amended;
- the Law of 10 November 2009 on payment services, as amended;
- the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
- the Law of 7 December 2015 on the insurance sector;
- the Law of 18 December 2015 on the failure of credit institutions and certain investment firms.

(Mém. A 2016, No 94)

Art. 1.

(1) When a company establishes a seat with a third party to conduct business there within the scope of its objects and the said third party provides certain services associated with such business, the company and the said third party, known as the domiciliation agent of companies, shall be required to enter into a written agreement known as a domiciliation agreement.

(Law of 18 December 2009) "Only a registered member of one of the following regulated professions established in the Grand-Duchy of Luxembourg may act as a domiciliation agent of companies: a credit institution or another professional of the financial sector and the insurance sector, an attorney-at-law ("avocat à la Cour") included in list I and a European lawyer practising under his home-title professional title included in list IV referred to in Article 8(3) of the amended Law of 10 August 1991 on the profession of *avocat*, *réviseur d'entreprises* (statutory auditor), *réviseur d'entreprises agréé* (approved statutory auditor) or accountant."

(2) A Grand-Ducal Regulation adopted on the advice of the *Conseil d'Etat* may add other regulated professions to those enumerated in the preceding paragraph which are subject to a supervisory or disciplinary body either official or specific to the profession and recognised by the law.

(3) Non-compliance with a provision of the first paragraph of this Article on the part of the company concerned constitutes a serious breach of the law which may lead to its judicial winding-up or closure pursuant to the provisions of Articles 203 and 203-1 of the amended Law of 10 August 1915 on commercial companies.

(4) (Law of 2 August 2003) "This Article does not apply to:

- (Law of 13 July 2007) "the domiciliation of a company with a natural person who is himself a direct or indirect partner exerting a significant influence over the conduct of the company's affairs;"

- the domiciliation of an investment company or of any other undertaking for collective investment having the legal form of a commercial company, with a management company of undertakings for collective investment;

- (Law of 13 July 2007) "the domiciliation of a management company of undertakings for collective investment or an advisory company of undertakings for collective investment with another management company of undertakings for collective investment."

- (Law of 13 July 2007) "the domiciliation of a company with a company belonging to the same group."

Art. 2.

(1) Any domiciliation agent of companies referred to in Article 1 is required to meet the following professional obligations:

a) Before entering into an agreement with a company under which the registered office or other seat of the company is established with it and under which it is responsible for providing certain services associated with the fact of the said seat being established with it, it shall be obliged to verify the company's compliance with the provisions relating to domiciles of subparagraph 2 or Article 2 of the amended Law of 10 August 1915 on commercial companies.

b) It shall be obliged to know the real identity of the members of the bodies of the company domiciled with it and to hold the relevant documentation and keep it up to date. In the event of there being doubt as to whether such persons, in their capacity as members of the said bodies, are acting for their own account, or in the event of it being certain that they are not acting for their own account, the domiciliation agent of companies shall take reasonable measures to obtain information concerning the real identity of the persons on behalf of whom the said persons are acting. The documentation used to identify the aforementioned persons shall be retained for a period of at least 5 years after the

cessation of relations between the company and the said persons, without prejudice to any longer periods of retention prescribed by other laws.

c) In the event of the domiciliation agent of companies finding that the company's statutory bodies and representatives contravene the legal provisions governing commercial companies and the right of establishment, it may terminate the domiciliation agreement with immediate effect by registered letter indicating the legal provisions which were not complied with. The termination shall take effect as from the date of its notification to the trade and companies register by the domiciliation agent of companies.

(2) The domiciliation agent of companies shall not incur any criminal or civil liability through having simply complied with the legal obligations imposed by this article.

Art. 3.

(1) When a company's domiciliation agreement is terminated early or when it expires and is not renewed, the agreement shall remain effective and the domiciliation agent of companies shall remain bound by its obligations deriving therefrom, as well as the obligations prescribed by Article 2, until the date on which the notice of termination is filed at the trade and companies register of the company's domicile. "The trade and companies register official" (Law of 19 December 2002) who receives the notice shall inform the *Procureur d'Etat* of the company's domicile thereof without delay. The cessation of the domiciliation shall, moreover, be published in the "Recueil électronique des sociétés et associations"² at the behest of the domiciliation agent of companies in accordance with the rules prescribed for the filing and publication of deeds or indications relating to commercial companies.

(2) With effect from the date of filing referred to in paragraph (1), the company concerned shall no longer have a legal domicile if the seat in question was the company's domicile.

(Law of 28 April 2011)

"(3) Without prejudice to paragraph (1), where a domiciled person is a person supervised by the CSSF, the domiciliation agreement is validly terminated only if the termination is notified to the CSSF at least one month before it takes effect."

Art. 4.

(1) The following persons shall incur a term of imprisonment of eight days to five years and a fine of "between 1,250 and 125,000 euros" (Law of 1 August 2001), or only one of these penalties, he who:

a) acts as a domiciliation agent of companies for one or more companies without legally practising a profession referred to in paragraphs (1) and (2) of Article 1;

b) acting in bad faith, establishes a seat of a company in the Grand-Duchy of Luxembourg with a domiciliation agent of companies who does not legally practise a profession referred to in paragraphs (1) and (2) of Article 1.

(2) He who establishes a seat of a company in the Grand-Duchy of Luxembourg with a domiciliation agent of companies without entering into a written domiciliation agreement shall incur a fine of between "1,250 and 125,000 euros" (Law of 1 August 2001).

(3) A domiciliation agent of companies who:

a) in violation of Article 1 (1), fails to enter into a written domiciliation agreement or does not effect publication as required;

b) violates a provision of Article 2;

¹ Electronic digest of companies and associations

² Law of 27 May 2016

shall incur a fine of between “1,250 and 125,000 euros” (Law of 1 August 2001).

Art. 5. Articles 203 and 203-1 of the Law of 10 August 1915 on commercial companies, as amended, shall apply in the event of any serious breach of the provisions of this law.

Art. 6. (amendment of Articles 2, 11bis, 151, 159, 203 and 203-1 of the amended Law of 10 August 1915 on commercial companies)

Art. 7. (amendment of Articles 5 and 7 of the amended Law of 23 December 1909 establishing a trade and companies register (repealed by the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings and amending certain other legal provisions) (see current point 9 of Article 13 and Article 14 of the Law of 19 December 2002))

Art. 8. (amendment of Articles 2 and 3 of the amended Law of 28 December 1988 **regulating access to the occupations of skilled tradesman, merchant, manufacturer and certain liberal professions**)

Art. 9. (insertion of an Article 1-1 in the amended Law of 12 July 1977 relating to holding companies)

Art. 10. (insertion of an Article 28-1 (currently Article 29) and amendment of Article 42 of the amended Law of 5 April 1993 relating to the financial sector)

Art. 11. (insertion of an Article 97-1 in the amended Law of 6 December 1991 on the insurance sector)

Art. 12.

(1) This law shall enter into force on the first day of the second month following the date of its publication.

(2) Companies existing when this law enters into force, and their domiciliation agent of companies, if any, shall have a period commencing upon such entry into force and ending at the close of their then current financial year in which to achieve compliance with the requirements of this law, including the filing at the trade and companies register of the amendments to their articles of association made necessary by this law, for their publication.