COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

In case of discrepancies between the French and the English texts, the French text shall prevail

Luxembourg, 8 July 2002

To all the credit institutions and all the other professionals of the financial sector

CSSF CIRCULAR 02/65

Re: Law of 31 May 1999 governing company domiciliation; clarifications regarding the term "seat" ("*siège*", place of business)

Dear Sir, Madam,

This Circular aims at specifying the meaning of the concept of company domiciliation as used in the Law of 31 May 1999 governing company domiciliation (the "Law" hereinafter) in practice.

The purpose of the Law is to create a legal framework with a view to preventing an important activity carried out by different market participants – the domiciliation of companies – from being used for illegal or fraudulent purposes, notably to the detriment of the reputation of the Luxembourg financial sector.

In order for the Law to be implemented in accordance with this approach, its scope of application must be specified as regards the term "seat" used therein.

The question concerning the scope of the Law, more specifically as regards the term "seat", arises as regards Luxembourg companies having established their registered office with a third party (domiciliation agent) in Luxembourg, as well as Luxembourg companies that have a seat with a third party (domiciliation agent) in Luxembourg besides their registered office.

The same question also arises concerning foreign companies whose registered offices are legally located abroad and which are doing business from Luxembourg in one way or another. The Law does not clearly state whether these different operations in Luxembourg correspond to a "seat" and, consequently whether these companies are obliged to sign a domiciliation agreement with an authorised domiciliation agent.

The legislator having intended to prevent Luxembourg from being used for fraudulent and illegal activities, namely under the guise of non authorised domiciliation agents, the concept of "a seat" must be read in a broader sense in order to encompass specific situations, including totally artificial situations, which might constitute an abuse. At the same time, it must be avoided that all foreign companies connected in any way to Luxembourg are henceforth submitted to the legislation governing the domiciliation activity.

Indeed, the *Conseil d'Etat* had noted in its opinion on the draft law that it should be borne in mind that the objective pursued by the draft law consists in regulating domiciliations in order to prevent abuses because of the fictitious character that the domiciliation in the Grand Duchy of Luxembourg of a foreign company might have, given the current state of legislation. Therefore, in order not to empty the draft law of its substance, it must be ensured that, taking into account the specificity of the activities falling under the scope of the regulations governing the financial sector, the scope of application of the Law remains as broad as possible.

Meaning of a "seat" according to the Law

On this basis, it must be remembered that according to Law, a "seat" exists as soon as a third party puts an address in Luxembourg at the disposal of a company in order to be used by the latter *vis-à-vis* other third parties.

This is notably the case where the company has been authorised to use the address and/or the name of the professional or the designated third party as its own address *vis-à-vis* other third parties. It is therefore considered as having a seat at this address.

Having a seat as referred to under the Law does not require the existence of an effective material presence (offices, staff, etc.), but may be limited to its simplest form (letter box or telecommunications installation).

Opening a bank account or renting a safe-deposit box with a Luxembourg credit institution does not imply that the company concerned disposes of a "seat" in the sense of the Law, even if the account or safe-deposit box are operated by a representative (resident or not) specially appointed to this end.

A company having an account with a credit institution or another Luxembourg professional of the financial sector which concluded a hold mail agreement with this professional, is not to be considered as having established a seat with this professional for the simple reason that such an agreement exists, as this address is not available to third parties.

The account-holding company can also instruct a credit institution or another professional of the financial sector to send the mail (coming from the professional) to a designated third party in Luxembourg. This fact does not imply that the company has a seat in the sense of the Law.

Rental practices

It has been observed that in practice certain persons use artifices to try to bypass the Law.

This is the case where rental agreements conceal in fact a domiciliation activity, notably where the rental agreement does not present the elements of a traditional rental, i.e. a lasting rental with a lessor and a tenant for a single premise with a separate entry used by the tenant to carry out its activity.

Thus, renting one or several premises to companies is likely to be considered as domiciliation activity if the number of tenant firms is disproportionate to the size of the rented premises. Indeed renting under these circumstances excludes any possibility of real activity within the premises concerned.

The more recent practice of renting technically and administratively equipped offices (telephone services, secretarial work, equipped meeting rooms, etc.) does as such not fall under the Law, provided that it meets the rental criteria, notably as regards the occupation of private premises for the exclusive use of the tenant.

The practice of time-sharing which allows renting the same offices to one or several companies according to a system of part-time use shall be considered as a company domiciliation activity if it is intended to bypass the Law.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

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