

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

Luxembourg, 7 June 2001

To all credit institutions
and other professionals of
the financial sector

CIRCULAR CSSF 01/29

Re: Minimum content required for an agreement on the domiciliation of companies

Ladies and Gentlemen,

The law of 31 May 1999 governing the domiciliation of companies entered into force on 1 January 2001. This law provides that a small group of professionals, including credit institutions and other professionals of the financial sector established in Luxembourg and subject to the supervision of the CSSF, may exercise the domiciliation activity. The law requires a written agreement between the domiciled company and the domiciliation agent of companies and imposes a set of professional obligations on the domiciliation agents of companies.

The purpose of this circular is to specify the points which shall be included in the domiciliation agreement.

I Scope

This circular applies to all credit institutions and other professionals of the financial sector established in Luxembourg and subject to the supervision of the CSSF.

II Responsibility of the management

The management of the professional appoints one of its authorised members to ensure especially that the content of the domiciliation agreement and the compliance with the professional obligations of the domiciliation agent of companies are in accordance with the applicable legal provisions and the rules set by the CSSF.

The professionals shall communicate the name of the designated member of the management to the CSSF before 1 September 2001 and then any changes in this matter.

III Points which shall be included in the domiciliation agreement

1. Subject-matter of the agreement

Article 1(1) of the law of 31 May 1999 provides a definition of the domiciliation of companies. The domiciliation takes place "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".

Thus, the agreement shall indicate that the company is authorised to establish a seat with the domiciliation agent of companies and shall also specify the services provided by the domiciliation agent of companies.

2. Rights and obligations of the domiciliation agent of companies

The domiciliation agreement shall expressly include the different points regarding the professional obligations set out in the law. Thus, the following shall be indicated:

- the obligation to know the identity of the members of the bodies, the shareholders and the beneficial owners of the company pursuant to the principles provided in Circular IML 94/112¹ on combating money laundering and prevention of the use of the financial sector for the purpose of money laundering;
- the obligation to keep the documents used to identify the aforementioned persons for a period of at least 5 years following the end of the relationship between the company and the said persons;
- the obligation to verify that the company's statutory bodies and representatives do not contravene the legal provisions governing commercial companies and the right of establishment. In order to be able to observe this obligation, the

¹ Amended by Circular CSSF 08/387

agreement shall also provide the obligation for the domiciliation agent of companies to be aware of any correspondence addressed to the company.

The agreement shall also indicate that Article 40(1) and (2)² of the law of 5 April 1993 on the financial sector, as amended, requires professionals of the financial sector to provide the fullest possible response to, and cooperation with, any lawful demand which may be made to them by the authorities responsible for applying the law in the exercise by those authorities of their powers.

They are also obliged to fully co-operate with the Luxembourg authorities responsible for the fight against money laundering by providing at these authorities' request all the necessary information in accordance with the procedures set out in the applicable law and by informing, at their own initiative, the State Prosecutor of the Luxembourg district court of any indication of money laundering.

3. Responsibility of the domiciliation agent of companies

The exemption clauses shall be specified in the agreement.

4. Rights and obligations of the company

In order to allow the domiciliation agent of companies to comply with all its professional obligations, the agreement shall state that the domiciled company must observe the following obligations:

- the obligation to provide the domiciliation agent of companies with all the books, registers, documents, minutes of the bodies, agreements or files necessary for the compliance with its obligations and in particular its identification obligation and its obligation to assess the activity exercised by the company and the financial situation;
- the obligation to provide the domiciliation agent of companies with all the documents and certificates required by the law or by the Luxembourg authorities;
- the obligation to inform the domiciliation agent of companies of any dispute or conflict in which it is involved and of any trial of which it may be a party;
- the obligation to immediately inform the domiciliation agent of companies of any changes in its articles of incorporation as well as any changes in the share ownership structure, its bodies as well as its beneficial owners, and to provide all the relevant documents;

² Amended by the law of 12 November 2004

- the obligation to avoid anything which may give the impression to third parties that the company is linked to or in relation with the domiciliation agent of companies in a manner other than as domiciled company and domiciliation agent of companies;
- the obligation to rigorously comply with the applicable and relevant legal, regulatory and administrative provisions in force in the Grand Duchy of Luxembourg and abroad.

5. Instructions and communication mode

The agreement shall specify the transmission mode of instructions between the company and the domiciliation agent of companies and it shall indicate that the domiciliation agent of companies may not execute instructions in certain cases to be specified in the agreement and that it will not be held liable by the company.

6. Commissions

The agreement shall set the amount and the payment date of the domiciliation commission and indicate the procedure and the consequences in case of non-payment of the commission.

7. Duration and termination of the agreement

The agreement shall set the duration of the contract and specify the termination procedure and its consequences.

If the parties are free to terminate the agreement with a notice period, the agreement shall provide the possibility of a termination **without a notice period** in case of **serious breach** pursuant to the terms and conditions set out in the domiciliation agreement.

The following shall be considered as serious breaches:

- the non-compliance of the legal and/or regulatory obligations by one of the parties;
- the non-compliance of the contractual obligations mentioned in this agreement by one of the parties;

- the amendment of the company's corporate purpose as well as the change in the share ownership structure, the bodies and the beneficial owners without prior written notice from the domiciliation agent of companies;
- the non-transmission to the domiciliation agent of companies of the documents and information which the latter deems necessary in order to observe the identification obligation or the obligation to assess the activity exercised by the company or the company's financial situation;
- the failure to immediately inform the domiciliation agent of companies by registered letter of a trial or any other fact which may have a negative impact on the company's reputation.

The agreement shall also provide the date from which the termination is effective and the indication that the law requires the domiciliation agent of companies to inform third parties and to make public that the seat does no longer exist.

8. Applicable law and settlement of disputes

The agreement shall indicate that the Luxembourg law is applicable and it shall specify whether the disputes will be settled by Luxembourg courts or according to an arbitration procedure.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Charles KIEFFER
Director

Arthur PHILIPPE
Director

Jean-Nicolas SCHAUS
Director General