

# BUSINESS

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## Business Centres turn the page

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Member of Luxembourg's Bar Council and former President of the Bar's Association of Young Lawyers, Bertrand Christmann – a specialist in contract law – highlights the importance of a recent decision of Luxembourg's Court of Appeal (Arrêt C.A. n°40.444 of 16.12.2015). Contractual relations between Business Centres and their client companies will have to become more structured. A paradox, in a universe where the workplace is dematerialising.

### Historical background of the practice

Towards the end of the last century, Luxembourg's financial industry favoured the establishment of a large number of companies, notably holdings, often reduced to mere letterboxes. During the past ten years, requirements on substance have continued to increase. The Ministry responsible for small and medium-sized enterprises ('Le Ministère des classes moyennes') has carried out inspections and imposed sanctions on companies with illegal domiciliation. In order better meet the new requirements, Business Centres have developed 'one-stop shop' services. They are usually provided through one single, global, contract for the provision of services, without much detail, covering

1. the rental of shared offices or areas;
2. the provision of a single registered office or company domiciliation; and
3. the provision of additional services (for example, reception, secretariat or the

rental of furniture and IT).

In its decision, the Court of Appeal rightly points out that these are three different activities - subject to different rules. Non-compliance makes the business illegal and results in the reclassification of both the contractual relationship with the client and the business' organisation.

### Recap of the regulatory constraints – nothing new, but the end of confusion

**Lease:** the definition of rental is given in the Napoleonic Code of 1804. In particular, the tenant must be granted the exclusive use of a specified area. The Court of Appeal rightly stated that "the premises of the leased office were not fixed". As a result, the Court held that it was not a lease but concealed domiciliation.

**Domiciliation:** company domiciliation has been regulated since 1999 (la loi du 31.05.1999 sur la domiciliation des



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changes. Domiciliation comprising merely of providing registered office remains possible for pure holdings. In all other cases, the premises need to be real: "a fixed place of business in Luxembourg which is suited to the nature and the dimension of the activity pursued; this entailing the existence of an operational infrastructure and the effective practice of activity management on a permanent basis." Failing this, the company, being fictitious, will be subject to judicial liquidation.

The financial industry's regulatory authorities and regulated professions with the right to offer domiciliation should consider how best to apply these requirements, given the increasing trend to dematerialise. Companies now frequently equip themselves with premises considerably smaller than those required for all of their employees. If the financial authorities do not do so, Luxembourg will no longer be able to attract start-ups, trading companies, brokerage companies or dematerialised services. It is not a question of amending Luxembourg's law, but of updating its interpretation. It is time for tailor-made solutions, with clear competitive advantages. Luxembourg's company law is ready, as it has always authorised the distinction between the registered office and the place of business. Only fraud should be punished.

sociétés). Domiciliation consists of a company establishing its registered office through a third party, to carry out an activity there, within the objects of its business. The only permitted third parties are regulated professions, namely lawyers, professionals of the financial and insurance sectors, company auditors and chartered accountants. A domiciliation agreement is mandatory. The Court of Appeal found that the contract proposed by the Business Centre was a concealed domiciliation agreement, that it was not authorised to enter into. The sanction was brutal: the contract was null and void.

**Provision of services:** the court of appeal also held that when services are provided in addition to the rental of premises, it is necessary to identify which is main purpose. Otherwise, the

regulations will not be applied correctly. Business Centres must therefore ensure that any provision of services strictly remains of secondary importance.

### Future prospects

There needs to be an increase in the level of awareness of the following three players: Business Centres, the companies that contract with them and the financial industry's regulatory authorities.

The Court of Appeal's ruling provides a clear opportunity for Business Centres to defend their business model. It needs to be adapted, to provide solutions based on bespoke, rather than general, contracts.

Companies should review the conformity of their business' organisation and make any necessary