



COMPANIES DOMICILED IN SWITZERLAND – FEDERAL AUTHORITIES REMEMBER TO TIGHTEN LEGAL REQUIREMENTS – DOES THIS ALSO AFFECT YOUR COMPANY?

In its practice notification of 30th November 2015, the Swiss Federal Office for the Commercial Register EHRA turns its attention to its own legal domicile and holding domicile and utters a warning: if a legal entity notifies its own legal domicile to the Commercial Register Office, despite failing to have its own offices, it is breaching the prohibition on deception. In addition, there is also a risk of a forgery of documents and the acquisition by false pretences of false certification in relation to the incorrect registration.

Initial situation

Every legal entity entered in the commercial register shows a registered office. The corresponding political municipality is entered. The address, under which the legal entity can be reached at its registered office, corresponds to its legal domicile ("legal domicile"). If the legal entity does not have its own offices, then it must be indicated in the entry in the commercial register, with whom the legal domicile of the company is located at this registered office (c/o¹ address).

¹ Origin of the term "c/o": c/o = care of (in English for "... in the custody of ..." or "... resident at ..."), German equivalent = pA or p. Adr. = per address. The domicile holder (also "domicile giver") is to be named with prefix "c/o" between the company name and building address. Special address: e.g. Sample AG, c/o Mandaris AG, Beethovenstrasse 49, CH-8022 Zürich. The c/o address is also to be mentioned in the public image (letterhead, website, telephone book, etc.) of the company.



Premises are considered to be a company's **own legal domicile** if a company can for example gain access to the latter on the basis of ownership or the existence of a lease or sub-lease (own offices). A company's own office premises can also be referred to if they are actually used for everyday administrative work. In particular, a company must be able to be contacted physically during normal office opening hours for postal and telephone contact with authorities and customers amongst others so that messages and documents of all kinds (in particular official documents such as regulations, payment summons, etc.) can be served. Receipt must primarily take place through the company's **own** staff (in particular those bound by instructions). Merely a letter box or a physical or electronic post-box are not sufficient to be a legal domicile.

If the legal entity's **own staff are not primarily responsible** for the administrative requirements of the company, but a company within its own Group (e.g. a service company), a third-party company (e.g. a trust agency) or a third person (e.g. a lawyer), then in accordance with the practice notification of the EHRA in such a case there are **no own premises with their own administrative staff and therefore no own legal domicile**. In this case the corresponding (third) company or the corresponding third person are to be shown as the domicile holder and are to be notified for entry in the commercial register (c/o address). The domicile holder must confirm that it is granting the legal entity a legal domicile at its registered office. The domicile holder must therefore definitely have its own offices and therefore its own legal domicile. Self-evidently a mere letter box or a physical or electronic post-box are not sufficient even when holding domicile.

Meaning and consequences

These regulations on the legal domicile are not new in principle. The Swiss Federal Office for the Commercial Register is however giving a reminder about the meaning and significance of the regulation and is probably not completely unconsciously creating a new "guideline for action" by publishing its practice notification, **which must be complied with by the commercial register authorities**. This serves to create uniform practice in all the cantonal commercial register offices.

In this connection the Commercial Register Regulation grants the commercial register office the right to request the corresponding evidence for the existence of its own legal domicile. If it then emerges that instead of a domicile holder, a legal domicile was entered in the commercial register and an entry therefore does not (any longer) correspond to the facts, the responsible commercial register office must correct the entry **officially**, insofar as the persons who are obliged to make entries in the register do not perform the amendment or deletion.

In addition, differentiation is important **for all the persons who are obliged to make entries** (e.g. member of the board of management of a joint stock company, AG, managing director of a limited liability company, GmbH, member of the board of directors of an association, etc.). The entries in the commercial register must be truthful and must not give any reasons for deception nor contradict public interests. Anyone who misleads a commercial register authority with incorrect information and registers the domicile incorrectly in the commercial register can be punished with imprisonment of up to five years or a fine (Art. 253 of the Swiss Criminal Code). The law enforcement authorities are obliged to pursue any findings in this area by law. Compensation or fines remain reserved in the event of intentional or negligent disregard of the obligations to register information.



Conclusion

Any notification of a legal domicile to the commercial register office that does not correspond to the facts can have far-reaching consequences and in the worst case scenario even lead to criminal prosecutions.

Mandaris has office premises at **sites in Zürich, Basel and Zug** with fully equipped work stations (including telephone and reception services as well as meeting rooms), which it makes available to its customers and rents out or can alternatively grant a domicile to the latter (c/o address).

Furthermore, it is happy to support consultants of Mandaris if there are any queries regarding the entry of their legal entity in accordance with the law or if there are other legal or tax law queries.

Please do not hesitate to contact the author if you have any questions or queries.

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