

Memorandum

FROM Alain Costantini & Julian Delplanche – DWMC Legal

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Useful tips concerning the election of domicile for publication purposes

I. Electing domicile for publication purposes: what is it?

When publishing the appointment of Board members in the Belgian Official Journal, an address must be mentioned for each Board member in the extract for publication. Third parties are then able to access that information online.

It goes without saying that many Board members are reluctant to have the address of their private domicile published in the Belgian Official Journal. Consequently, for privacy purposes and as foreseen in article 2:54 of the Companies and Associations Code, Board members may elect domicile for publication purposes at a professional address (either at the registered office of the company (or the association) or at any specific professional address). By proceeding as such, their private domiciles are not disclosed in the publication in the Belgian Official Journal.

II. No proof of residence needed from Board members when they elect domicile at the registered office of the company/association

Warning: please note that this section only deals with the administrative guidelines imposed by the Commercial Court of Brussels. Guidelines imposed by other Commercial Courts may differ, and a separate verification should therefore be made for companies or associations having their registered office outside the judicial district of Brussels

In terms of supporting documents, newly appointed Board members that do not possess a Belgian identity card must in principle submit a proof of (private) residence for the publication process (e.g. a certificate of residence, or more simply a utility bill).

However, when Board members elect domicile at the registered office of the company/association in the extract for publication, it is interesting to note that the commercial Court of Brussels has recently indicated that the proof of the private domicile is not required (to the condition that the election of domicile is reflected in the minutes of the meeting and in the extract for publication).

In other words, having newly appointed Board members elect domicile at the registered office of the company/association is not only beneficial in terms of privacy, but it also allows to reduce the

administrative burden of having to collect proofs of private domicile from them for the purpose of the publication in the Belgian Official Journal.

III. Ensure that future filings of annual accounts are consistent with previous elections of domicile

Companies with legal personality and associations must file annual accounts yearly with the National Bank of Belgium (and for the associations, either with the National Bank of Belgium or with the commercial Court, depending on the size of the association). The first pages of the annual accounts list the mandates carried out in the company/association, and notably the mandates of the Board members of the company/association. Similarly to what is applicable to the publication of their mandates in the Belgian Official Journal, an address must again be disclosed in the annual accounts for each Board member.

If Board members have made an election of domicile when their mandates were published in the Belgian Official Journal, it is important to ensure that the address mentioned in the annual accounts is that same address for which the election of domicile was made.

Unfortunately, careful consideration is often not given to this topic, which may result in private addresses of Board members included in the annual accounts. These data are then freely and indefinitely accessible by third parties on the website of the National Bank of Belgium (or with the Commercial Court.

Therefore, make sure to protect the privacy of your Board members also in the annual accounts!

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