

Applicable Rules to the Domiciliation in France

Circular of July 24th 1998

relating to the domiciliation of persons seeking their registration

in the register of commerce and companies

N°. NOR: JUS C 9820457C

The Coordinating Committee of the register of commerce and companies has attracted the attention of the Ministry of Justice on the many questions that are put to him about the domiciliation of companies.

It is apparent that the interpretations of the Ordinance N°. 58-1352 of Dec. 27th 1958 penalizing certain infringements of the commercial register, as amended by Law N°. 84-1149 of Dec. 21st 1984 were diverse and that it was useful to recall the words to enable better enforcement.

Also, this circular did to clarify the rules governing the domicile of business (I) and the modalities of control grafts (II).

I. – Applicable RULES TO the domiciliation

It should be noted that the ordinance applies to any person seeking registration in the register of commerce and companies (RCS) whatever the nature is, commercial or civil, of its activity.

It is necessary to clearly distinguish the situations referred to, firstly, by Article 1 bis of the Ordinance and, secondly, by Article 1 er ter.

Indeed, Article 1st bis is applicable to all applications for registration, while section 1 er ter concerns only certain particular situations.

1. Article 1st bis of the order of December 27th 1958

This article provides that "any person seeking registration in the register of commerce and companies must justify the enjoyment of the premises where it installs, alone or with others, the headquarters of the company, or when it is located abroad, the agency, the branch or the representation made on French territory.

The domiciliation of a company in occupied premises by several businesses is permitted under conditions set by decree of the Council of State. This decree also will specify the equipments or services required to justify the reality of the headquarters of the domiciled company.”

We must, for the purposes of this article, distinguish the conditions it imposes. 1.1. The reality of the headquarters

the first rule requires persons seeking registration with the RCS to justify the reality of their seats.

It is simply to verify that the person has actually premises likely to host his headquarters, at which third parties could

legitimately write and inform him of any proceeding.

The justification can be done by any means, the nature and characteristics of premises (including their usual destination) are not taken into consideration.

The title of occupation is irrelevant: these premises may be the property of the person seeking registration or any third party with whom he shares the dwelling or whom he gives to the lease or puts at his disposal. However ensure, in the latter case, to see that are respected, if necessary, the second paragraph of Article 1st bis.

1.2. The domiciliation in common of several enterprises

the second rule laid down by Article 1st bis concerns the conditions under which a company can domicile its headquarters in occupied premises by several businesses.

The text applying these provisions is Article 26-1 of the Decree of May 30th 1984 on the RCS, which specifies the conditions under which this domiciliation can be done.

These provisions apply where two companies have the local in common, except that it is a sublease. Typically a company that installs its headquarters in premises provided by another company. The legal status of the company that creates domiciliation does not have to be taken into consideration for the application of the text, subject to what is said later on its register of commerce and companies or on the directory of profession.

The conditions set by the decree are relative, on the one hand, to the requirement of a written contract to be provided to the Registry and to registration with the RCS or to the directory of trades of the company that creates the domiciliation (except case of public figures) and, on the other hand, services and premises which must be provided to the company "domiciled". "It does not apply to companies and their subsidiaries that set up its headquarters in the same premises in which just one has the enjoyment."

These provisions ensure that the headquarters is effective and is not simply a "mailbox", which means that sufficient premises or offices facilities are provided, enabling compliance of other laws or regulations, for example relating to the conservation at the headquarters of records or documents.

It should be noted that Article 1st bis is relative to the seat of the company or, when that seat

is abroad, to the first institution or branch in France.

It is therefore not applicable to secondary institution whose conditions of use are not to be justified by the registrant. 2. Article 1st ter of the order of December 27th 1958

Apart from provisions relating to the reality of the headquarters of the company mentioned above, Article 1st ter of the Ordinance stipulates specific provisions, in particular, the rules

that are related to the allocation of premises, and in order To facilitate business creation, put down a derogatory rule for them.

This text provides that "the person seeking registration during the creation of a company is authorized, notwithstanding any law or any specified, to install the seat in his local housing or that of his legal representative for a period not exceeding two years or exceeds the legal term, contractual or legal occupation of the premises. He must, prior to filing of its application, notify by writing to the lessor or the union's intention Condominium to use the option provided in this text.

Before this period expires, the person must, under penalty of the removal of office, communicate with the clerk of the

court the document justifying the enjoyment of the premises at the headquarters of his company in accordance with Article 1 bis. If the lessor or the trustee requested by letter with return receipt no later than two months before the expiry of this period, the owner or tenant must justify the transfer of the headquarters of his company. Lacks of justification of the transfer in the date of expiry of that period, the court finds the termination of the lease right or condemns the owner, if need under periodic penalty, to comply with the terms of settlement of condominiums and fixes if appropriate, damages or interests.

It may not result from the provisions of this article nor the change of destination of the building, nor the implementation of status of commercial leases.”

Contrary to what is sometimes argued, these provisions do not mean that the installation of a seat in a local housing is in any case limited to two years.

Indeed, the phrase held in the first paragraph reads: "notwithstanding any law or any opposite stipulation...", although these tend to create an exception to other legal or contractual stipulations.

It follows that the headquarters of a company can be placed in a residential with unlimited period when no legal or contractual stipulation is objected.

To that extent, it is useful to point here situations in which Article 1st ter of the Ordinance

applies, which means that where it can derogate from the legal provisions or contractual stipulations and in which the company must therefore make a seat change at the end of the period of two years.

2.1. The contractual stipulations

As for contractual stipulations, they must essentially agree:

- A lease if it relates to a room intended for habitation, it does not normally use the facility for another use;
- A settlement of condominiums, in which a clause occupation of the building may prohibit any party or the use of the premises of the building as a professional.

2.2.the Legal provisions

It should be noted primarily on the regulation change of premises, which should be a reminder of the broad principles of Articles L. 631-7 and following the code of Construction and Housing and articles L. 510-1 to L. 510-4 and R. 510-1 to 510-14 of the town planning code.

2.2.1. Article L. 631-7 of the Code of Construction and Housing

This article prohibits allocate space of housing to another use or turn them into rooming houses, hotels, guesthouses and other institutions in which the operator works as a landlord of furnished spaces under the first paragraph of Article 2 of Law No. 49-458 of April 2nd 1949 amended in the Commons exhaustively defined by the text itself or its implementing legislation.

Without conducting a thorough analysis of Article L.631-7, it should be noted the following points. 1 The territorial scope is limited and are concerned:

- Paris;

- Municipalities within a radius of 50 km from the site of the former fortifications of Paris;
- Municipalities with populations less than 10 000 of inhabitants;
- Municipalities that this legislation has been made applicable pursuant to Article L. 631-9 of the Code of Construction and Housing.

In all other municipalities, processing premises to another use is free.

In addition, the Article L. 631-8 specifies that Article L. 631-7 does not apply in the seaside resorts, spas or climate, classified or being terminated, premises which, before September 2nd 1939, were usually assigned to the rental or occupied during the season by their owner.

2° Exceptions to the prohibition in Article L.631-7.

a) The provisions of this article can temper prohibitions that it imposes:

- Exemptions can be granted by the prefect, after consulting the mayor, to authorize the allocation of spaces or similar professional use, including commercial;
- Additionally, the prefect may authorize the exercise, under certain conditions, in a part of a local housing, a profession that can not be at any time of a commercial nature, if this room is at the same time residence of the applicant.

b) A new article L. 631-7-3, inserted in the code of construction and housing under Article 11 of Law 98-546 of July 2nd 1998 on various provisions of an economic and financial explicitly

departs with Article L. 631-7.

This text provides that:

"Notwithstanding to the provisions of Article L. 631-7, the exercise of a professional activity, including commercial, is allowed in part of a residential space, since the activity that is only exerted by the occupants having their principal residence in this room, and he does not get to receive nor customers nor goods. "

In this case, the person does not require Prefectural permission if he complies with the conditions imposed by the article, which means that the activity is exercised only by the occupants of the premises and he does not receive the customers or the goods in this room.

Thus, even in municipalities where the Article L. 631-7 is applicable, the person seeking registration may, on the one hand, benefit from the Article L. 631-7-3 or, on the other hand, having obtained the authorization to transform his residential local or local of business use or locally mixed-use, which means residential and professional, as recalled that mixed use for commercial activity is prohibited.

The person concerned may also obtain permission after his registration during the period of two years.

2.2.2. Articles L. 510-1 to L. 510-4 and R. 510-1 to R.510-14 of the town planning code

These articles provide accreditation for any operation to the construction, reconstruction, rehabilitation or expansion of any premises or facilities used for industrial, commercial, professional, administrative, technical, scientific or ' education and any change of user or use of these premises.

These laws only apply to premises located in the Ile-de-France and provide many cases for which the approval is not required.

2.3. The particular provisions

Subdivisions:

The regulation of subdivision and any specifications are applicable throughout the subdivision and therefore possibly applicable to individual houses, and not only to condominiums buildings.

Regulation and specifications may, like the settlement of condominiums, contain provisions relating to the destination of buildings.

It should be noted that in case of contradiction between the settlement of condominium and subdivision documents, these latter shall prevail.

In conclusion:

People who are registered in the register of commerce and companies must be justified by any means, for the enjoyment of the premises where they install their seats.

Moreover, when this seat is in a local housing, they must indicate whether they intend to benefit from the provisions of Article 1st ter of the order of December 27th 1958, which

means that if they are subject to contractual provisions and other laws that may prohibit them from sustaining their seats in the local housing. It should be remembered that the living quarters in question can not be the one in which the legal representative of the company actually resides.

Failing to be subject to these contractual provisions or laws, no text prevents them from maintaining as much as they want their headquarters in a local home.

II. - TERMS OF CONTROL BY GRAFT

1° during the registration of the person, it may be useful to recall the applicable regulations, but no particular control is provided by the legislation.

2° When the seat is located in a residential, the new Article 42-2 of the Decree of May 30th

1984, as introduced by Decree N°. 98-550 of July 2nd 1998 amending Decree N°. 84 -- 406 of May 30th 1984 on the register of companies and the Code of Judicial Organization (regulations), provides that the clerk calls the taxpayer, in a letter sent three months before the expiration of two years planned in Article 1st ter of the Ordinance of 1958, to rectify the situation if necessary.

Therefore, in this letter to ask the person:

- If he is in a town that is subject to the provisions of the articles of the construction code and housing code or city planning mentioned above, to clarify whether it has a derogation (such as the art. L. 631-7-3) or a prefectural authorization, which in this case must be justified;
- And in all cases (that whether he is in a town that is subject to the provisions of the code above or not), to clarify and justify it is not subject to contractual obligations prohibiting him to keep his seat in his Local housing.

When these conditions are not met, it must justify the installation of his seat in accordance with local laws and regulations or contractual provisions, subject to being removed from office in accordance with the requirements of Article 1 ter of the Ordinance of 1958

See our PACKS

Order Now