



NEWS FLASH

Chamber of Commerce Fees

Loyens & Loeff Luxembourg has recently been engaged in several cases of litigation regarding the validity of Chamber of Commerce (“CoC”) fees. During the second half of 2009 and the beginning of 2010 (cf. *Cour Administrative, June 15, 2010, 26723C*, which can be found at: <http://www.ja.etat.lu/>), the Administrative Tribunal (first instance) and the Administrative Court of appeal (second and final instance) issued several judgements. Following those judgements, it is possible to state that **CoC fees are illegal, not only for the years up to 2007, but also for 2008, 2009 and 2010 (for those already issued).**

Pursuant to the judgements by the Administrative Tribunal, a distinction should be made between CoC fees for 2007 and earlier years, which were altogether illegal, and CoC fees for 2008 and subsequent years, for which the claim of nullity had so far been rejected. The Administrative Court of Appeal partially overruled those judgements, by ruling that CoC fees for 2008 and 2009 were also illegal. The decision of the Administrative Court of Appeal is based on the fact that the Grand-Ducal Regulation adopted in 2007 to validate CoC fees is illegal, as it was taken without consultation of the *Conseil d’Etat* on the grounds of “an emergency”. According to the Administrative Court, this claim of an emergency was not justified.

Due to the findings of these judgements, Luxembourg companies should consider challenging CoC fees. To be admissible, an appeal against CoC fee assessments should in principle be introduced within three months following the assessment notice. For instance, CoC fee assessments issued in 2010 should be challenged during the three-month period following the notification of the assessment. Nevertheless, in the case of assessments falling outside the three-month period, it should also be borne in mind that the burden of proving the assessment was notified lies with the CoC. As a result, an assessment may still be challenged if the CoC is unable to establish the notification of the assessment, which should be the case if the two following conditions are met: (1) the litigious CoC fees have not yet been paid, and (2) there has been no correspondence between the client and the CoC.

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