

Coordinated version of the law of 17 June 1992 relating to:

- **the annual and consolidated accounts of credit institutions governed by the laws of Luxembourg;**
- **the obligations regarding publication of the accounting documents of branches of credit institutions and financial institutions governed by foreign laws**
 - as amended
 - by the law of 3 May 1994
 - transposing into the law on the financial sector Directive 92/30/EEC of 6 April 1992 on the supervision of credit institutions on a consolidated basis
 - introducing certain other amendments into the law on the financial sector and into the law relating to the accounts of credit institutions

(Mém. A 1994, No. 39)
 - by the law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings and amending certain other legal provisions

(Mém. A 2002, No. 149)
 - by the law of 16 March 2006 relating to the introduction of the international accounting standards for credit institutions and transposing:
 - Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions
 - Articles 5 and 9 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards
 - Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC of the Council on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings.

(Mém. A 2006, No. 55)
 - by the law of 29 May 2009 (applicable to the financial years starting the year after the publication date of the law)
 - transposing for credit institutions Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings;
 - and amending the Law of 17 June 1992 relating to the accounts of credit institutions, as amended.

(Mém. A 2009, No. 133)
 - by the law of 18 December 2009 concerning the audit profession and:
 - transposing Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC,
 - on the organisation of the audit profession,
 - amending divers other statutory provisions, and
 - repealing the law of 28 June 1984 on the organisation of the profession of company auditors, as amended

(Mém. A 2010, No. 22)
 - by the law of 28 April 2011
 - transposing Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management;
 - transposing for credit institutions Directive 2009/49/EC of the European Parliament and of the Council of 18 June 2009 amending Council Directives 78/660/EEC and 83/349/EEC as regards certain disclosure requirements for medium-sized companies and the obligation to draw up consolidated accounts;
 - completing the transposition of Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes and the payout delay;
 - amending the law of 5 April 1993 on the financial sector, as amended;
 - amending the law of 17 June 1992 relating to the accounts of credit institutions, as amended;

- amending the law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”);
- amending the law of 31 May 1999 governing the domiciliation of companies;
- amending the law of 13 July 2007 on markets in financial instruments, as amended;
- amending the law of 11 January 2008 on transparency requirements in relation to issuers of securities;
- amending the law of 10 November 2009 on payment services

(*Mém. A* 2011, No. 81)

- by the law of 27 May 2016

amending, with the view of reforming the legal publication regime regarding companies and associations,

- the law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended;
- the law of 10 August 1915 on commercial companies, as amended;
- the law of 21 April 1928 on non-profit organisations, as amended;
- the Grand-ducal decree of 24 May 1935 supplementing the legislation on suspension of payments, on composition with creditors to prevent bankruptcy by establishing a controlled management regime, as amended;
- the Grand-ducal decree of 17 September 1945 revising the law of 27 March 1900 on the organisation of agricultural associations, as amended;
- the law of 24 March 1989 relating to Banque et Caisse d’Epargne de l’Etat, Luxembourg, as amended;
- the law of 25 March 1991 on economic interest groupings, as amended;
- the law of 25 March 1991 on diverse implementing measures of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG), as amended;
- the law of 17 June 1992 relating to the annual and consolidated accounts of credit institutions, as amended;
- the law of 8 December 1994 relating to: - the annual and consolidated accounts of insurance and reinsurance undertakings governed by the laws of Luxembourg - the obligations in relation to the drawing-up and publication of accounting documents of branches of insurance undertakings governed by foreign laws, as amended;
- the law of 31 May 1999 governing the domiciliation of companies, as amended;
- the law of 22 March 2004 on securitisation, as amended;
- the law of 15 June 2004 relating to the Investment company in risk capital (SICAR), as amended;
- the law of 13 July 2005 on institutions for occupational retirement provision in the form of a SEPCAV and an ASSEP, as amended;
- the law of 13 February 2007 relating to specialised investment funds, as amended;
- the law of 10 November 2009 on payment services, as amended;
- the law of 17 December 2010 relating to undertakings for collective investment, as amended;
- the law of 7 December 2015 on the insurance sector;
- the law of 18 December 2015 on the failure of credit institutions and certain investment firms.

(*Mém. A* 2016, No. 94)

Part I: Scope

Art. 1

(1) “(Law of 16 March 2006)

Articles 2 to 112a and 118 shall apply to all credit institutions governed by Luxembourg laws as defined in the law of 5 April 1993 on the financial sector, as amended.”

“(Law of 3 May 1994) However, the aforementioned articles shall not apply to the affiliated rural banks referred to in Article 12 of the aforementioned law. In that case, without prejudice to the application of this law to the central body, the whole constituted by the central body and its affiliated institutions must be subject of consolidated accounts including a management report which shall be drawn up, audited and published in accordance with this law.

“(Law of 16 March 2006) Articles 83 to “106a”¹, 107(1), (6), (7), (9), (10), (13) and (14), 108(2), 109 and 112a shall not apply to credit institutions whose securities are admitted to trading on the regulated market of a Member State within the meaning Article 4(1), point (14) of Directive 2004/39/EC of the European

¹ Law of 29 May 2009

Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.”

- (2) “(Law of 16 March 2006) Articles 113, 114 and 118 shall apply:”
- to all branches of credit institutions governed by foreign laws established in the Grand Duchy of Luxembourg in accordance with the aforementioned law;
 - to branches of financial institutions having their registered office in another EEC country, insofar as the measures prescribed by Directive 86/635/EEC are applicable to them in their home country (Directive on the annual accounts and consolidated accounts of banks and other financial institutions).

Part II: Annual accounts

Chapter 1 – General Provisions

Art. 2.

- (1) The annual accounts shall comprise the balance sheet, the profit and loss account and the notes to the accounts. These documents shall constitute a composite whole.
- “(Law of 16 March 2006) Credit institutions may include other statements in the annual accounts in addition to the documents referred to in the first subparagraph.”
- (2) The annual accounts shall be drawn up clearly and in accordance with the provisions of this law.
- (3) The annual accounts shall give a true and fair view of the company's assets, liabilities, financial position and profit or loss.
- (4) Where the application of the provisions of this law would not be sufficient to give a true and fair view within the meaning of paragraph (3), additional information must be given.
- (5) Where in exceptional cases the application of a provision of this law is incompatible with the obligation laid down in paragraph (3), that provision must be departed from in order to give a true and fair view within the meaning of paragraph (3). Any such departure must be disclosed in the notes to the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss.

Chapter 2 – General provisions concerning the balance sheet and the profit and loss account

Art. 3. The layout of the balance sheet and of the profit and loss account, particularly as regards the form adopted for their presentation, may not be changed from one financial year to the next. Departures from this principle shall be permitted in exceptional cases. Any such departure must be disclosed in the notes to the accounts together with an explanation of the reasons therefor.

Art. 4.

- (1) In the balance sheet, and in the profit and loss account the items prescribed in Articles 7, 41 and 42 must be shown separately in the order indicated. A more detailed subdivision of the items shall be authorised provided that the layouts are complied with. New items may be added provided that their contents are not covered by any of the items prescribed by the layouts.
- (2) The balance sheet and profit and loss account sub-items preceded by lower-case letters may be combined where:
 - (a) they are immaterial in amount for the purposes of Article 2(3); or
 - (b) such combination makes for greater clarity, provided that the items so combined are dealt with separately in the notes to the accounts. Combinations under (a) and (b) may only be made with the prior consent of the executive board of the “CSSF”².
- (3) In respect of each balance sheet and profit and loss account item the figure relating to the corresponding item for the preceding financial year must be shown. Non-comparability of the figures from year to year and any adjustment of the figures for the preceding financial year, made to ensure such comparability, must be disclosed in the notes to the accounts, with relevant comments.
- (4) Save where there is a corresponding item for the preceding financial year within the meaning of paragraph (3), a balance sheet or profit and loss account item for which there is no amount shall not be shown.

“(Law of 16 March 2006)

- (5) The presentation of amounts within items in the profit and loss account and balance sheet shall have regard to the substance of the reported transaction or arrangement.”

Art. 5. A Grand-Ducal Regulation may adapt the layout of the balance sheet and profit and loss account in order to include the appropriation of profit or the treatment of loss.

Art. 6. Any set-off between asset and liability items, or between income and expenditure items shall be prohibited, except in the cases envisaged by this law.

² Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”): art.28 (*Mém. A* 1998, p.2985)

Chapter 3 – Layout of the balance sheet

Art. 7. The following layout shall be used for the presentation of the balance sheet:

“(Law of 16 March 2006) Credit institutions may, as an alternative, adopt the presentation of the balance sheet set out in Article 7a.”

<i>Assets</i>	<i>Liabilities</i>
1. Cash in hand, balances with central banks and post office banks.	1. Amounts owed to credit institutions: (a) repayable on demand (b) with agreed maturity dates or periods of notice
2. Treasury bills and other bills eligible for refinancing with central banks: (a) Treasury bills and similar securities (b) Other bills eligible for refinancing with central banks	2. Amounts owed to customers: (a) savings deposits (b) other debts (ba) repayable on demand (bb) with agreed maturity dates or periods of notice
3. Loans and advances to credit institutions: (a) repayable on demand (b) other loans and advances	3. Debts evidenced by certificates: (a) debt securities in issue (b) others
4. Loans and advances to customers	4. Other liabilities
5. Leasing transactions	5. Accruals and deferred income
6. Debt securities and other fixed-income securities: (a) issued by public bodies (b) issued by other borrowers	6. “(Law of 16 March 2006) Provisions” (a) provisions for pensions and similar obligations (b) provisions for taxation (c) other provisions
7. Shares and other variable-yield securities	7. Subordinated liabilities
8. Participating interests	8. Special items with a reserve quota portion
9. Shares in affiliated undertakings	9. Subscribed capital
10. Intangible assets	10. Share premium account
11. Tangible assets	11. Reserves
12. Own shares	12. Revaluation reserve
13. Other assets	13. Profit or loss brought forward
14. Subscribed capital unpaid, showing separately: called-up capital	14. Profit or loss for the financial year
15. Prepayments and accrued income	
TOTAL ASSETS	TOTAL LIABILITIES

Off-balance sheet items

1. Contingent liabilities, showing separately:
 - acceptances and endorsements
 - guarantees and assets pledged as collateral security
2. Commitments, showing separately: – commitments arising out of sale and repurchase transactions
3. Fiduciary transactions

“(Law of 16 March 2006)

Art. 7a. Credit institutions may replace the presentation of balance sheet items provided for in Article 7 by the presentation of those items classified by their nature and in order of their relative liquidity provided that the information given is at least equivalent to that otherwise required by Article 7.”

Art. 8.

- (1) Assets shall be shown under the relevant balance sheet items even where the credit institution drawing up the balance sheet has pledged them as security for its own liabilities or for those of third parties or has otherwise assigned them as security to third parties.
- (2) A credit institution shall not include in its balance sheet assets pledged or otherwise assigned to it as security unless such assets are in the form of cash in the hands of that credit institution.

Art. 9.

- (1) Where a loan has been granted by a syndicate consisting of a number of lenders, the credit institution concerned shall disclose only that part of the total loan which it has itself funded.
- (2) If in the case of a syndicated loan as described in paragraph (1) the amount of funds guaranteed by a credit institution exceeds the amount which it has made available, any additional guarantee portion shall be shown as a contingent liability (in Off-balance sheet item 1, second indent).

Art. 10. Only those amounts which can at any time be withdrawn without notice or for which a maturity or period of notice of 24 hours or one working day has been agreed shall be regarded as repayable on demand.

Art. 11.

- (1) Sale and repurchase transactions shall mean transactions which involve the transfer by a credit institution or customer (the “transferor”) to another credit institution or customer (the “transferee”) of assets, for example, bills, debts or transferable securities, subject to an agreement that the same assets will subsequently be transferred back to the transferor at a specified price.
- (2) If the transferee undertakes to return the assets on a date specified or to be specified by the transferor, the transaction in question shall be deemed to be a genuine sale and repurchase transaction.
- (3) If, however, the transferee is merely entitled to return the assets at the purchase price or for a different amount agreed in advance on a date specified or to be specified, the transaction in question shall be deemed to be a sale with an option to repurchase.
- (4) The following accounting method shall be used for such transactions:
 - (a) In the case of transactions based on a genuine sale and repurchase transaction, the asset items transferred shall continue to appear in the transferor’s balance sheet; the purchase price received by the transferor shall be shown as an amount owed to the transferee. In addition, the value of the assets transferred shall be disclosed in a note to the transferor’s accounts. The transferee shall not be entitled to show the assets transferred in his balance sheet; the purchase price paid by the transferee shall be shown as an amount owed by the transferor.
 - (b) In the case of transactions considered as a sale with an option to repurchase, however, the transferor shall not be entitled to show in his balance sheet the assets transferred; those items shall be shown as assets in the transferee’s balance sheet. The transferor shall enter under Off-balance sheet item 2 an amount equal to the price agreed in the event of repurchase.
- (5) No forward exchange transactions, options, transactions involving the issue of debt securities with a commitment to repurchase all or part of the issue before maturity of any similar transactions shall be regarded as sale and repurchase transactions within the meaning of this Article.

Chapter 4 – Special provisions relating to certain balance sheet items

Art. 12. *Assets: Item 1 – Cash in hand, balances with central banks and post office banks*

- (1) Cash in hand shall comprise legal tender including foreign notes and coins.
- (2) This item may include only balances with the central banks and post office banks of the country or countries in which a credit institution is established. Such balances must be readily available at all times. Other claims on such bodies must be shown as loans and advances to credit institution (Assets item 3) or as loans and advances to customers (Assets item 4).

Art. 13. *Assets: Item 2 – Treasury bills and other bills eligible for refinancing with central banks*

- (1) This item shall comprise, under (a), treasury bills and similar securities, i.e. treasury bills, treasury certificates and similar debt instruments issued by public bodies which are eligible for refinancing with the central banks of the country or countries in which a credit institution is established. Those debt instruments issued by public bodies which fail to meet the above condition shall be shown under Assets sub-item 6(a).

- (2) This item shall comprise, under (b), bills eligible for refinancing with central banks, i.e. all bills held in portfolio that were purchased from credit institutions or from customers to the extent that they are eligible, under national law, for refinancing with the central banks of the country or countries in which a credit institution is established.

Art. 14. *Assets: Item 3 – Loans and advances to credit institutions*

- (1) Loans and advances to credit institutions shall comprise all loans and advances arising out of banking transactions to domestic or foreign credit institutions by the credit institution drawing up the balance sheet, regardless of their actual designations.

The only exception shall be loans and advances represented by securities which must be shown under Assets item 6 and those arising from leasing transactions which must appear under Assets item 5.

- (2) For the purposes of this Article credit institutions shall comprise all undertakings on the list published in the Official Journal of the European Communities pursuant to “Article 11 of Directive 2000/12/EC”³, as well as central banks and official domestic and international banking organisations and all private and public undertakings which are not established in the Community which have the status of bank or credit institution and are included in the official list of banks or credit institutions in their respective countries, if such a list exists, as well as the other institutions whose business is to receive deposits or other repayable funds from the public and to grant credits for their own account.

Loans and advances to undertakings which do not satisfy the above conditions shall be shown under Assets item 4.

Art. 15. *Assets: Item 4 – Loans and advances to customers*

Loans and advances to customers shall comprise all types of assets in the form of claims on domestic and foreign customers other than credit institutions, regardless of their actual designations.

The only exception shall be loans and advances represented by securities which must be shown under Assets item 6 and those arising from leasing transactions which must appear under Assets item 5.

“Art. 16. *Assets: Item 5 – Leasing transactions*

(Law of 3 May 1994)

This item shall include loans and advances resulting from leasing transactions, where these transactions consist in letting movables or real estate specifically acquired for the purpose of this letting by the institution which remains the owner, and where the letting duration set down in the agreement is that of the presumed economic use of the property or where the agreement allows the tenant to acquire the ownership of all or part of the rented property, during or at the end of the lease period, for a price fixed in the agreement.”

Art. 17. *Assets: Item 6 – Debt securities and other fixed-income securities*

- (1) This item shall comprise negotiable debt securities including fixed-income securities issued by credit institutions, by other undertakings or by public bodies; such securities issued by the latter, however, shall be included only if they are not to be shown under Assets item 2.
- (2) Securities bearing interest rates that vary in accordance with specific factors, for example the interest rate on the inter-bank market or on the Euromarket, shall also be regarded as debt securities including fixed-income securities.

Art. 18. *Assets: Item 8 – Participating interests*

For the purposes of this law, “participating interests” shall mean rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a durable link with those undertakings, are intended to contribute to the company’s activities. The holding of part of the capital of another company shall be presumed to constitute a participating interest where it exceeds twenty per cent.

Art. 19. *Assets: Item 9 – Shares in affiliated undertakings*

Undertakings are affiliated if they satisfy the definition given in Article 109 of this law.

Art. 20. *Assets: Item 10 – Intangible assets*

- (1) This item collectively encompasses the following items:
- (a) Formation expenses
 - (b) Costs of research and development
 - (c) Concessions, patents, licences, trade marks and similar rights and assets, if they were:
 - (ca) acquired for valuable consideration without being included in the items of a goodwill

³ Law of 16 March 2006

- (cb) created by the undertaking itself
 - (d) Goodwill, to the extent that it was acquired for valuable consideration
 - (e) Payments on account.
- (2) The amounts relating to items (a) and (d) of paragraph (1) must be disclosed separately in the notes to the accounts.
- Art. 21.** *Assets: Item 11 – Tangible assets*
- (1) This item collectively encompasses the following items:
 - (a) Land and buildings
 - (b) Plant and machinery
 - (c) Other fixtures and fittings, tools and equipment
 - (d) Payments on account and tangible assets in course of construction.
 - (2) The amount concerning land and buildings occupied by a credit institution for its own activities shall be disclosed in the notes to the accounts.
 - (3) Rights to immovables and other similar rights as defined by civil law must be shown under “Land and buildings”.
 - (4) Land and buildings which are not occupied for the own activities of the undertaking, but intended to be resold shall not be included in this item, but in item 13 – Other assets.
- Art. 22.** *Assets: Item 12 – Own shares*
- The nominal value of the own shares held, or, in the absence of a nominal value, their accounting par value, should also be indicated.
- Art. 23.** *Assets: Item 13 – Other assets*
- This item is residual relative to the other asset items.
- Art. 24.** *Assets: Item 15 – Prepayments and accrued income*
- Expenditure incurred during the financial year but relating to a subsequent financial year, together with any income which, through relating to the financial year in question, is not due until after its expiry must be shown under this item.
- Art. 25.** Value adjustments shall comprise all adjustments intended to take account of reductions in the values of individual assets established at the balance sheet date whether that reduction is final or not.
- Art. 26.** *Liabilities: Item 1 – Amounts owed to credit institutions*
- (1) Amounts owed to credit institutions shall include all amounts arising out of banking transactions owed to other domestic or foreign credit institutions by the credit institution drawing up the balance sheet, regardless of their actual designations.

The only exception shall be liabilities represented by debt securities or by any other security, which must be shown under Liabilities item 3.
 - (2) For the purposes of this Article, credit institutions shall comprise all undertakings which satisfy the definition in Article 14(2).
- Art. 27.** *Liabilities: Item 2 – Amounts owed to customers*
- (1) Amounts owed to customers shall include all amounts owed to creditors that are not credit institutions within the meaning of Article 26, regardless of their actual designations.

The only exception shall be liabilities represented by debt securities or by any other security, which must be shown under Liabilities item 3.
 - (2) Savings bonds shall be shown under the corresponding sub-item only if they are not represented by negotiable certificates.
- Art. 28.** *Liabilities: Item 3 – Debts evidenced by certificates*
- (1) This item shall include both debt securities and debts for which transferable certificates have been issued, in particular deposit receipts, “bons de caisse” and liabilities arising out of own acceptances and promissory notes.
 - (2) Only acceptances which a credit institution has issued for its own refinancing and in respect of which it is the first party liable (“drawee”) shall be treated as own acceptances.
- Art. 29.** *Liabilities: Item 4 – Other liabilities*
- This item is residual relative to other Assets items.

Art. 30. *Liabilities: Item 5 – Accruals and deferred income*

Income receivable before the balance sheet date but relating to a subsequent financial year, together with any charges which, though relating to the financial year in question, will be paid only in the course of a subsequent financial year, must be shown under this item.

Art. 31. “(Law of 16 March 2006) *Item 6 – Provisions*”

“(Law of 16 March 2006)

- (1) Provisions are intended to cover losses or debts the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to the amount or as to the date on which they will arise.”
- (2) The creation of provisions intended to cover charges which have their origin in the financial year under review or in a previous financial year, the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to the amount or as to the date on which they will arise is also authorised.

“(Law of 16 March 2006)

- (3) Provisions may not be used to adjust the values of assets.”

Art. 32. *Liabilities: Item 7 – Subordinated liabilities*

Where it has been contractually agreed that, in the event of winding up or of bankruptcy, liabilities, whether or not evidenced by certificates, are to be repaid only after the claims of all other creditors have been met, the liabilities in question shall be shown under Liabilities item 7.

Art. 33. *Liabilities: item 8 – Special items with a reserve quota portion*

Amounts which may be subject to fiscal immunity shall be shown under these items. Immunity relates, inter alia, to capital gains constituted pursuant to Articles 53, 54 and 54a LIR. The notes to the accounts shall include a breakdown of the different items and give details of the basis on which they were constituted.

Art. 34. *Liabilities: Item 9 – Subscribed capital*

This item shall comprise all amounts, regardless of their actual designations, which, in accordance with the legal structure of the institution concerned, are regarded under national law as equity capital subscribed by the shareholders or other proprietors. The fraction of subscribed capital, unpaid at year end shall be shown under Assets item 14. The paid-up fraction shall be shown separately in a sub-item.

Art. 35. *Liabilities: Item 11 – Reserves*

This item shall comprise the following types of reserves:

1. Legal reserve.
2. Reserve for own shares.
3. Reserves provided for by the articles of association.
4. Other reserves.

These different types of reserve shall be shown separately, as sub-items of Liabilities item 11, with the exception of the revaluation reserve which shall be shown under item 12.

Art. 36. *Liabilities: Item 12 – Revaluation reserve*

The revaluation reserve to be shown under this item is that resulting from the application of Article 53.

Art. 37. *Off-balance sheet: Item 1 – Contingent liabilities*

This item shall comprise all transactions whereby an institution has underwritten the obligations of a third party.

The following shall be shown as sub-items:

- Liabilities arising out of the endorsement of rediscounted bills and acceptances other than own acceptances.
- Sureties and assets pledged as collateral security which include all guarantee obligations incurred and assets pledged as collateral security on behalf of third parties, particularly in respect of sureties and irrevocable letters of credit.

Art. 38. *Off-balance sheet: Item 2 – Commitments*

This item shall include every irrevocable commitment which could give rise to a risk.

Commitments arising out of sale and repurchase transactions shall include commitments entered into by a credit institution in the context of sale and repurchase transactions (on the basis of firm agreements to sell with options to repurchase) within the meaning of Article 11.

Art. 39. *Off-balance sheet: Item 3 – Fiduciary transactions*

- (1) This item shall include all fiduciary transactions expressly subject to the application “of the law of 27 July 2003 relating to trusts and fiduciary contracts”⁴.
- (2) Fiduciary transactions which are not expressly subject “to the Law of 27 July 2003”⁵ shall appear in the balance sheet. The total amount of such assets and liabilities shall be shown separately or in the notes to the accounts, broken down according to the various assets and liabilities items.
- (3) Assets acquired in the name of and on behalf of third parties must not be shown in the balance sheet.

Chapter 5 – Layout of the profit and loss account

Art. 40. For the presentation of the profit and loss account, credit institutions shall prescribe one of the two layouts provided for in Articles 41 and 42.

“(Law of 16 March 2006) By way of derogation from Article 2(1) of this law, credit institutions may present a statement of their performance instead of the presentation of profit and loss items in accordance with Article 41 or 42, provided that the information given is at least equivalent to that otherwise provided for by those Articles.”

Art. 41. Vertical layout

1. Interest receivable and similar income,
showing separately
that arising from fixed-income securities.
2. Interest payable and similar charges
3. Income from transferable securities
 - (a) Income from shares and other variable-yield securities
 - (b) Income from participating interests
 - (c) Income from shares in affiliated undertakings
4. Commissions receivable
5. Commissions payable
6. Net profit or net loss on financial operations
7. Other operating income
8. General administrative expenses:
 - (a) staff costs,
showing separately:
 - wages and salaries,
 - social security costs, with a separate indication of those relating to pensions
 - (b) Other administrative expenses
9. Value adjustments in respect of Assets items 10 and 11
10. Other operating charges
11. Value adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments
12. Value re-adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments
13. Value adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings
14. Value re-adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings
15. Allocations to “special items with a reserve quota portion”.
16. Income from the writing back of “special items with a reserve quota portion”.
17. Tax on profit or loss on ordinary activities
18. Profit or loss on ordinary activities after tax
19. Extraordinary income

⁴ Law of 16 March 2006

⁵ Law of 16 March 2006

20. Extraordinary charges
21. Extraordinary profit or loss
22. Tax on extraordinary profit or loss
23. Extraordinary profit or loss after tax
24. Other taxes not shown under the preceding items
25. Profit or loss for the financial year

Art. 42. Horizontal layout

A. Charges

1. Interest payable and similar charges
2. Commissions payable
3. Net loss on financial operations
4. General administrative expenses
 - (a) Staff costs, showing separately:
 - wages and salaries
 - social security costs, with a separate indication of those relating to pensions
 - (b) Other administrative expenses
5. Value adjustments in respect of Assets items 10 and 11
6. Other operating charges
7. Value adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments
8. Value adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings
9. Allocations to “special items with a reserve quota portion”.
10. Tax on profit or loss on ordinary activities
11. Profit or loss on ordinary activities after tax.
12. Extraordinary charges
13. Tax on extraordinary profit or loss
14. Extraordinary loss after tax
15. Other taxes not shown under the preceding items
16. Profit for the financial year

B. Income

1. Interest receivable and similar income, showing separately that arising from fixed-income securities.
2. Income from transferable securities
 - (a) Income from shares and other variable-yield securities
 - (b) Income from participating interests
 - (c) Income from shares in affiliated undertakings
3. Commissions receivable
4. Net profit on financial operations
5. Value re-adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments
6. Value re-adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings
7. Other operating income
8. Income from the writing back of “special items with a reserve quota portion”.
9. Profit or loss on ordinary activities after tax.
10. Extraordinary income
11. Extraordinary profit after tax
12. Loss for the financial year

Chapter 6 – Special provisions relating to certain items in the profit and loss account

Art. 43. Article 41, items 1 and 2 (vertical layout),

Article 42, items A1 and B1 (horizontal layout)

Interest receivable and similar income; Interest payable and similar charges

These items shall include all profits and losses arising out of banking activities, including:

- (1) all income from assets entered under Assets items 1 to 6 in the balance sheet, however calculated. Such income shall also include income arising from the spreading on a time basis of the discount on assets acquired at an amount below, and liabilities contracted at an amount above, the sum payable at maturity;
- (2) all charges arising out of liabilities entered under Liabilities items 1, 2, 3 and 7, however calculated. Such charges shall also include charges arising from the spreading on a time basis of the premium on assets acquired at an amount above, and liabilities contracted at an amount below, the sum payable at maturity;
- (3) income and charges resulting from covered forward contracts, spread over the actual duration of the contract and similar in nature to interest;
- (4) fees and commission similar in nature to interest and calculated on a time basis or by reference to the amount of the claim or liability.

Art. 44. Article 41, item 3 (vertical layout),

Article 42, item B2 (horizontal layout)

Income from shares and other variable-yield securities, from participating interests, and from shares in affiliated undertakings.

This item shall comprise all dividends and other income from variable-yield securities, from participating interests and from shares in affiliated undertakings. Income from shares in investment companies shall also be included under this item.

Art. 45. Article 41, items 4 and 5 (vertical layout),

Article 42, items A2 and B3 (horizontal layout)

Commissions receivable and commissions payable.

Without prejudice to Article 43, commissions receivable shall include income in respect of all services supplied to third parties, and commissions payable shall include charges for services rendered by third parties, in particular

- commissions for guarantees, loans administration on behalf of other lenders and securities transactions on behalf of third parties,
- commissions and other charges and income in respect of payment transactions, account administration charges and commissions for the safe custody and administration of securities,
- commissions for foreign currency transactions and for the sale and purchase of coin and precious metals on behalf of third parties,
- commissions charges for brokerage services in connection with savings and insurance contracts and loans.

Art. 46. Article 41, item 6 (vertical layout),

Article 42, item A3 or B4 (horizontal layout)

Net profit or net loss on financial operations

This item covers:

- (1) the net profit or loss on transactions in securities which are not held as financial fixed assets as defined in Article 56 together with value adjustments and value re-adjustments on such securities taking into account, where Article 58(3) has been applied, the difference resulting from application of that article. However, for credit institutions exercising the option provided for in Article 62, these net profits or losses and value adjustment and value re-adjustments shall be included only insofar as they relate to securities included in a trading portfolio.
- (2) the net profit or loss on exchange activities, without prejudice to Article 43, point (3);
- (3) the net profits and losses on other buying and selling operations involving financial instruments, including precious metals.

Art. 47. Article 41, items 11 and 12 (vertical layout),

Article 42, items A7 and B5 (horizontal layout)

Value adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments

and

Value re-adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments.

- (1) These items shall include, on the one hand, charges for value adjustments in respect of loans and advances to be shown under Assets items 3, 4 and 5 and provisions for contingent liabilities and for commitments to be shown under Off-balance sheet items 1 and 2, on the other hand, credits from the recovery of written-off loans and advances and amounts written back following earlier value adjustments and provisions.
- (2) For those credit institutions exercising the option provided for in Article 62, these items shall also include the net profit or loss on transactions in securities included in Assets items 6 and 7 which are neither held as financial fixed Assets as defined in Article 56 nor included in a trading portfolio, together with value adjustments and value re-adjustments on such securities taking into account, where Article 58(3) has been applied, the difference resulting from application of that article. In this case, the titles of these items shall be adapted as follows:

Value adjustments in respect of loans and advances and transferable securities which are not held as financial fixed assets and are not included in a trading portfolio, and provisions for contingent liabilities and for commitments

and

Value re-adjustments in respect of loans and advances and transferable securities which are not held as financial fixed assets and are not included in a trading portfolio, and provisions for contingent liabilities and for commitments

- (3) Credit institutions may offset the charges and income covered by these items against each other, so that only a net item (income or charge) is shown.

Art. 48. Article 41, items 13 and 14 (vertical layout),

Article 42, items A8 and B6 (horizontal layout)

Value adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings

and

Value re-adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings.

- (1) These items shall include:
 - charges for value adjustments in respect of assets shown in Assets items 6, 8 and 9;
 - all the amounts written back following earlier value adjustments;insofar as such charges and income relate to transferable securities held as financial fixed assets as defined in Article 56, participating interests and shares in affiliated undertakings. These items shall also include the net profit or loss on sales relating to fixed-income securities which are held as financial fixed assets as defined in Article 56.
- (2) Credit institutions may offset certain charges and income covered by these items, so that only a net item (income or charge) is shown.

Art. 49.

- (1) Income and charges that arise otherwise than in the course of the institution's ordinary activities must be shown under "Extraordinary income and extraordinary charges".
- (2) Unless the income and charges referred to in paragraph (1) are immaterial for the assessment of the results, explanations of their amount and nature must be given in the notes to the accounts. The same shall apply to income and charges relating to another financial year.

Art. 50. Taxes on the profit or loss on ordinary activities and taxes on the extraordinary profit or loss may be shown in total as one item in the profit and loss account before "Other taxes not shown under the above items". The title of this new item shall be "Tax on ordinary and extraordinary profit or loss". In such cases, the items "Profit or loss on ordinary activities after tax" and "Extraordinary profit, after tax" are deleted.

Where this derogation is applied, the credit institutions must disclose in the notes to the accounts the extent to which the taxes on the profit or loss affect the profit or loss on ordinary activities and the extraordinary profit or loss.

Chapter 7 – Valuation rules

Art. 51.

- (1) The valuation of the items shown in the annual accounts shall be done in accordance with the following general principles:
 - (a) the company must be presumed to be carrying on its business as a going concern;
 - (b) the methods of valuation must be applied consistently from one financial year to another;
 - (c) valuation must be made on a prudent basis, and in particular:
 - (aa) only profits made at the balance sheet date may be included,
“(Law of 16 March 2006)
 - (bb)
account must be taken of all liabilities arising in the course of the financial year concerned or of a previous one, even if such liabilities become apparent only between the date of the balance sheet and the date on which it is drawn up;”
 - (cc) account must be taken of all depreciation, whether the result of the financial year is a loss or a profit;
 - (d) account must be taken of income and charges relating to the financial year, irrespective of the date of receipt or payment of such income or charges;
 - (e) the components of asset and liability items must be valued separately;
 - (f) the opening balance sheet for each financial year must correspond to the closing balance sheet for the preceding financial year.

“(Law of 16 March 2006)

- (1)a. In addition to the amounts recorded pursuant to Article 51(1), point (c)(bb), credit institutions may take into account all foreseeable liabilities and potential losses arising in the course of the financial year concerned or of a previous one, even if such liabilities or losses become apparent only between the date of the balance sheet and the date on which it is drawn up.”
- (2) Departures from these general principles shall be permitted in exceptional cases. Any such departures must be disclosed in the notes to the accounts and the reasons for them given together with an assessment of their effect on the assets, liabilities, financial position and profit or loss.

Art. 52. The items shown in the annual accounts shall be valued in accordance with Articles 54 to 64, which are based on the principle of purchase price or production cost.

Art. 53. By way of derogation Article 52, a Grand-Ducal Regulation may authorise or impose the following measures for all credit institutions:

- (a) valuation by the replacement value method for tangible fixed assets with limited useful economic lives and for stocks;
- (b) valuation by methods other than that provided for in (a) which are designed to take account of inflation for the items shown in annual accounts, including equity;

“(Law of 16 March 2006)

- (c) revaluation of fixed assets.”

The regulation providing for the valuation methods referred to in (a), (b) or (c) shall determine their content, limits and implementing rules in accordance with the provisions of Article 33 of Directive 78/660/EEC of 25 July 1978.

Art. 54.

- (1)
 - (a) Formation expenses must be written off within a maximum period of five years.
 - (b) Insofar as formation expenses have not been completely written off, no distribution of profits shall take place unless the amount of the reserves available for distribution and profits brought forward is at least equal to that of the expenses not written off.
- (2) The amounts entered under "Formation expenses" must be explained in the notes to the accounts.
- (3) Costs which relate to the creation or extension of an undertaking, a part of an undertaking or a business segment, as opposed to costs arising from routine administration, may be shown under assets as formation expenses.

Art. 55.

- (1) Article 54(1) and (2) shall apply to item “Costs of research and development”.
- (2) Article 54(1)(a) shall apply to item “Goodwill”.

Art. 56.

- (1) The following assets shall be valued as fixed assets:
 - (a) Assets items 10 and 11.
 - (b) Financial fixed assets. Including participating interests (Assets item 8), shares in affiliated undertakings (item 9), debt securities and other fixed income securities intended for use on a continuing basis in the normal course of the undertaking's activity (Assets item 6).
 - (c) The other items included in the assets where they are intended for use on a continuing basis in the normal course of the undertaking's activity.
- (2)
 - (a) Fixed assets as specified above must be valued at purchase price or production cost, without prejudice to (b), (c), (d) and (e).
 - (b) The purchase price or production cost of fixed assets with limited useful economic lives must be reduced by value adjustments calculated to write off the value of such assets systematically over their useful economic lives.
 - (c)
 - (aa) Value adjustments may be made in respect of financial fixed assets, so that they are valued at the lower figure to be attributed to them at the balance sheet date.
 - (bb) Value adjustments must be made in respect of fixed assets, whether their useful economic lives are limited or not, so that they are valued at the lower figure to be attributed to them at the balance sheet date if it is expected that the reduction in their value will be permanent.
 - (cc) Valuation at the lower of the values provided for in (aa) and (bb) may not be continued if the reasons for which the value adjustments were made have ceased to apply.
 - (d) Where the purchase price of debt securities and other fixed-income securities which are held as financial fixed assets exceeds the amount repayable at maturity, the amount of the difference must be charged to the profit and loss account, under item "Interest payable and similar charges" (item 2 – vertical layout; item A1 – horizontal layout). However, it shall also be permissible for the amount of the difference to be written off in instalments. This difference, which shall be the cumulated amortisation value since the date of acquisition, shall be disclosed separately in the balance sheet or in the notes to the accounts.
 - (e) Where the purchase price of such securities is less than the amount repayable at maturity, the amount of the difference may be released to income in instalments over the period remaining until repayment, under the item "Interest receivable and similar income" (item 1– vertical layout; item B1 – horizontal layout). This difference, which shall be the cumulated proportional value since the date of acquisition, shall be disclosed separately in the balance sheet or in the notes to the accounts.
 - (f) If fixed assets are the subject of exceptional value adjustments for taxation purposes alone, the amount of the adjustments and the reasons for making them shall be indicated in the notes to the accounts.
- (3) The purchase price shall be calculated by adding to the price paid the expenses incidental thereto.
- (4)
 - (a) The production cost shall be calculated by adding to the purchasing price of the raw materials and consumables the costs directly attributable to the product in question.
 - (b) A reasonable proportion of the costs which are only indirectly attributable to the product in question may be added into the production costs to the extent that they relate to the period of production.
- (5) Interest on capital borrowed to finance the production of fixed assets may be included in the production costs to the extent that it relates to the period of production. In that event, the inclusion of such interest under "Assets" must be disclosed in the notes to the accounts.

Art. 57. Tangible assets, raw materials and consumables which are constantly being replaced and the overall value of which is of secondary importance to the undertaking may be shown under "Assets" at a fixed quantity and value, if the quantity, value and composition thereof do not vary materially.

Art. 58.

- (1) All assets not referred to in Article 56(1) shall be valued as current assets.
- (2)
 - (a) Current assets must be valued at purchase price or production cost, without prejudice to (b) and (c).
 - (b) Value adjustments shall be made in respect of current assets with a view to showing them at the lower market value or, in particular circumstances, another lower value to be attributed to them at the balance sheet date.
 - (c) Exceptional value adjustments may be permitted where, on the basis of a reasonable commercial assessment, these are necessary if the valuation of these items is not to be modified in the near future because of fluctuations in value. The amount of these value adjustments must be disclosed separately in the profit and loss account or in the notes to the accounts.

- (d) Valuation at the lower value provided for in (b) and (c) may not be continued if the reasons for which the value adjustments were made have ceased to apply.
 - (e) If current assets are the subject of exceptional value adjustments for taxation purposes alone, the amount of the adjustments and the reasons for making them must be disclosed in the notes to the accounts.
- (3) By way of derogation from paragraph (2)(a), credit institutions shall be authorised to show fixed-income securities which are not held as financial fixed assets at the higher market value at the balance sheet date. The difference between the purchase price and the higher market value shall be disclosed in the notes to the accounts.
 - (4) The definitions of purchase price and of production cost given in Article 56(3) and (4) shall apply. Article 56(5) shall also apply. Distribution costs may not be included in production costs.

Art. 59. The purchase price or production cost of stocks of goods of the same category and all fungible items including investments may be calculated either on the basis of weighted average prices or by the "first in, first out" (FIFO) method, the "last in, first out" (LIFO) method, or some similar method.

Art. 60.

- (1) Where the amount repayable on account of any debt is greater than the amount received, the difference may be shown as an asset. It must be shown separately in the balance sheet or in the notes to the accounts.
- (2) The amount of this difference must be written off by a reasonable amount each year and completely written off no later than the time of repayment of the debt.

“(Law of 16 March 2006)

Art. 61. Provisions may not exceed in amount the sums which are necessary.”

Art. 62.

- (1) Loans and advances to credit institutions and customers (Assets items 3 and 4), leasing transactions (Assets item 5), as well as debt securities, shares and other variable-yield securities included in Assets items 6 and 7 which are neither held as financial fixed assets as defined in Article 56(1) nor included in a trading portfolio may be shown at a value lower than that which would result from the application of Article 58(2) of this law, where that is required by the prudence dictated by the particular risks associated with banking. The difference between the two values must not be more than 4% of the total amount of the assets mentioned above after application of the aforementioned Article 58.
- (2) The lower value resulting from the application of paragraph (1) may be maintained until the credit institution decides to adjust it.

Art. 63.

- (1) Credit institutions may introduce a Liabilities item 8A entitled “Fund for general banking risks”. That item shall include those amounts which a credit institution decides to put aside to cover such risks where that is required by the particular risks associated with banking.
- (2) The increases and decreases of the “Fund for general banking risks” and the income from the partial or total writing back of the fund must be shown separately in the profit and loss account in items entitled “Increases and decreases of the fund for general banking risks” (item 16A in the vertical layout or item A 9A in the horizontal layout) and “Income from the writing back of the amounts in the fund for general banking risks” (item 16B in the vertical layout or B 8A in the horizontal layout).

Art. 64.

- (1) Assets and liabilities denominated in foreign currency shall be translated in the capital currency at the spot rate of exchange ruling on the balance sheet date.

It is however permitted to translate assets held as financial fixed assets and tangible and intangible assets, not covered in either the spot or forward markets, in the capital currency at the rates ruling on the dates of their acquisition, without prejudice to the following reserve. If it is expected that the reduction in the value of the currency in which such assets are denominated will be permanent, value adjustments must be made in respect of such items so that they are valued at the lower figure to be attributed to them at the balance sheet date.

- (2) Uncompleted spot exchange transactions shall be translated in the capital currency at the spot rates of exchange ruling on the balance sheet date.

Uncompleted forward exchange transactions shall be translated in the capital currency at the forward rates for residual maturity at the balance sheet date.

- (3) Without prejudice to Article 43, point (3), the differences between the carrying amounts of the assets, liabilities and forward transactions and the amounts produced by translation in accordance with paragraphs (1) and (2) shall be treated as follows:

- (a) For spot items covered in the forward markets and for forward items covered in the spot markets, such differences shall be offset in the prepayments and accrued income/accruals and deferred income without the profit or loss for the financial year being affected.
 - (b) For not covered spot items, these differences shall be posted to the profit and loss account if they are negative. A positive valuation result may be entered in the profit and loss account.
 - (c) For not covered futures transactions, these differences shall be posted to the profit and loss account if they are negative. On the other hand, positive valuation results shall be ignored.
- (4) If a method specified in Article 76 of this law is used, any translation differences shall be transferred, in whole or in part, directly to prepayments and accrued income/accruals and deferred income. Positive and negative translation differences transferred shall be shown separately in the balance sheet or in the notes to the accounts.

“(Law of 16 March 2006)

Chapter 7a. – Valuation at fair value

Art. 64a.

“(Law of 29 May 2009) By way of derogation from Article 52, credit institutions may proceed to the valuation of financial instruments in accordance with the international accounting standards adopted pursuant to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards. In this case, they must comply with the associated disclosure requirements provided for in the international accounting standards adopted pursuant to Regulation (EC) No 1606/2002.

Valuation of financial instruments in accordance with IFRS international accounting standards is however subject to the prior authorisation of the *Commission de surveillance du secteur financier*.”

Art. 64b.

By way of derogation from Article 51(1)(c), credit institutions may, where a financial instrument is valued in accordance with Article 64a, include a change in the value in the profit and loss account or directly in equity in a fair value reserve, as appropriate.

Art. 64c.

Where the fair value method is used for financial instruments, the notes to the accounts shall disclose:

- (a) the significant assumptions underlying the valuation models and techniques used, where applicable;
- (b) per category of financial instruments, the fair value, the changes in value included directly in the profit and loss account as well as changes included in the fair value reserve;
- (c) for each class of derivative financial instruments, information about the extent and the nature of the instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows; and
- (d) a table showing movements in the fair value reserve during the financial year.

Art. 64d.

By way of derogation from Article 52, credit institutions may apply valuation of specified categories of assets other than financial instruments at amounts determined by reference to fair value.

Art. 64e.

By way of derogation from Article 51(1)(c), credit institutions may, where an asset is valued in accordance with Article 64d., include a change in the value in the profit and loss account.”

Chapter 8 – Contents of the notes to the accounts

Art. 65. In addition to the information required under other provisions of this law, the notes to the accounts shall include the following information on balance sheet items as provided for in the layouts presented in Article 7 of this law:

- (1) Re item 8, Assets: the amount of the participating interests in other credit institutions.
- (2) Re item 9, Assets: the amount of shares held in affiliated undertakings which are credit institutions.
- (3) Re item 2(a), Liabilities: the aggregate amount of savings deposits repayable on demand and with agreed maturity dates or periods of notice.

- (4) Separately for each of the Assets items 3(b), 4 and 5 and the Liabilities items 1(b), 2(a), 2(b)(bb) and 3(b) the amounts of those loans and advances and liabilities on the basis of their remaining maturity as follows:

- not more than three months;
- more than three months but not more than one year;
- more than one year but not more than five years;
- more than five years.

For Assets item 4, loans and advances on call and at short notice must also be shown. If loans and advances or liabilities involve payment by instalments, the remaining maturity shall be the period between the balance sheet date and the date on which each instalment falls due.

- (5) In respect of Assets item 6 (Debt securities including fixed-income securities) and Liabilities item 3(a) (Debt securities in issue), the proportion of assets and liabilities that become due within one year of the balance sheet date.
- (6) The breakdown of the securities shown under Assets items 6 to 9 into listed and unlisted securities.
- (7) The breakdown of the securities shown under Assets item 6 into securities which, pursuant to Article 56, are or are not held as financial fixed assets and the criterion used to distinguish the financial fixed assets category.
- (8) The breakdown of the leasing transactions (Asset item 5) depending on whether they are carried out with credit institutions or customers.
- (9) The composition of the main elements constituting the items “Other assets” and “Other liabilities” of the balance sheet, where such amounts are important for the purpose of assessing the annual accounts. Explanations of their amount and nature must also be given.
- (10) The number and the nominal value or, in the absence of a nominal value, the accounting par value of the shares subscribed during the financial year within the limits of an authorised capital.
- (11) Where there is more than one class of shares, the number and the nominal value or, in the absence of a nominal value, the accounting par value for each class.
- (12) The existence of any participation certificates, convertible debentures or similar securities or rights, with an indication of their number and the rights they confer.
- (13) The charges paid on account of subordinated liabilities by a credit institution in the year under review. The following should also be indicated:
- in respect of each borrowing which exceeds 10% of the total amount of the subordinated liabilities:
 - (i) the amount of the borrowing, the currency in which it is denominated, the rate of interest and the maturity date or the fact that it is a perpetual issue;
 - (ii) whether there are any circumstances in which early repayment is required;
 - (iii) the terms of the subordination, the existence of any provisions to convert the subordinated liability into capital or some other form of liability and the terms of any such provisions;
 - an overall indication of the rules governing other borrowings.
- (14) The aggregate amounts of assets and of liabilities denominated in foreign currencies, translated into the currency in which the annual accounts are drawn up.
- (15) A. The movements in the following assets held as fixed assets, within the meaning of Article 56:
1. Participating interests (item 8)
 2. Shares in affiliated undertakings (item 9)
 3. Debt securities including fixed-income securities held as financial fixed assets (which are set out in item 6)
 4. Intangible assets (item 10), including:
 - (a) Formation expenses
 - (b) Costs of research and development
 - (c) Concessions, patents, licences, trade marks and similar rights and assets, if they were:
 - (ca) acquired for valuable consideration without being included in the items of a goodwill
 - (cb) created by the undertaking itself
 - (d) Goodwill, to the extent that it was acquired for valuable consideration.

- (e) Payments on account.
- 5. Tangible assets (item 11), including:
 - (a) Land and buildings
 - (b) Plant and machinery
 - (c) Other fixtures and fittings, tools and equipment
 - (d) Payments on account and tangible assets in course of construction.
- 6. The other assets items as specified in Article 56(1)(c).

To this end there shall be shown separately, starting with the purchase price or production cost, for each of these fixed asset items and sub-items, on the one hand, the additions, disposals and transfers during the financial year and, on the other, the cumulative value adjustments at the balance sheet date and the rectifications made during the financial year to the value adjustments of previous financial years. The obligation to show value adjustments separately shall not, however, apply for participating interests, shares in affiliated undertakings and transferable securities held as financial fixed assets. In that event value adjustments may be combined with other items.

- B. If, when annual accounts are drawn up in accordance with this law for the first time, the purchase price or production cost of a fixed asset cannot be determined without undue expense or delay, the residual value at the beginning of the financial year may be treated as the purchase price or production cost. Any application of this exception must be disclosed in the notes to the accounts.
- C. Where Article 53 is applied, the movements in the various fixed asset items referred to in point A of this paragraph shall be shown starting with the purchase price or production cost resulting from revaluation.

Art. 66. Credit institutions shall indicate either in the balance sheet or in the notes to the accounts:

- (1) Separately for each relevant item:
 - claims, whether or not evidenced by certificates, on affiliated undertakings and included in Assets items 2 to 6;
 - claims, whether or not evidenced by certificates, on undertakings with which a credit institution is linked by virtue of a participating interest and included in Assets items 2 to 6;
 - liabilities, whether or not evidenced by certificates, to affiliated undertakings and included in Liabilities items 1, 2, 3 and 7;
 - liabilities, whether or not evidenced by certificates, to undertakings with which a credit institution is linked by virtue of a participating interest and included in Liabilities items 1, 2, 3 and 7.
- (2) Separately for each of the items of the layout and the sub-items created in accordance with paragraph (1): subordinated assets.

Assets, whether or not evidenced by certificates, are subordinated if, in the event of winding up or bankruptcy, they are to be repaid only after the claims of other creditors have been met.
- (3) (a) Where an asset or liability relates to more than one layout item, its relationship to other items, if such disclosure is essential to the comprehension of the annual accounts.
- (b) Own shares and shares in affiliated undertakings may be shown only under the items prescribed for that purpose.

Art. 67.

- (1) In respect of the contingent liabilities included in Off-balance-sheet item 1, credit institutions shall state in the notes to the accounts the nature and amount of any type of contingent liability which is material in relation to all their activities.

The above-mentioned contingent liabilities existing in respect of affiliated undertakings must be shown separately.
- (2) Credit institutions shall give particulars of the assets which they have pledged as security for their own liabilities or for those of third parties (including contingent liabilities); the particulars should be in sufficient detail to indicate for each Liabilities item and for each Off-balance sheet item the total amount of the assets pledged as security.

Assets pledged as security of affiliated undertakings must be shown separately.

- (3) In respect of the commitments included in Off-balance-sheet item 2, credit institutions shall state in the notes to the accounts the nature and amount of any type of commitment which is material in relation to all their activities. Commitments in respect of affiliated undertakings must be shown separately.

Commitments which are not included in the balance sheet or in the off-balance sheet must also be shown insofar as this information is of assistance in assessing the financial position. Any commitments concerning pensions and affiliated undertakings must be disclosed separately.

- (4) A statement shall be provided which shows the types of unmatured forward transactions outstanding at the balance sheet date indicating, in particular, for each type of transaction, whether they are made to a material extent for the purpose of hedging the effects of fluctuations in interest rates, exchange rates and market prices, and whether they are made to a material extent for dealing purposes.

These types of transaction shall include all those in connection with which the income or expenditure is to be included in Article 41, item 6, Article 42 item A3 or B3 or B4 or Article 43, point (3), for example: foreign currencies, precious metals, securities, certificates of deposit and other assets.

- (5) The fact that the institution provides management and agency services to third parties shall be indicated where the scale of business of that kind is material in relation to the institution's activities as a whole.

“(Law of 29 May 2009)

Art. 67a.

- (1) The nature and business purpose of the arrangements that are not included in the balance sheet and the financial impact on the credit institution of those arrangements must be included, provided that the risks or benefits arising from such arrangements are material and insofar as the disclosure of such risks or benefits is necessary for assessing the financial position of the credit institution.
- (2) The transactions which have been entered into with related parties by the credit institution, including the amount of such transactions, the nature of the related party relationship and other information about the transactions necessary for an understanding of the financial position of the credit institution, if such transactions are material and have not been concluded under normal market conditions, must be included. Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the credit institution.”

Transactions entered into between two or more members of a group are exempted provided that subsidiaries which are party to the transaction are wholly owned by such a member.

“Related party”, for the purposes of this paragraph, has the same meaning as in the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.”

Art. 68. Credit institutions shall also give the following information in the notes to the accounts:

- (1) The valuation methods applied to the various items in the annual accounts, and the methods employed in calculating the value adjustments. For items included in the annual accounts which are or were originally expressed in foreign currency the bases of conversion used to express them in the currency of the capital must be disclosed.
- (2) The name and registered office of each of the undertakings in which the company, either itself or through a person acting in his own name but on the company's behalf, holds at least 20% of the capital, showing the proportion of the capital held, the amount of equity, and the profit and loss for the latest financial year of the undertaking concerned for which accounts have been adopted. This information may be omitted where for the purposes of Article 2(3) it is of negligible importance only. The information concerning equity and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet and less than 50% of its capital is held (directly or indirectly) by the company.
- (3) The proportion of the income relating to items 1, 3, 4, 6, and 7 of Article 41 or items B1, B2, B3, B4 and B7 of Article 42, by geographical markets, insofar as, taking account of the manner in which the credit institution is organised, those markets differ substantially from one another.
- (4) Explanations of the amount and nature of the main components of the items “Other operating charges”, and “Other operating income” where such amounts are immaterial for the assessment of the results.
- (5) The average number of staff members employed during the financial year, broken down by categories.
- (6) The extent to which the calculation of the profit or loss for the financial year has been affected by a valuation of the items which, by way of derogation from the principles enunciated in “Articles 51 and

54 to “64e”⁶”⁷, was made in the financial year in question or in an earlier financial year with a view to obtaining tax relief. Where the influence of such a valuation on future tax charges is material, details must be disclosed.

- (7) The difference between the tax charged for the financial year and for earlier financial years and the amount of tax payable in respect of those years, provided that this difference is material for purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading.
- (8) The amount of the remunerations allocated in respect of the financial year to the members of the administrative, management and supervisory bodies by reason of their responsibilities, and any commitments arising or entered into in respect of retirement pensions for former members of those bodies, with an indication of the total for each category.
- (9) The amounts of advances and credits granted to the members of their administrative, management and supervisory bodies, as well as the commitments entered into on behalf of these persons by way of guarantees of any kind, with an indication of the total for each category.
- (10)
 - (a) The name and registered office of the undertaking which draws up the consolidated accounts of the largest body of undertakings of which the company forms part as a subsidiary undertaking.
 - (b) The name and registered office of the undertaking which draws up the consolidated accounts of the smallest body of undertakings of which the company forms part as a subsidiary undertaking and which is also included in the body of undertakings referred to in (a) above.
 - (c) The place where copies of the consolidated accounts referred to in (a) and (b) above may be obtained provided that they are available.

“(Law of 16 March 2006)

- (11) Where the fair value method is not used for financial instruments in accordance with Chapter 7a:
 - (a) for each class of derivative financial instruments:
 - i) the fair value of the instruments, if such a value can be determined by any of the following methods:
 - a market value, for those financial instruments for which a reliable market can readily be identified. Where a market value is not readily identifiable for an instrument but can be identified for its components or for a similar instrument, the market value may be derived from that of its components or of the similar instrument; or
 - a value resulting from generally accepted valuation models and techniques, for those instruments for which a reliable market cannot be readily identified. Such valuation models and techniques shall ensure a reasonable approximation of the market value.
 - (ii) information about the extent and the nature of the instruments; and
 - (b) for financial fixed assets covered by Article 64a, carried at an amount in excess of their fair value and without use being made of the option to make a value adjustment in accordance with Article 56(2)(c)(aa):
 - (i) the carrying amount and the fair value of either the individual assets or appropriate groupings of those individual assets;
 - (ii) the reasons as to why the carrying amount has not been written down and specifically the nature of the information that leads to believe that the carrying amount will be recovered.
- (12) “Separately, the aggregate amount of fees paid during the financial year to the *réviseur d’entreprises agréé* (approved statutory auditor) or the *cabinet de révision agréé* (approved audit firm) for the statutory audit of annual accounts, the aggregate amount of fees paid for other assurance services, the aggregate amount of fees paid for tax consulting services and the aggregate amount of fees paid for other services.”⁸”

Art. 69.

- (1) The information prescribed in Article 68(2) may be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings to which Article 68(2) relates. Any such omission must be disclosed in the notes to the accounts.
- (2) Paragraph (1) shall also apply to the information prescribed by Article 68(3).

⁶ Law of 29 May 2009

⁷ Law of 16 March 2006

⁸ Law of 18 December 2009

- (3) The information laid down in the first sentence of Article 68(2) on the amount of the equity, and the profit or loss for the latest financial year concerned for which accounts have been prepared may be omitted:
 - (a) where the undertakings concerned are included in consolidated accounts drawn up by the parent company or in the consolidated accounts of a larger body of undertakings as referred to in Article 80(2) of this law or
 - (b) where the holdings in the undertakings concerned have been dealt with by the parent undertaking in its annual accounts in accordance with Article 76, or in the consolidated accounts drawn up by that parent undertaking in accordance with Article 103 of this law.

Chapter 9 – Contents of the management report

Art. 70.

“(Law of 16 March 2006)

- (1)
 - (a) The management report shall include at least a fair review of the development and performance of the credit institution’s business and of its position, together with a description of the principal risks and uncertainties that it faces.
The review shall be a balanced and comprehensive analysis of the development and performance of the credit institution’s business and of its position, consistent with the size and complexity of the business.
 - (b) To the extent necessary for an understanding of the credit institution’s development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters.
 - (c) In providing its analysis, the management report shall, where appropriate, include references to and additional explanations of the amounts reported in the annual accounts.”
- (2) The report shall also give an indication of:
 - (a) any important events that have occurred since the end of the financial year;
 - (b) the company's likely future development;
 - (c) activities in the field of research and development;
 - (d) the information concerning acquisitions of own shares prescribed by Article 49-5(2) of the Law of 10 August 1915 on commercial companies;

“(Law of 16 March 2006)

 - (e) any branches the credit institution has;
 - (f) in relation to the company's use of financial instruments and where this is material for the assessment of its assets, liabilities, financial position and profit or loss,
 - the financial risk management objectives and policies of the credit institution, including its policies for hedging each major type of forecasted transaction for which hedge accounting is used, and
 - the credit institution’s exposure to price risk, credit risk, liquidity risk and cash flow risk.”

“(Law of 29 May 2009)

Art. 70a.

- (1) A credit institution whose securities are admitted to trading on a regulated market within the meaning of Article 4(1), point (14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments shall include a corporate governance statement in its management report.
That statement shall be included as a specific section of the management report and shall contain at least the following information:
 - (a) a reference to:
 - (i) the corporate governance code to which the credit institution is subject;
and/or
 - (ii) the corporate governance code which the credit institution may have voluntarily decided to apply;
and/or
 - (iii) all relevant information about the corporate governance practices applied beyond the requirements under national law.

- Where points (i) and (ii) apply, the credit institution shall also indicate where the relevant texts are publicly available; where point (iii) applies, the credit institution shall make its corporate governance practices publicly available;
- (b) to the extent to which a credit institution, in accordance with national law, departs from a corporate governance code referred to under letter (a)(i) or (ii), an explanation by the credit institution as to which parts of the corporate governance code it departs from and the reasons for doing so. Where the credit institution has decided not to apply any provisions of a corporate governance code referred to under letter (a)(i) or (ii), it shall explain its reasons for doing so;
 - (c) a description of the main features of the credit institution's internal control and risk management systems in relation to the financial reporting process;
 - (d) the information required by Article 10(1), letters (c), (d), (f), (h) and (i) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, where the credit institution is subject to that Directive;
 - (e) unless the information is already fully provided for in national laws or regulations, the operation of the shareholder meeting and its key powers, and a description of shareholders' rights and how they can be exercised;
 - (f) the composition and operation of the administrative, management and supervisory bodies and their committees.
- (2) The information required by this Article may be set out in a separate report published together with the management report or by means of a reference in the management report where such document is publicly available on the credit institution's website. In the event of a separate report, the corporate governance statement may contain a reference to the management report where the information required in paragraph (1), letter (d) is made available. Article 75 of this law shall apply to the provisions of paragraph (1), letters (c) and (d). For the remaining information, the statutory auditor(s) shall check that the corporate governance statement has been produced.
 - (3) Credit institutions which have only issued securities other than shares admitted to trading on a regulated market, within the meaning of Article 4(1), point (14) of Directive 2004/39/EC of the European Parliament and of the Council, are exempted from the application of the provisions of paragraph (1), letters (a), (b), (e) and (f), unless such credit institutions have issued shares which are traded in a multilateral trading facility, within the meaning of Article 4(1), point (15) of Directive 2004/39/EC."

Chapter 10 – Publication

Art. 71.

- (1) "The duly approved annual accounts of credit institutions together with the management reports and the reports by the person(s) responsible for auditing the accounts (hereinafter: *réviseurs d'entreprises agréés* (approved statutory auditors)) shall be filed within one month of their approval, and not later than seven months after the end of the financial year, pursuant to Article 79(1) of the law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings."⁹
- (2) The credit institutions' annual accounts must be published in any EEC Member State in which they have branches.

Art. 72.

Whenever the annual accounts and the management report are published in full, they must be reproduced in the form and text on the basis of which the person responsible for auditing the accounts has drawn up his opinion. They must be accompanied by the full text of the report drawn up by the person(s) responsible for auditing the accounts. (...) ¹⁰

Art. 73.

If the annual accounts are not published in full, it must be indicated that the version published abridged and reference must be made to the registry in which the accounts have been filed in accordance with Article 71(1).

"Where such filing has not yet been effected, the fact must be disclosed. The report of the *réviseur(s) d'entreprises agréé(s)* (approved statutory auditor(s)) shall not accompany this publication, but it shall be disclosed whether an unqualified, qualified or adverse audit opinion was expressed, or whether the *réviseurs d'entreprises agréés* (approved statutory auditors) were unable to express an audit opinion. It shall also be disclosed whether the report of the *réviseurs d'entreprises agréés* (approved statutory auditors) included a reference to any matters to which the *réviseurs d'entreprises agréés* (approved statutory auditors) drew attention by way of emphasis without qualifying the audit opinion."¹¹

⁹ Law of 18 December 2009

¹⁰ The third sentence is repealed by the law of 16 March 2006

¹¹ Law of 18 December 2009

Art. 74. The following must be published together with the annual accounts, and in like manner:

- the proposed appropriation of the profit or treatment of the loss,
 - the appropriation of the profit or treatment of the loss,
- where these items do not appear in the annual accounts.

“(Law of 16 March 2006)

Art. 74a. In addition to publication in the currency or unit of account in which they are prepared, the annual accounts may also be published in euros using the conversion rate of the balance sheet date. The said rate shall be reported in the notes to the accounts.”

“(Law of 29 May 2009)

Chapter 10a. – Duty and liability for drawing up and publishing the annual accounts and the management report

Art. 74b. The members of the administrative, management and supervisory bodies of the credit institution have collectively the duty to ensure that the annual accounts, the management report and, when provided separately, the corporate governance statement to be provided pursuant to Article 70a of this law are drawn up and published in accordance with the requirements of this law and, where applicable, in accordance with the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.

Art. 74c. The members of the administrative, management and supervisory bodies are jointly liable, within the limits of the respective competences of the bodies concerned, to the credit institution and to the third parties for any damages resulting from infringements to the provisions of Article 74b of this law. They will not be held liable for infringements in which they were not involved only if no fault is attributable to them and if they have denounced these infringements, as the case may be, at the following shareholder meeting or during the first meeting of the body which has given them mandate following the moment in which they have become aware of the infringements.”

Chapter 11 – Auditing

Art. 75. “The *réviseurs d’entreprises agréés* (approved statutory auditors) responsible for auditing the annual accounts, pursuant to Article 10(1) of the law of 5 April 1993 on the financial sector, as amended, shall also express an opinion concerning the consistency or otherwise of the management report with the annual accounts for the same financial year.”¹²

Art. 75a.

“(1) The report of the *réviseurs d’entreprises agréés* (approved statutory auditors) shall include:

- (a) an introduction which shall at least identify the annual accounts that are the subject of the statutory audit, together with the financial reporting framework that has been applied in their preparation;
- (b) a description of the scope of the statutory audit which shall at least identify the auditing standards in accordance with which the statutory audit was conducted;
- (c) an audit opinion which shall state clearly the opinion of the *réviseurs d’entreprises agréés* (approved statutory auditors) as to whether the annual accounts give a true and fair view in accordance with the relevant financial reporting framework and, where appropriate, whether the annual accounts comply with statutory requirements. The audit opinion shall be either unqualified, qualified, an adverse opinion or, if the *réviseurs d’entreprises agréés* (approved statutory auditors) are unable to express an audit opinion, a disclaimer of opinion;
- (d) a reference to any matters to which the *réviseurs d’entreprises agréés* (approved statutory auditors) draw attention by way of emphasis without qualifying the audit opinion;
- (e) an opinion concerning the consistency or otherwise of the management report with the annual accounts for the same financial year.

(2) The report shall be signed and dated by the *réviseurs d’entreprises agréés* (approved statutory auditors).”¹³

¹² Law of 18 December 2009

¹³ Law of 18 December 2009

Chapter 12 – Application of the equity accounting method to the annual accounts

Art. 76.

- (1) Credit institutions may show the participating interests, as defined in Article 18, in the capital of undertakings over the operating and financial policies on which they exercise a significant influence, in the balance sheet in accordance with paragraphs (2) to (8) below, as sub-items of the items “Participating interests” or “Shares in affiliated undertakings”, as the case may be. The title of the sub-item is “Undertakings accounted for by the equity method”. A company shall be presumed to exercise a significant influence over another undertaking where it has 20% or more of the shareholders’ or members’ voting rights. Article 78 of this law shall apply.
- (2) When this Article is applied for the first time to a participating interest covered by paragraph (1), that participating interest shall be shown in the balance sheet either:
 - (a) at its carrying amount calculated in accordance with the rules set forth “in Chapter 7 or 7a of Part II”¹⁴ of this law. The difference between that value and the amount corresponding to the proportion of equity represented by that participating interest shall be disclosed separately in the balance sheet or in the notes to the accounts. That difference shall be calculated as at the date as at which that method is used for the first time; or
 - (b) at an amount corresponding to the proportion of the equity represented by that participating interest. The difference between that amount and the carrying amount calculated in accordance with the “valuation rules laid down in Chapter 7 or 7a of Part II”¹⁵ of this law shall be disclosed separately in the balance sheet or in the notes to the accounts. That difference shall be calculated as at the date as at which that method is used for the first time.
 - (c) The balance sheet or the notes to the accounts must indicate whether (a) or (b) has been used.
 - (d) For application of (a) or (b), the calculation of the difference may take place on the date of acquisition of the shares or, where they were acquired in two or more stages, on the date on which the shares became a participating interest within the meaning of paragraph (1).
- (3) Where the assets or liabilities of an undertaking in which a participating interest within the meaning of paragraph (1) above is held have been valued by methods other than those used by the company drawing up the annual accounts, they may, for the purpose of calculating the difference referred to in paragraph (2)(a) or (b) above, be revalued by the methods used by the company drawing up the annual accounts. Disclosure must be made in the notes to the accounts where such revaluation has not been carried out.
- (4) The carrying amount referred to in paragraph (2)(a) above, or the amount corresponding to the proportion of equity referred to in paragraph (2)(b) above, shall be increased or reduced by the amount of the variation which has taken place during the financial year in the proportion of equity represented by that participating interest; it shall be reduced by the amount of the dividends relating to the participating interest.
- (5) Insofar as a positive difference covered by paragraph (2)(a) or (b) above cannot be related to any category of asset or liability items category, it shall be written off within a maximum period of five years.
- (6) The proportion of the profit or loss attributable to the participating interests referred to in paragraph (1) above shall be shown in the profit and loss account only to the extent of the amount corresponding to dividends already received or the payment of which can be claimed.

It shall be entered under a separate item “Income from undertakings accounted for by the equity method”, which is a sub-item of items 3(b) and 3(c) – vertical layout, or B2b) and B2c) – horizontal layout.
- (7) The eliminations referred to in Article 95(1)(d) of this law shall be effected insofar as the facts are known or can be ascertained. Article 95(2) and (3) of this law shall apply.
- (8) Where an undertaking in which a participating interest within the meaning of paragraph (1) above is held draws up consolidated accounts, the foregoing paragraphs shall apply to the equity shown in such consolidated accounts.

¹⁴ Law of 16 March 2006

¹⁵ Law of 16 March 2006

“(Law of 16 March 2006)

Part IIa.: Annual accounts prepared according to international accounting standards

Art. 76a.

“(Law of 29 May 2009)

Credit institutions may draw up their annual accounts in accordance with the international accounting standards adopted pursuant to the procedure provided for under Article 6(2) of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards and may, to the extent necessary to it, derogate from the provisions of Part II of this law.

In such cases, the credit institutions concerned shall nevertheless remain subject to the provisions of points (2), (5), (8), (9), (10) and (12) of Article 68, of Article 69(1) and Articles 70, 70a, 71, 72, 73, 74, 74a, 74b, and 74c, 75 and 75a of this law.”

Part III: Consolidated accounts

Chapter 1 – Conditions for the preparation of consolidated accounts

Art. 77.

(1) Any credit institution referred to in the first Article of this law shall be obliged to draw up consolidated accounts and a consolidated management report if that institution:

(a) has a majority of the shareholders’ or members’ voting rights in another undertaking;

or

(b) has the right to appoint or remove a majority of the members of an administrative, management or supervisory body of another undertaking and is at the same time a shareholder in or member of that undertaking;

or

(c) is a shareholder or member in an undertaking and, by virtue of an agreement entered into with other shareholders or members in that undertaking, has sole control of a majority of its shareholders’ or members’ voting rights;

or

“(Law of 16 March 2006)

(d)

da) has the power to exercise, or actually exercises, a dominant influence or a control over another undertaking; or,

db) itself and another undertaking are managed on a unified basis.”

(2) For the purposes of this law, the institution holding the rights referred to in paragraph (1) shall be known as the parent undertaking. The undertakings in which such rights are held shall be known as subsidiary undertakings.

Art. 78.

(1) For the purposes of Article 77(1)(a), (b) and (c), the voting rights and the rights of appointment and removal of any other subsidiary undertaking as well as those of any person acting in his own name but on behalf of the parent undertaking or of another subsidiary undertaking must be added to those of the parent undertaking.

(2) For the purposes of Article 77(1)(a), (b) and (c), the rights mentioned in paragraph (1) above must be reduced by the rights:

(a) attaching to shares held on behalf of a person who is neither the parent undertaking nor a subsidiary thereof;

or

(b) attaching to shares held by way of security, provided that the rights in question are exercised in accordance with the instructions received, or held in connection with the granting of loans as part of normal business activities, provided that the voting rights are exercised in the interests of the person providing the security.

- (3) For the purposes of Article 77(1)(a) and (c), the total of the shareholders' or members' voting rights in the subsidiary undertaking must be reduced by the voting rights attaching to the shares held by that undertaking itself by a subsidiary undertaking of that undertaking or by a person acting in his own name but on behalf of those undertakings.

Art. 79.

- (1) Without prejudice to “(Law of 16 March 2006) Article 83” a parent undertaking and all of its subsidiary undertakings shall be undertakings to be consolidated regardless of where the registered offices of such subsidiary undertakings are situated.
- (2) For the purposes of paragraph (1) above, any subsidiary undertaking of a subsidiary undertaking shall be considered a subsidiary undertaking of the parent undertaking which is the parent of the undertakings to be consolidated.

Art. 80.

- (1) By way of derogation Article 77, any parent undertaking which is also a subsidiary undertaking if its own parent undertaking is governed by the law of a European Community Member State shall be exempted from the obligation to prepare consolidated accounts and a consolidated management report in the following two cases:
 - (a) where that parent undertaking holds all of the shares in the exempted undertaking. The shares in that undertaking held by members of its administrative, management or supervisory bodies pursuant to an obligation in law or in the memorandum or articles of association shall be ignored for this purpose; or
 - (b) where that parent undertaking holds 90% or more of the shares in the exempted undertaking and the remaining shareholders in or members of that undertaking have approved the exemption.
- (2) Exemption shall be conditional upon compliance with all of the following conditions:
 - (a) the exempted undertaking and, without prejudice to “Article 83”¹⁶, all of its subsidiary undertakings, must be consolidated in the accounts of a larger body of undertakings, the parent undertaking of which is governed by the law of a European Community Member State;
 - (b) (aa) the consolidated accounts referred to in (a) above and the consolidated management report of the larger body of undertakings must be drawn up by the parent undertaking of that body and audited, according to the law of the Member State by which it is governed;
(bb) The consolidated accounts referred to in (a) above and the consolidated management report referred to in (aa) above, the report by the person responsible for auditing those accounts must be published for the exempted undertaking in the manner prescribed by Article 112(1).
 - (c) The parent undertaking must be a credit institution within the meaning of Article 14(2) of this law;
 - (d) the notes to the annual accounts of the exempted undertaking must disclose:
 - (aa) the name and registered office of the parent undertaking that draws up the consolidated accounts referred to in (a) above; and
 - (bb) the exemption from the obligation to draw up consolidated accounts and a consolidated management report.

“(Law of 16 March 2006)

- (3) This Article shall not apply to credit institutions whose securities are admitted to trading on a regulated market of a European Community Member State within the meaning of Article 4(1), point (14) of Directive 2004/39/EC.”

Art. 81. In cases not covered by Article 80(1) any parent undertaking which is also a subsidiary undertaking, the parent undertaking of which is governed by the law of a European Community Member State are exempted from the obligation of preparing consolidated accounts and a consolidated management report, provided that all the conditions set out in Article 80(2) are fulfilled and that the shareholders in or members of the exempted undertaking, who own shares of the subscribed capital of that company at a minimum rate of 10% if the exempted company is a *société anonyme* [public limited liability company] or a *société en commandite par actions* [limited partnership with a share capital], and at a minimum rate of 20% if it is a company of another legal form, have not requested the preparation of consolidated accounts at least six months before the end of the financial year.

Art. 82.

- (1) By way of derogation Article 77, any parent undertaking which is also a subsidiary undertaking whose own parent undertaking is not governed by the law of a European Community Member State shall be exempted

¹⁶ Law of 16 March 2006

from the obligation of preparing consolidated accounts and a consolidated management report if all the following conditions are met:

- (a) the exempted company and, without prejudice to “Article 83”¹⁷, all of its subsidiary undertakings, must be consolidated in the accounts of a larger body of undertakings;
- (b) the consolidated accounts referred to in (a) and, if appropriate, the consolidated management report must be drawn up in accordance with the provisions of this law or in an equivalent manner;
- (c) the consolidated accounts referred to in (a) have been audited by one or more persons authorised to audit accounts under the national law governing the undertaking which prepared the said accounts.

(2) Article 80(2)(b)(bb), (c) and (d) and Article 81 shall apply.

Art. 83.

- (1) An undertaking need not be included in consolidated accounts where it is not material for the purposes of Article 85(3).
- (2) Where two or more undertakings satisfy the requirements of paragraph (1) above, they must nevertheless be included in consolidated accounts if, as a whole, they are material for the purposes of Article 85(3).

“(Law of 28 April 2011)

(2a) Any parent undertaking which only has subsidiary undertakings which are not material for the purposes of Article 85(3), both individually and as a whole, shall be exempted from the obligation imposed in Article 77(1).”

(3) In addition, an undertaking need not be included in consolidated accounts where:

- (a) severe long-term restrictions substantially hinder the parent company in the exercise of its rights over the assets or management of that undertaking;
- (b) the information necessary for the preparation of consolidated accounts in accordance with this law cannot be obtained without disproportionate expense or undue delay.
- (c) the shares of that undertaking are held exclusively with a view to their subsequent resale. Where a subsidiary undertaking which is a credit institution as defined in Article 14(2) is not included in consolidated accounts but where the shares of that undertaking are temporarily held as a result of a financial assistance operation with a view to its reorganisation or its rescue, the annual accounts of that undertaking shall be attached to the consolidated accounts and additional information shall be given in the notes to the accounts concerning the nature and terms of the financial assistance operation.

Art. 84. (...)¹⁸

Chapter 2 – The preparation of consolidated accounts

Art. 85.

(1) Consolidated accounts shall comprise the consolidated balance sheet, the consolidated profit and loss account and the notes to the accounts. These documents shall constitute a composite whole.

“(Law of 16 March 2006) Credit institutions may include other statements in the consolidated accounts in addition to the documents referred to in the first subparagraph.”

- (2) Consolidated accounts shall be drawn up clearly and in accordance with this law.
- (3) Consolidated accounts shall give a true and fair view of the assets, liabilities, financial position and profit or loss of the undertakings included therein taken as a whole.
- (4) Where the application of this law would not be sufficient to give a true and fair view within the meaning of paragraph (3), additional information must be given.
- (5) Where, in exceptional cases, the application of a provision of Articles 86 to 108 and 115 is incompatible with the obligation imposed in paragraph (3), that provision must be departed from in order to give a true and fair view within the meaning of paragraph (3). Any such departure must be disclosed in the notes to the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss.

Art. 86.

¹⁷ Law of 16 March 2006

¹⁸ Repealed by the law of 16 March 2006

- (1) Articles 3 to 50 of this law shall apply in respect of the layout of consolidated accounts, without prejudice to the provisions of this Part and taking account of the essential adjustments resulting from the particular characteristics of consolidated accounts as compared with annual accounts.
- (2) Stocks may be combined in the consolidated accounts where a breakdown would entail undue expense.

Art. 87. The assets and liabilities of undertakings included in a consolidation shall be incorporated in full in the consolidated balance sheet.

Art. 88.

- (1) The carrying amounts of shares in the capital of undertakings included in a consolidation shall be set off against the proportion which they represent of the equity of those undertakings:
 - (a) That set-off shall be effected on the basis of carrying amounts as at the date as at which such undertakings are included in the consolidations for the first time. Differences arising from such set-offs shall as far as possible be entered directly against those items in the consolidated balance sheet which have values above or below their carrying amounts.
 - (b) Such set-off may also be done on the basis of the value of the identifiable assets and liabilities as at the date of acquisition of the shares or, in the event of acquisition in two or more stages, as at the date on which the undertaking became a subsidiary.
 - (c) Any difference remaining after the application of (a) or resulting from the application of (b) shall be shown as a separate item in the consolidated balance sheet with the heading "The difference on first consolidation". This item shall appear between Assets items 10 (Intangible assets) and 11 (Tangible assets) and between Liabilities items 12 (Revaluation reserve) and 13 (Profit or loss brought forward) of the layout as defined in Article 7 of this law. That item, the methods used and any significant changes in relation to the preceding financial year must be explained in the notes to the accounts. The positive and negative differences may be offset, provided that a breakdown thereof is given in the notes to the accounts.
- (2) However, paragraph (1) shall not apply to shares in the capital of the parent undertaking held either by that undertaking itself or by another undertaking included in the consolidation. In the consolidated accounts, such shares shall be treated as own shares in accordance with this law.

Art. 89.

- (1) Instead of the method described in Article 88, consolidating companies may carry out offsetting between the carrying amounts of the shares in an undertaking included in the consolidation and the corresponding percentage of the capital of that single undertaking, provided that:
 - (a) the shares held represent at least 90% of the nominal value or, in the absence of nominal value, of the accounting par value, of the shares of that undertaking other than shares conferring a limited right of participation in dividend distributions or shares of the corporate assets in the event of liquidation;
 - (b) the proportion referred to in (a) above has been attained pursuant to an arrangement providing for the issue of shares by an undertaking included in the consolidation; and
 - (c) the arrangement referred to in (b) above did not include a cash payment exceeding 10% of the nominal value or, in the absence of a nominal value, of the accounting par value of the shares issued.
- (2) Any difference arising under paragraph (1) shall be added to or deducted from consolidated reserves as appropriate.
- (3) The application of the method described in paragraph (1), the resulting movement in the reserves and the names and registered offices of the undertakings concerned shall be disclosed in the notes to the accounts.

Art. 90. The amount attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated balance sheet as a separate item titled "Minority interests". This item shall appear after the item "The differences on first consolidation" as defined in Article 88.

Art. 91. The income and expenditure of undertakings included in a consolidation shall be incorporated in full in the consolidated profit and loss account.

Art. 92. The amount of any profit or loss attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated profit and loss account as a separate item titled "Minority interests' share". This item shall appear in the balance sheet and profit and loss account as follows:

Profit or loss for the financial year
of which: group share
 minority interests' share.

Art. 93. Consolidated accounts shall be drawn up in accordance with the principles enunciated in Articles 94 to 97.

Art. 94.

- (1) The methods of consolidation must be applied consistently from one financial year to another.
- (2) Derogations from the provisions of paragraph (1) shall be permitted in exceptional cases. Any such derogations must be disclosed in the notes to the accounts and the reasons for them given together with an assessment of their effect on the assets, liabilities, financial position and profit or loss of the undertakings included in the consolidation taken as a whole.

Art. 95.

- (1) Consolidated accounts shall show the assets, liabilities, financial positions and profits or losses of the undertakings included in a consolidation as if the latter were a single undertaking. In particular:
 - (a) debts and claims between the undertakings included in a consolidation shall be eliminated from the consolidated accounts;
 - (b) reciprocal rights and commitments relating to the off-balance-sheet accounts shall also be eliminated;
 - (c) income and expenditure relating to transactions between the undertakings included in a consolidation shall be eliminated from the consolidated accounts;
 - (d) where profits and losses resulting from transactions between the undertakings included in a consolidation are included in the carrying amounts of assets, they shall be eliminated from the consolidated accounts.

Such eliminations may be effected in proportion to the percentage of the capital held by the parent undertaking in each of the subsidiary undertakings included in the consolidation.

- (2) Paragraph (1)(d) may be derogated from where a transaction has been concluded according to normal market conditions and where the elimination of the profit or loss would entail undue expense. Any such derogations must be disclosed and where the effect on the assets, liabilities, financial position and profit or loss of the undertakings, included in the consolidation, taken as a whole, is material, that fact must be disclosed in the notes to the consolidated accounts.
- (3) Derogations from the provisions of paragraph (1)(a), (b) (c) and (d) shall be permitted where the amounts concerned are not material for the purposes of Article 85(3).

Art. 96.

- (1) Consolidated accounts must be drawn up as at the same date as the annual accounts of the parent undertaking.
- (2) However, the consolidated accounts may be drawn up as at another date in order to take account of the balance sheet dates of the largest number or the most important of the undertakings included in the consolidation. Where use is made of this derogation that fact shall be disclosed in the notes to the consolidated accounts together with the reasons therefor. In addition, account must be taken or disclosure made of important events concerning the assets and liabilities, the financial position or the profit or loss of an undertaking included in a consolidation which have occurred between that undertaking's balance sheet date and the consolidated balance sheet date.
- (3) Where an undertaking's balance sheet date precedes the consolidated balance sheet date by more than three months, that undertaking shall be consolidated on the basis of interim accounts drawn up as at the consolidated balance sheet date.

Art. 97. If the composition of the undertakings included in a consolidation has changed significantly in the course of a financial year, the consolidated accounts must include information which makes the comparison of successive sets of consolidated accounts meaningful.

Where such a change is a major one, that obligation may be met by the preparation of an adjusted opening balance sheet and an adjusted profit and loss account.

Art. 98.

- (1) Assets and liabilities to be included in consolidated accounts shall be valued according to uniform methods and in accordance with "chapters 7 and 7a and Article 99"¹⁹ of this law.
- (2)
 - (a) The undertaking which draws up consolidated accounts must apply the same methods of valuation as in its annual accounts. However other methods of valuation in accordance with the above-mentioned Articles may be applied to the consolidated accounts.
 - (b) Where use is made of this derogation that fact shall be disclosed in the notes to the consolidated accounts and the reasons therefore given.

¹⁹ Law of 16 March 2006

- (3) Where assets and liabilities to be included in consolidated accounts have been valued by undertakings included in the consolidation by methods differing from those used for the consolidation, they must be revalued in accordance with the methods used for the consolidation unless the results of such revaluation are not material for the purposes of Article 85(3). Departures from this principle shall be permitted in exceptional cases. Any such departures shall be disclosed in the notes to the consolidated accounts and the reasons for them given.
- (4) Account shall be taken in the consolidated balance sheet and in the consolidated profit and loss account of any difference resulting from the above-mentioned methods of valuation between the tax chargeable for the financial year and for preceding financial years and the amount of tax paid or payable in respect of those years, provided that it is probable that an actual charge to tax will arise within the foreseeable future for one of the undertakings included in the consolidation.
- (5) Where assets to be included in consolidated accounts have been the subject of exceptional value adjustments solely for tax purposes, they shall be incorporated in the consolidated accounts only after those adjustments have been eliminated. Such assets may nevertheless be incorporated in the consolidated accounts without the elimination of the adjustments, provided that their amounts, together with the reasons for them, are disclosed in the notes to the consolidated accounts.

Art. 99.

- (1) Translation differences arising on consolidation out of the retranslation of an affiliated undertaking's equity or the share of a participating interest's equity at the beginning of the accounting period to be included, in whole or in part to an item titled "Translation differences", together with the translation differences arising on the translation of any transactions undertaken to cover that equity.
This item shall appear after the item "Minority interests", as defined in Article 90.
- (2) The income and expenditure of affiliated undertakings and participating interests may be translated on consolidation at the average rates of exchange ruling during the accounting period.

Art. 100.

- (1) The positive "Initial consolidation difference" resulting from the application of Article 88(1)(c) shall be written off within a maximum period of five years.
- (2) The positive consolidation difference may be immediately and clearly deducted from the consolidated reserves.

Art. 101. The negative "Initial consolidation difference" resulting from the application of Article 88(1)(c) may be transferred to the consolidated profit and loss account only:

- (a) where it corresponds to the expectation at the date of acquisition of unfavourable future results in that undertaking, or to the expectation of costs which that undertaking would incur, insofar as such an expectation materialises; or
- (b) insofar as it corresponds to a realised gain.

Art. 102.

- (1) Where an undertaking included in a consolidation manages another undertaking jointly with one or more undertakings not included in that consolidation, that undertaking may be included in the consolidated accounts in proportion to the rights in its capital held by the undertaking included in the consolidation.
- (2) Articles 83 to 101 shall apply *mutatis mutandis* to the proportional consolidation referred to in (1).
- (3) Where this Article is applied, Article 103 shall not apply if the undertaking proportionally consolidated is an associated undertaking as defined in Article 103.

Art. 103.

- (1) Where an undertaking included in a consolidation exercises a significant influence over the operating and financial policy of an undertaking not included in the consolidation (an associated undertaking) in which it holds a participating interest, as defined in Article 18 of this law, that participating interest shall be shown in the consolidated balance sheet as a separate item titled "Participating interests accounted for by the equity method". An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20% or more of the shareholders' or members' voting rights in that undertaking. Article 78 shall apply.
(...)²⁰
- (2) When this Article is applied for the first time to a participating interest covered by paragraph (1), that participating interest shall be shown in the consolidated balance sheet either:

²⁰ Repealed by the law of 16 March 2006

- (a) at its carrying amount calculated in accordance with the valuation rules laid down in Part II of this law. The difference between that value and the amount corresponding to the proportion of equity represented by that participating interest shall be disclosed separately in the consolidated balance sheet or in the notes to the accounts. That difference shall be calculated as at the date as at which that method is used for the first time; or
 - (b) at an amount corresponding to the proportion of the associated undertaking's equity represented by that participating interest. The difference between that amount and the carrying amount calculated in accordance with the valuation rules laid down in Part II of this law shall be disclosed separately in the consolidated balance sheet or in the notes to the accounts. That difference shall be calculated as at the date as at which that method is used for the first time.
 - (c) The consolidated balance sheet or the notes to the accounts must indicate whether (a) or (b) has been used. The difference obtained through the application of these two methods shall be shown in an item titled "Equity accounting difference".
 - (d) For the application of (a) or (b), the calculation of the difference may take place as at the date of acquisition of the shares or, where they were acquired in two or more stages, as at the date on which the undertaking became an affiliated undertaking.
- (3) Where an associated undertaking's assets or liabilities have been valued by methods other than those used for consolidation in accordance with Article 98(2), they may, for the purpose of calculating the difference referred to in paragraph (2)(a) or (b) above, be revalued by the methods used for consolidation. Where such revaluation has not been carried out that fact must be disclosed in the notes to the accounts.
 - (4) The carrying amount referred to in paragraph (2)(a), or the amount corresponding to the proportion of the associated undertaking's equity referred to in paragraph (2)(b), shall be increased or reduced by the amount of any variation which has taken place during the financial year in the proportion of the associated undertaking's equity represented by that participating interest; it shall be reduced by the amount of the dividends relating to that participating interest.
 - (5) Insofar as the positive difference referred to in paragraph (2)(a) or (b) cannot be related to any category of assets or liabilities it shall be dealt with in accordance with Articles 100(...)²¹.
 - (6) The proportion of the profit or loss of the associated undertakings attributable to such participating interests shall be shown in the consolidated profit and loss account as a separate item titled "Proportion of the profit/loss of the undertakings accounted for by the equity method".
 - (7) The eliminations referred to in Article 95(1)(d) shall be effected insofar as the facts are known or can be ascertained. Article 95(2) and (3) shall apply.
 - (8) Where an associated undertaking draws up consolidated accounts, the foregoing provisions shall apply to the equity shown in such consolidated accounts.
 - (9) This Article need not be applied where the participating interest in the capital of the associated undertaking is not material for the purposes of Article 85(3).

Chapter 3 – Contents of the notes to the accounts

Art. 104. In addition to the information required under other provisions of this law, the notes to the accounts shall include the following information on balance sheet items as provided for in the layouts presented in Article 7 of this law, taking account of the essential adjustments resulting from the particular characteristics of consolidated accounts as compared with annual accounts:

- (1) Re item "Participating interests", Assets: the amount of any (non consolidated) participating interests in other credit institutions.
- (2) Re item "Shares in affiliated undertakings", Assets: the amount of any shares in (non consolidated) affiliated undertakings which are credit institutions.
- (3) Re item "Amounts owed to customers – savings deposits", Liabilities: the aggregate amount of savings deposits repayable on demand and those with agreed maturity dates or periods of notice.
- (4) Separately for each of the Assets items 3(b), 4 and 5 and the Liabilities items 1(b), 2(a), 2(b)(bb) and 3(b) the amounts of those loans and advances and liabilities on the basis of their remaining maturity as follows:
 - not more than three months;
 - more than three months but not more than one year;
 - more than one year but not more than five years;

²¹ Repealed by the law of 29 May 2009

- more than five years.

For Assets item 4, loans and advances on call and at short notice must also be shown.

If loans and advances or liabilities involve payment by instalments, the remaining maturity shall be the period between the balance sheet date and the date on which each instalment falls due.

- (5) In respect of Assets item 6 (debt securities including fixed-income securities) and Liabilities item 3(a) (debt securities in issue), the proportion of assets and liabilities that will become due within one year of the balance sheet date.
- (6) The breakdown of the securities shown under Assets items 6 to 9 into listed and unlisted securities.
- (7) The breakdown of the securities shown under Assets item 6 into securities which, pursuant to Article 56, are or are not held as financial fixed assets and the criterion used to distinguish this category.
- (8) The breakdown of the leasing transactions (Asset item 5) depending on whether they are carried out with credit institutions or customers.
- (9) The composition of the main component amounts constituting the items “Other assets” and “Other liabilities” of the consolidated balance sheet, where such amounts are important for the purpose of assessing the annual accounts. Explanations of their amount and nature must also be given.
- (10) The number and the nominal value or, in the absence of a nominal value, the accounting par value of the shares subscribed during the financial year within the limits of an authorised capital.
- (11) Where there is more than one class of shares, the number and the nominal value or, in the absence of a nominal value, the accounting par value for each class.
- (12) The existence of any participation certificates, convertible debentures or similar securities or rights, with an indication of their number and the rights they confer.
- (13) The charges paid on account of subordinated liabilities during the financial year, on a consolidated basis.

In addition the following must be indicated:

- in respect of each borrowing which exceeds 10% of the total amount of the subordinated liabilities:
 - (i) the amount of the borrowing, the currency in which it is denominated, the rate of interest and the maturity date or the fact that it is a perpetual issue;
 - (ii) whether there are any circumstances in which early repayment is required;
 - (iii) the terms of the subordination, the existence of any provisions to convert the subordinated liability into capital or some other form of liability and the terms of any such provisions.
 - an overall indication of the rules governing other borrowings.
- (14) The aggregate amounts of assets and of liabilities denominated in foreign currencies, translated into the currency in which the annual accounts are drawn up.
 - (15) A. The movements of the following assets held as fixed assets, within the meaning of Article 56:
 1. Participating interests (not included in the consolidation)
 2. Shares in affiliated undertakings (not included in the consolidation)
 3. Debt securities including fixed-income securities held as financial fixed assets.
 4. Intangible assets, showing separately:
 - (a) Formation expenses
 - (b) Costs of research and development
 - (c) Concessions, patents, licences, trade marks and similar rights and assets, if they were:
 - (ca) acquired for valuable consideration without being included in the items of a goodwill
 - (cb) created by the undertakings included in the consolidation.
 - (d) Goodwill, to the extent that it was acquired for valuable consideration
 - (e) Payments on account.
 5. Tangible assets, showing separately:
 - (a) Land and buildings
 - (b) Plant and machinery
 - (c) Other fixtures and fittings, tools and equipment
 - (d) Payments on account and tangible assets in course of construction.
 6. The other assets items as specified in Article 56(1)(c).

To this end there shall be shown separately, starting with the purchase price or production cost, for each of these items and sub-items, on the one hand, the additions, disposals and transfers during the financial year and, on the other, the cumulative value adjustments at the balance sheet date and the rectifications made during the financial year to the value adjustments of previous financial years.

The obligation to show value adjustments separately shall not, however, apply for participating interests, shares in affiliated undertakings and transferable securities held as financial fixed assets. In that event value adjustments may be combined with other items.

- B. If, when consolidated accounts are drawn up in accordance with this law for the first time, the purchase price or production cost of a fixed asset cannot be determined without undue expense or delay, the residual value at the beginning of the financial year may be treated as the purchase price or production cost. Any application of this exception must be disclosed in the notes to the accounts.
- C. Where Article 53 is applied on a consolidated basis, the movements in the various fixed asset items referred to in A shall be shown starting with the purchase price or production cost resulting from revaluation.

Art. 105. Credit institutions shall indicate either in the consolidated balance sheet or in the notes to the accounts:

- (1) Separately for each relevant item:
 - claims, whether or not evidenced by certificates, on affiliated undertakings and not included in the consolidation and included in Assets items 2 to 6;
 - claims, whether or not evidenced by certificates, on undertakings not included in the consolidation and with which there is a link by virtue of a participating interest and included in Assets items 2 to 6;
 - liabilities, whether or not evidenced by certificates, to affiliated undertakings not included in the consolidation and included in Liabilities items 1, 2, 3 and 7;
 - liabilities, whether or not evidenced by certificates, to undertakings not included in the consolidation and with which there is a link by virtue of a participating interest and included in Liabilities items 1, 2, 3 and 7;
- (2) Separately for each item of the layout and sub-item created in accordance with paragraph (1): subordinated assets.

Assets, whether or not evidenced by certificates, are subordinated if, in the event of winding up or bankruptcy, they are to be repaid only after the claims of other creditors have been met.
- (3) (a) Where an asset or liability relates to more than one layout item, its relationship to other items, if such disclosure is essential to the comprehension of the consolidated accounts.
- (b) Own shares and shares in affiliated undertakings may be shown only under the items prescribed for that purpose.

Art. 106.

- (1) In respect of the contingent liabilities included in the consolidated off-balance-sheet, the notes to the accounts shall state the nature and amount of any type of contingent liability which is material in relation to all their consolidated activities.

The above-mentioned contingent liabilities existing in respect of affiliated undertakings not included in the consolidation must be shown separately.

- (2) The notes to the accounts shall give particulars of the assets which the undertakings included in the consolidation have pledged as security for their own liabilities or for those of outside third parties (including contingent liabilities); the particulars should be in sufficient detail to indicate for each Liabilities item and for each consolidated Off-balance sheet item the total amount of the assets pledged as security. Assets pledged as security of affiliated undertakings not included in the consolidation must be shown separately.
- (3) With regard to the commitments stated in the consolidated off-balance-sheet, the notes to the accounts shall state the nature and amount of any type of commitment which is material in relation to all their consolidated activities.

Commitments in respect of affiliated undertakings not included in the consolidation must be shown separately. In addition the commitments which are neither included in the consolidated balance sheet nor in the consolidated off-balance-sheet must also be shown insofar as this information is of assistance in assessing the consolidated financial position. Any commitments concerning pensions and affiliated undertakings not included in the consolidation must be disclosed separately.

- (4) A statement must be disclosed of the types of unmatured forward transactions outstanding at the balance sheet date indicating, in particular, for each type of transaction, whether they are made to a material extent for the purpose of hedging the effects of fluctuations in interest rates, exchange rates and market prices, and whether they are made to a material extent for dealing purposes.

These types of transaction shall include all those in connection with which the income or expenditure is to be included in Article 41, item 6, Article 42, items A3 or B4 or Article 43, point (3), for example, foreign currencies, precious metals, securities, certificates of deposits and other assets.

- (5) The fact that management and agency services are provided to third parties shall be indicated where the scale of business of that kind is material in relation to all consolidated activities.

“(Law of 29 May 2009)

Art. 106a.

- (1) The nature and business purpose of any arrangements that are not included in the consolidated balance sheet and the financial impact on the credit institution of those arrangements must be indicated, provided that the risks or benefits arising from such arrangements are material and insofar as the disclosure of such risks or benefits is necessary for assessing the financial position of the undertakings included in the consolidation taken as a whole.
- (2) The transactions, save for intra-group transactions, which have been entered into by the parent credit institution, or by other undertakings included in the consolidation, with related parties, including the amounts of such transactions, the nature of the related party relationship as well as other information about the transactions necessary for an understanding of the financial position of the undertakings included in the consolidation taken as a whole, if such transactions are material and have not been concluded under normal market conditions, must be indicated. Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of the related party transactions on the financial position of the undertakings included in the consolidation taken as a whole.”

“Related party”, for the purposes of this paragraph, has the same meaning as in the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.”

Art. 107. The notes to the consolidated accounts shall also include the following information:

- (1) The valuation methods applied to the various items in the consolidated accounts, and the methods employed in calculating the value adjustments. For items included in the consolidated accounts which are, or were originally, expressed in foreign currency, the bases of conversion used to express them in the currency in which the consolidated accounts are drawn up must be disclosed.
- (2) (a) The names and registered offices of the undertakings included in the consolidation; the proportion of the capital held in undertakings included in the consolidation, other than the parent undertaking, by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings; which of the conditions referred to in Article 77 following application of Article 78 has formed the basis on which the consolidation has been carried out. The latter disclosure may, however, be omitted where consolidation has been carried out on the basis of Article 77(1)(a) and where the proportion of the capital and the proportion of the voting rights held are the same.
(b) The same information must be given in respect of undertakings excluded from a consolidation pursuant to “Article 83 and”²² an explanation must be given for the exclusion of the undertakings referred to in Article 83.
- (3) (a) The name and registered offices of undertakings associated with an undertaking included in the consolidation as described in Article 103(1), and the proportion of their capital held by undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.
(b) The same information must be given in respect of the associated undertakings referred to in Article 103(9), together with the reasons for applying that provision.
- (4) The names and registered offices of undertakings proportionally consolidated pursuant to Article 102, the factors on which joint management is based, and the proportion of their capital held by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.

²² Law of 16 March 2006

- (5) The name and registered office of each of the undertakings other than those referred to in paragraphs (2), (3) and (4), in which undertakings included in the consolidation (...) ²³, either themselves or through persons acting in their own names but on behalf of those undertakings, hold at least twenty percent of the capital, showing the proportion of the capital held, the amount of equity, and the profit or loss for the latest financial year of the undertaking concerned for which accounts have been adopted. This information may be omitted where, for the purposes of Article 85(3), it is of negligible importance only. The information concerning equity and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet and where less than 50% of its capital is held (directly or indirectly) by the above-mentioned undertakings.
 - (6) The proportion of the income relating to items 1, 3, 4, 6 and 7 of Article 41 or to items B1, B2, B3, B4 and B7 of Article 42, by geographical markets, insofar as, taking account of the manner in which the undertakings included in the consolidation taken as a whole is organised, those markets differ substantially from one another.
 - (7) Explanations on the amount and nature of the main components of the items “Other operating charges”, and “Other operating income” where such amounts are immaterial for the assessment of the results.
 - (8)
 - (a) The average number of staff members employed during the financial year by the undertakings included in the consolidation, broken down by categories.
 - (b) The average number of staff members employed during the financial year by the undertakings to which Article 102 is applied shall be disclosed separately.
 - (9) The extent to which the calculation of the profit or loss for the financial year has been affected by a valuation of the items which, by way of derogation from the principles enunciated in “Articles 51 and 54 to 64c” ²⁴, was made in the financial year in question or in an earlier financial year with a view to obtaining tax relief. Where the influence of such a valuation on future tax charges of the undertakings included in the consolidation taken as a whole is material, details must be disclosed.
 - (10) The difference between the tax charged to the consolidated profit and loss account for the financial year and to those for earlier financial years and the amount of tax payable in respect of those years, provided that this difference is material for the purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading.
 - (11) The amount of the remunerations allocated in respect of the financial year to the members of the administrative, management and supervisory bodies of the parent undertaking by reason of their responsibilities in the parent undertaking and its subsidiary undertakings, and any commitments arising or entered into under the same conditions in respect of retirement pensions for former members of those bodies, with an indication of the total for each category.
 - (12) The amount of advances and credits granted to the members of the administrative, management and supervisory bodies of the parent undertaking, by that undertaking or by one of its subsidiary undertakings, as well as commitments entered into on behalf of these persons by way of guarantee of any kind with an indication of the total for each category.
- “(Law of 16 March 2006)
- (13) Where the fair value method is used for financial instruments, the notes to the accounts shall disclose:
 - (a) the significant assumptions underlying the valuation models and techniques used, if appropriate;
 - (b) For each class of financial instruments, the fair value, the changes in value included directly in the profit and loss account as well as changes included in the fair value reserve;
 - (c) for each class of derivative financial instruments, information about the extent and the nature of the instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows; and
 - (d) a table showing movements in the fair value reserve during the financial year.
 - (14) Where the fair value method is not used for financial instruments in accordance with Chapter 7a of this law:
 - (a) for each class of derivative financial instruments:
 - (i) the fair value of the instruments, if such a value can be determined by any of the following methods:

²³ Repealed by the law of 16 March 2006

²⁴ Law of 16 March 2006

- a market value, for those financial instruments for which a reliable market can readily be identified. Where a market value is not readily identifiable for an instrument but can be identified for its components or for a similar instrument, the market value may be derived from that of its components or of the similar instrument; or
 - a value resulting from generally accepted valuation models and techniques, for those instruments for which a reliable market cannot be readily identified. Such valuation models and techniques shall ensure a reasonable approximation of the market value.
- (ii) information about the extent and the nature of the instruments; and
- (b) for financial fixed assets covered by Article 64a of this law carried at an amount in excess of their fair value and without use being made of the option to make a value adjustment in accordance with Article 56(1)(c)(aa) of this law:
- (i) the carrying amount and the fair value of either the individual assets or appropriate groupings of those individual assets;
 - (ii) the reasons as to why the carrying amount has not been written down and specifically the nature of the information that leads to believe that the carrying amount will be recovered.
- (15) “Separately, the aggregate amount of fees paid during the financial year to the *réviseurs d’entreprises agréés* (approved statutory auditors) or the *cabinet de révision agréé* (approved audit firm) for the statutory audit of consolidated accounts, the aggregate amount of fees paid for other assurance services, the aggregate amount of fees paid for tax consulting services and the aggregate amount of fees paid for other services.”²⁵”

Art. 108.

- (1) The disclosures prescribed in Article 107(2), (3), (4) and (5) may be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings referred to in the provisions. Any such omission must be disclosed in the notes to the accounts.
- (2) Paragraph (1) shall also apply to the information prescribed in Article 107(6).

Chapter 4 – Affiliated undertakings

Art. 109.

- (1) Undertakings which are connected as described in Article 77, and those other undertakings which are similarly connected with one of the aforementioned undertakings, shall be affiliated undertakings for the purposes of this law.
- (2) Articles 78 and 79(2) shall apply.

Chapter 5 – Consolidated management report

Art. 110.

“(Law of 16 March 2006)

- (1) The consolidated management report shall include at least a fair review of the development and performance of the business and of the position of the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.

The review shall be a balanced and comprehensive analysis of the development and performance of the business and of the position of the undertakings included in the consolidation taken as a whole, consistent with the size and complexity of the business. To the extent necessary for an understanding of the undertakings’ development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters.

In providing its analysis, the consolidated management report shall, where appropriate, include references to and additional explanations of amounts reported in the consolidated accounts.”

- (2) In respect of those undertakings, the report shall also give an indication of:
 - (a) any important events that have occurred since the end of the financial year;
 - (b) the likely future development of those undertakings taken as a whole;
 - (c) the activities of those undertakings taken as a whole in the field of research and development;

²⁵ Law of 18 December 2009

- (d) the number and nominal value or, in the absence of a nominal value, the accounting par value of all the parent undertaking's shares held by that undertaking itself, by subsidiary undertakings of that undertaking or by a person acting in his own name but on behalf of the said undertakings;

“(Law of 16 March 2006)

- (e) in relation to the company's use of financial instruments and where material for the assessment of its assets, liabilities, financial position and profit or loss,
- the credit institution's financial risk management objectives and policies, including its policy for hedging each major type of forecasted transaction for which hedge accounting is used, and
 - the credit institution's exposure to price risk, credit risk, liquidity risk and cash flow risk.”

“(Law of 29 May 2009)

- (f) a description of the main features of the group's internal control and risk management systems in relation to the process for preparing consolidated accounts, where an undertaking has its securities admitted to trading on a regulated market within the meaning of Article 4(1), point (14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments. In the event that the consolidated management report and the management report are presented as a single report, this information must be included in the section of the report containing the corporate governance statement as provided for by Article 70a of this law.

If the information required by paragraph (1) of Article 70a is set out in a separate report published together with the management report, the information provided under the previous subparagraph also forms part of that separate report. Article 111(1), second subparagraph, shall apply to the separate report.”

“(Law of 16 March 2006)

- (3) Where a consolidated management report is required in addition to a management report, the two reports may be presented as a single report. In preparing such a single report, it may be appropriate to give greater emphasis to those matters which are significant to the undertakings included in the consolidation taken as a whole.”

“(Law of 29 May 2009)

Chapter 5a. – Duty and liability for drawing up and publishing the consolidated accounts and the consolidated management report

Art. 110a.

The members of the administrative, management and supervisory bodies of the credit institution drawing up the consolidated accounts and the consolidated management report have collectively the duty to ensure that the consolidated accounts, the consolidated management report and, when provided separately, the corporate governance statement to be provided pursuant to Article 70a of this law are drawn up and published in accordance with the requirements of this law and, where applicable, in accordance with the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.

Art. 110b.

The members of the administrative, management and supervisory bodies are jointly liable, within the limits of the respective competences of the bodies concerned, to the credit institution and to the third parties for any damages resulting from infringements to the provisions of Article 110a of this law. They will not be held liable for infringements in which they were not involved only if no fault is attributable to them and if they have denounced these infringements, as the case may be, at the following shareholder meeting or during the first meeting of the body which has given them mandate following the moment in which they have become aware of the infringements.”

Chapter 6 – Auditing the consolidated accounts

Art. 111.

“(Law of 16 March 2006)

- “(1) The credit institution which prepares the consolidated accounts must have them audited by the *réviseur(s) d'entreprises agréé(s)* (approved statutory auditor(s)) to whom the audit of the annual accounting documents has been entrusted.

The *réviseur(s) d'entreprises agréé(s)* (approved statutory auditor(s)) responsible for auditing the consolidated accounts shall also express an opinion concerning the consistency or otherwise of the consolidated management report with the consolidated accounts for the same financial year.”²⁶

- “(2) The report of the *réviseurs d'entreprises agréés* (approved statutory auditors) shall include:
- (a) an introduction which shall at least identify the consolidated accounts which are the subject of the statutory audit, together with the financial reporting framework that has been applied in their preparation;
 - (b) a description of the scope of the statutory audit which shall at least identify the auditing standards in accordance with which the statutory audit was conducted;
 - (c) an audit opinion which shall state clearly the opinion of the *réviseurs d'entreprises agréés* (approved statutory auditors) as to whether the consolidated accounts give a true and fair view in accordance with the relevant financial reporting framework and, where appropriate, whether the consolidated accounts comply with statutory requirements; the audit opinion shall be either unqualified, qualified, an adverse opinion or, if the *réviseurs d'entreprises agréés* (approved statutory auditors) are unable to express an audit opinion, a disclaimer of opinion;
 - (d) a reference to any matters to which the *réviseurs d'entreprises agréés* (approved statutory auditors) draw attention by way of emphasis without qualifying the audit opinion;
 - (e) an opinion concerning the consistency or otherwise of the consolidated management report with the consolidated accounts for the same financial year.”²⁷
- “(3) The report shall be signed and dated by the *réviseurs d'entreprises agréés* (approved statutory auditors).”²⁸
- “(4) Where the annual accounts of the parent undertaking are attached to the consolidated accounts, the report of the *réviseurs d'entreprises agréés* (approved statutory auditors) required by this Article may be combined with any report of the *réviseurs d'entreprises agréés* (approved statutory auditors) on the annual accounts of the parent undertaking required by Article 75 of this law.”²⁹”

Chapter 7 – Publication

Art. 112.

- “(1) Consolidated accounts of credit institutions, duly approved, and the management reports, together with the opinion submitted by the *réviseur(s) d'entreprises agréé(s)* (approved statutory auditor(s)) shall be published for the credit institution which drew up the consolidated accounts as laid down in Article 341(1) and (2) of the law of 10 August 1915 on commercial companies, as amended.”³⁰
- (2) Articles 72 and 73 of this law shall apply.
- (3) The consolidated accounts of a credit institution must be published in every EEC Member State in which that credit institution has branches.
- “(Law of 16 March 2006)
- (4) In addition to publication in the currency or unit of account in which they are prepared, the consolidated accounts may also be published in euros using the conversion rate of the balance sheet date. The said rate shall be reported in the notes to the accounts.”

“(Law of 16 March 2006)

Part IIIa.: Consolidated accounts prepared according to international accounting standards

Art. 112a.

“(Law of 29 May 2009)

Credit institutions whose securities are not admitted to trading on the regulated market of a Member State within the meaning of Article 4(1), point (14) of Directive 2004/39/EC may draw up their consolidated accounts in accordance with international accounting standards adopted pursuant to the procedure provided

²⁶ Law of 18 December 2009

²⁷ Law of 18 December 2009

²⁸ Law of 18 December 2009

²⁹ Law of 18 December 2009

³⁰ Law of 18 December 2009

for under Article 6(2) of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards and may, to the extent necessary to it, derogate from the provisions of Part III of this law.

In such cases, the credit institutions concerned shall nevertheless remain subject to the provisions of Articles 77 to 82, Article 107(2), (3), (4), (5), (8), (11), (12) and (15), Article 108(1) and Articles 110, 110a, 110b, 111 and 112 of this law.”

Part IV: Obligations regarding publication of the accounting documents of branches of credit institutions and financial institutions governed by foreign laws

Chapter 1 – Publication of accounting documents by branches having their registered office in the EEC

Art. 113.

- (1) The branches of credit institutions and financial institutions having their registered office in the EEC must file every financial year in accordance with “Article 11a § 3”³¹ of the law of 10 August 1915 on commercial companies, as amended, “and with the provisions of Chapter Va of Title I of the law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended,”³² the annual accounts, the consolidated accounts, the management report, the consolidated management report and the reports by the persons responsible for auditing annual accounts and consolidated accounts of their institution.
- (2) The documents mentioned in paragraph (1) must have been drawn up and audited according to the methods laid down in accordance with above-mentioned Directive 86/635/EEC, by the law of the EEC Member State in which the credit institution or financial institution has its registered office.
- (3) Branches shall not be required to publish annual accounts relating to their own activities.

Chapter 2 – Publication of accounting documents by branches of credit institutions having their registered office outside the EEC

Art. 114.

- (1) The branches of credit institutions and financial institutions having their registered office outside the EEC must file every financial year in accordance with “Article 11a § 3”³³ of the law of 10 August 1915 on commercial companies, as amended, “and with the provisions of Chapter Va of Title I of the law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended,”³⁴ the annual accounts, the consolidated accounts, the management report, the consolidated management report and the reports by the persons responsible for auditing annual accounts and consolidated accounts of their credit institution and which were drawn up and verified according to the law of the country where the registered office is established.
- (2) Where the documents in question have been drawn up in accordance with Parts II, “IIa.”³⁵, III, “IIIa.”³⁶ and V of this law or in an equivalent manner, Article 113(3) shall apply.
- (3) In all cases other than those referred to in paragraph (2), the documents in question shall be reprocessed in order to establish the conformity or equivalence required by paragraph (2).

“(Law of 29 May 2009)

Part V: Various provisions

Art. 115.

The Grand Duke is empowered to coordinate the text of this law. The numbering of parts, titles, chapters, articles, paragraphs and subparagraphs, even if not amended, may be changed. The Grand Duke is empowered to adapt the references included therein.

³¹ Law of 27 May 2016

³² Law of 27 May 2016

³³ Law of 27 May 2016

³⁴ Law of 27 May 2016

³⁵ Law of 29 May 2009

³⁶ Law of 29 May 2009

Art. 116.

This law may be referred to in abbreviated form using the designation “law of 17 June 1992 on the accounts of credit institutions, as amended”.

(...)³⁷

Part VI: Criminal law provisions

Art. 118.

“(Law of 29 May 2009)

- (1) The members of the administrative, management and supervisory bodies of credit institutions who did not publish the balance sheet, the profit and loss account, the notes to the accounts, the management report and, when provided separately, the corporate governance statement to be provided pursuant to Article 70a of this law, and the report by the person(s) responsible for auditing the accounts in accordance with Articles 71, 72, 73, 74, 74b, 110a, 112, 113 and 114 of this law shall incur a fine of between 500 and 25,000 euros.

- (2) The members of the administrative, management and supervisory bodies of credit institutions who, by fraud, did not publish the balance sheet, the profit and loss account, the notes to the accounts, the management report and, when provided separately, the corporate governance statement to be provided pursuant to Article 70a of this law, and the report by the person(s) responsible for auditing the accounts in accordance with Articles 71, 72, 73, 74, 74b, 110a, 112, 113 and 114 of this law shall incur a term of imprisonment of between one month and two years and a fine of between 5,000 and 125,000 euros.”

³⁷ Repealed by the law of 16 March 2006