

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

In case of discrepancies between the French and the English text, the French text shall prevail

Luxembourg, 21 February 2008

To all Luxembourg credit institutions and branches of non-EU credit institutions

CIRCULAR CSSF 08/340

as amended by Circulars CSSF 14/596 and CSSF 20/760 (pages 14 and 22)

- Re:**
- I) Legal publication of accounts:**
 - **Changes introduced by the law of 16 March 2006 relating to the introduction of international accounting standards for credit institutions**
 - **Clarification of certain issues related to the legal publication of accounts**
 - II) First-time application of IAS/IFRS standards to the prudential financial reporting**
 - III) Amendments to Circular CSSF 01/27**

Ladies and Gentlemen,

The purpose of this circular is to provide further details on the legal publication of accounts, namely:

- 1) explain the changes introduced by the law of 16 March 2006 relating to the introduction of international accounting standards for credit institutions (“Law of 16 March 2006”);
- 2) clarify certain issues related to the legal publication of accounts; and
- 3) define the interaction between the accounting regime for the legal publication of accounts and the prudential reporting under IAS/IFRS.

Moreover, this circular provides details in relation to the first-time application of IAS/IFRS standards to the prudential financial reporting.

This circular also amends two points of Circular CSSF 01/27 relating to the practical rules on the role of external auditors.

Note:

It is important to differentiate between the legal publication of accounts, which is the main subject of this circular (and of Chapter III of Circular CSSF 05/227), and the prudential financial reporting to be submitted to the CSSF, which is the subject of Circulars CSSF 05/227 (Chapters I and II), 07/279, 07/316, 07/319, 07/324 and 07/331. Starting from January 2008, the prudential financial reporting must be prepared according to the IAS/IFRS standards, whereas for the legal publication of accounts, credit institutions may choose to publish their accounts according to LUX GAAP, LUX GAAP combined with one or more IAS/IFRS provisions (LUX GAAP with “IAS options”), or the IAS/IFRS standards.

This circular includes the following elements:

PART I. LEGAL PUBLICATION OF ACCOUNTS

- CHAPTER I. CHANGES INTRODUCED BY THE LAW OF 16 MARCH 2006
 - Sub-chapter I.1. LUX GAAP accounting regime*
 - I.1.1. Changes introduced by the Law of 16 March 2006 in relation to the financial statements
 - I.1.2. Publication of consolidated accounts according to LUX GAAP
 - Sub-chapter I.2. Mixed accounting regime (LUX GAAP with “IAS options”)*
 - I.2.1. Prior consent of the CSSF for the use of an IAS/IFRS provision (“IAS option”)
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 - I.2.3. “IAS options” relating to the valuation rules
 - I.2.4. Changes introduced by the Law of 16 March 2006 in relation to the financial statements
 - I.2.5. Publication of consolidated accounts according to LUX GAAP with “IAS options”
 - Sub-chapter I.3. IAS/IFRS accounting regime*
 - I.3.1. General principles
 - I.3.2. Publication of consolidated accounts according to IAS/IFRS
- CHAPTER II. CLARIFICATION OF CERTAIN ISSUES RELATED TO THE LEGAL PUBLICATION OF ACCOUNTS
 - Sub-chapter II.1. VISA procedure*
 - Sub-chapter II.2. Statutory auditor’s report on annual and consolidated accounts (audit report)*
 - Sub-chapter II.3. Long-form report (annual and consolidated)*
 - Sub-chapter II.4. Circular CSSF 01/32*
 - Sub-chapter II.5. Disclosure of prudential figures*

PART II. FIRST-TIME APPLICATION OF IAS/IFRS STANDARDS TO THE PRUDENTIAL FINANCIAL REPORTING (01.01.2008)

PART III. AMENDMENTS TO CIRCULAR CSSF 01/27

PART I. LEGAL PUBLICATION OF ACCOUNTS

The legal publication of accounts of credit institutions is governed by the law of 17 June 1992 relating to the accounts of credit institutions, as amended (the “Law of 17 June 1992, as amended”).

As indicated in Chapter III of Circular CSSF 05/227, the Law of 16 March 2006 introduces into the Law of 17 June 1992, as amended, major changes in relation to the accounting regime of accounts published by credit institutions. It gives credit institutions the possibility to publish their annual accounts or, where applicable, their consolidated accounts, in accordance with one of the following three accounting regimes:

- Current accounting regime (LUX GAAP)
- Mixed accounting regime (LUX GAAP with “IAS options”)
- IAS/IFRS accounting regime (new Parts IIa and IIIa implementing the optional regime of the IAS Regulation¹, article 5).

Only credit institutions whose securities are admitted to trading on the regulated market of a Member State² must publish their consolidated accounts according to the IAS/IFRS standards pursuant to the mandatory regime of the IAS Regulation (article 4).

The changes introduced by the Law of 16 March 2006 are detailed in this circular in sub-chapters I.1, I.2 and I.3. Moreover, annexe 1 includes a summary table describing the different accounting regimes applicable to the legal publication of accounts.

Credit institutions opting for the publication of annual accounts and/or consolidated accounts according to IAS/IFRS, and those for which the IAS Regulation requires to draw up consolidated accounts pursuant to IAS/IFRS remain nevertheless subject to the Law of 17 June 1992, as amended, relating to the accounts of credit institutions for the provisions not covered by IAS/IFRS, namely the provisions relating to the management report, the statutory auditor’s report and the publication of accounts, as well as the obligation to provide certain information in the notes to the accounts (for example the number of staff members, the remunerations allocated to the members of the administrative, management or supervisory bodies and the fees paid to the statutory auditor).

The details on the information to be published, on the documents to be submitted to the CSSF in relation to the publication of accounts and on the publication regime are included in the *Recueil des instructions aux banques* in the documents: “*Information to*

¹ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards

² For readability reasons, reference is made to the term “listed” instead of the terms “admitted to trading on the regulated market of a Member State”.

publish under LUX GAAP or LUX GAAP combined with “IAS options”” and “*Information to publish under IAS/IFRS*”. These documents are available on the CSSF website in section: Legal reporting/ Periodic reporting/ Recueil des Instructions/ Legal publication of accounts.

Chapter I. Changes introduced by the Law of 16 March 2006

Sub-chapter I.1. LUX GAAP accounting regime

This sub-chapter only applies to credit institutions which continue to publish their annual accounts or, where applicable, their consolidated accounts, in accordance with LUX GAAP standards.

I.1.1. Changes introduced by the Law of 16 March 2006 in relation to the financial statements

The main changes introduced by the Law of 16 March 2006 into the Law of 17 June 1992, as amended, are:

- (a) Express requirement to present the balance sheet and the profit and loss account in accordance with the principle “substance over form”
- (b) Change in the title of the liability item “Provisions for liabilities and charges” to “Provisions”
- (c) Requirement to provide certain additional details in the notes to the accounts
 - where the fair value method is not used for financial instruments, in accordance with Chapter 7a:
 - o for each class of derivative financial instruments, the fair value of these instruments and information about the extent and the nature of these instruments;
 - o for financial fixed assets 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), the carrying amount and the fair value shall be provided as well as 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;
 - separately, the aggregate amount of fees paid during the financial year to the statutory auditor or the audit firm for the statutory audit of annual/consolidated accounts, the aggregate amount of fees paid for other assurance services³, the aggregate amount of

³ As defined in the context of IFAC (International Federation of Accountants) standards.

fees paid for tax consulting services and the aggregate amount of fees paid for other services.

(d) Management report

The content of the management report is more detailed (please refer to new article 70 of the Law of 17 June 1992, as amended, included in annexe 2 of this circular for annual accounts, and to new article 110 for consolidated accounts).

(e) Deadline for filing the annual accounts

Article 71 of the Law of 17 June 1992, as amended, indicates that the annual accounts shall be filed not later than seven months after the end of the financial year.

(f) Report of the statutory auditor(s)

The content of the statutory auditor(s)' report is detailed in the new article 75a of the Law of 17 June 1992, as amended, included in annexe 2 of this circular, for annual accounts, and in the new article 111 for consolidated accounts.

I.1.2. Publication of consolidated accounts according to LUX GAAP

The Law of 17 June 1992, as amended, remains applicable as regards the conditions for the preparation of consolidated accounts (obligation to draw up consolidated accounts and exemptions), irrespective of the applicable accounting regime. The Law of 16 March 2006 brought however an important change in relation to the conditions for the preparation of consolidated accounts. Indeed, as regards the exemptions to the obligation to draw up consolidated accounts, credit institutions whose shares or bonds are listed may no longer benefit from the “group exemption” provided for in article 80(1) and (2) of the Law of 17 June 1992, as amended, in accordance with the new article 80(3). In other words, a Luxembourg parent credit institution whose shares or bonds are listed must prepare consolidated accounts in accordance with IAS/IFRS standards in conformity with the IAS Regulation and a consolidated annual report, even if the Luxembourg parent credit institution is part of an EU-group publishing consolidated accounts and in which the Luxembourg credit institution and its subsidiaries are included (please refer to point I.3.1. below for further details).

Moreover, as regards the consolidation scope a credit institution preparing consolidated accounts under LUX GAAP shall take into account, the Law of 16 March 2006 introduced the following two changes⁴:

- subsidiary shall mean any undertaking over which the credit institution may exercise or effectively exercises a dominant influence or control, or with which it is placed under the same management, even where there are no capital ties, the obligation of a participation in the form of ownership (provided for under article 77(1)(d)) having been removed;

⁴ The consolidation scope will now be similar to the consolidation scope defined in the IAS/IFRS standards.

- subsidiaries with a different activity shall forthwith also be consolidated, considering that article 84 of the Law of 17 June 1992, as amended, has been repealed; this change applies in particular to subsidiaries of insurance companies, unless they are only of negligible interest.

Comment on the interaction between the regime for the legal publication of accounts and the new prudential financial reporting:

The prudential consolidation scope laid down according to the provisions of the law of 5 April 1993 on the financial sector, as amended, should be used for the prudential reporting on a consolidated basis to be submitted to the CSSF. However, the consolidation scope applicable for the legal publication of accounts may also be used for the prudential financial reporting, provided the difference between them is not material. In such cases, the prior consent of the CSSF is required.

Sub-chapter I.2. Mixed accounting regime (LUX GAAP with “IAS options”)

This sub-chapter only applies to credit institutions which publish their annual accounts or, where applicable, their consolidated accounts, under the LUX GAAP standard with “IAS options”.

I.2.1. Prior consent of the CSSF for the use of an IAS/IFRS provision (“IAS option”)

The Law of 17 June 1992, as amended, allows credit institutions to publish their accounts under LUX GAAP by applying one or several provisions of the IAS/IFRS standards (“IAS options”). These “IAS options” refer either to the presentation of the financial statements or to the valuation rules, i.e.:

- Presentation of the financial statements:
 - Inclusion of other financial statements in the accounts (for example, a cash flow table or a statement of equity variations)
 - Alternative balance sheet presentation layout
 - Alternative profit and loss account presentation layout
- Valuation rules:
 - Valuation of financial instruments at fair value
 - Valuation of specified categories of assets other than financial instruments at fair value

In addition, the Law of 17 June 1992, as amended, also allows to apply other provisions of the IAS/IFRS standards, as for example the IAS 19 or IAS 37 standards.

Credit institutions may however not revalue tangible or intangible assets (IAS 16 and 38), as long as no Grand-ducal regulation authorising such practice is available (cf. article 53 of the Law of 17 June 1992, as amended).

In order to promote a prudent and harmonised application of the “IAS options”, the comments of the Law of 16 March 2006 provide that the “IAS options” should be submitted to the prior approval of the CSSF, at individual and consolidated level. Credit institutions intending to use “IAS options” shall thus submit a written request to the CSSF. In this request, the bank must specify the provision(s) of the IAS/IFRS standards it intends to use.

I.2.2. “IAS options” relating to the presentation layout

Credit institutions may present their balance sheet and/or profit and loss account according to an IAS/IFRS layout instead of a LUX GAAP layout.

Institutions may also include other financial statements, as for example, a cash flow table or a statement of equity variation.

I.2.3. “IAS options” relating to the valuation rules

Credit institutions applying exclusively “IAS options” relating to the valuation rules shall use the layout provided for in the Law of 17 June 1992, as amended, for the preparation of the accounts and indicate in the notes to the accounts the valuation methods of the IAS/IFRS standards used.

Credit institutions may in particular use the following two “IAS options”:

1) Valuation at fair value of financial instruments (IAS 39)

Credit institutions may use the “IAS option” for the valuation at fair value of one or more categories of financial instruments (cf. Chapter 7a). The institutions shall define a coherent approach which must be applied in compliance with the principle of consistency.

Examples of financial instruments which might be valued at fair value are:

- financial instruments of the investment and trading portfolio;
- derivative instruments: forward foreign-exchange, IRS, FRA, options, futures, etc.;
- financial instruments subject to a fair value hedge or a cash flow hedge, respectively.

The latent revaluation gains or losses should be booked, as the case may be, in the profit and loss account or directly in a revaluation reserve in equity in accordance with the provisions of the IAS/IFRS standards applied.

Note:

As, according to the IAS/IFRS standards, revaluation reserves have to be constituted for the revaluation of certain assets and other specific elements, they may not be distributed and shall be assimilated to an unavailable reserve. In particular, latent gains on available-for-sale financial assets (line 1.4 “Available-for-sale financial assets” of table B 1.1 of the new prudential financial reporting) are concerned, as they must be directly included in equity pursuant to the IAS/IFRS standards, without affecting the profit or loss account. These gains are, in principle, transferred to the profit and loss account when the items concerned are sold and may only be distributed in that case.

Where valuation at fair value of financial instruments has been applied, the notes to the accounts shall be completed with the following information (new article 64c):

- “ (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.”.

2) Measurement of investment property at fair value (IAS 40)

Credit institutions may value investment property at fair value through the profit and loss account (cf. Chapter 7a, new articles 64d and 64e).

Comment on the interaction between the regime of the legal publication of accounts and the new prudential financial reporting:

(a) According to Circular CSSF 07/316, point 22(b), a credit institution shall only be permitted to measure its investment property at fair value (option provided for by IAS 40.33) in the prudential financial reporting where this property is also shown at fair value in the financial statements/consolidated financial statements to be published.

(b) In order to determine the prudential own funds, “prudential filters” shall be applied. This means that for the calculation of prudential own funds, latent gains included (in the profit and loss account) in investment property valued at fair value are not admitted (i.e. these gains are excluded, in application of the prudential filters) (cf. Part IV, sub-section 3.3.3.2 of Circular CSSF 06/273 as amended by Circular CSSF 07/317).

I.2.4. Changes introduced by the Law of 16 March 2006 in relation to the financial statements

Without prejudice to the “IAS options” used, the changes introduced into the Law of 17 June 1992, as amended, by the Law of 16 March 2006 for credit institutions publishing

their accounts under LUX GAAP also apply to credit institutions publishing their accounts under LUX GAAP with “IAS options”.

The main changes are:

- (a) Express requirement to present the balance sheet and the profit and loss account in accordance with the principle “substance over form”
- (b) Change in the title of the liability item “Provisions for liabilities and charges” to “Provisions”
- (c) Requirement to provide certain additional details in the notes to the accounts
 - where the fair value method is not used for financial instruments, in accordance with Chapter 7a:
 - o for each class of derivative financial instruments, the fair value of these instruments and information about the extent and the nature of these instruments;
 - o for financial fixed assets 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), the carrying amount and the fair value shall be provided as well as 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;
 - separately, the aggregate amount of fees paid during the financial year to the statutory auditor or audit firm for the statutory audit of the annual/consolidated accounts, the aggregate amount of fees paid for other assurance services⁵, the aggregate amount of fees paid for tax consulting services and the aggregate amount of fees paid for other services.

(d) Management report

The content of the management report is more detailed (please refer to new article 70 of the Law of 17 June 1992, as amended, included in annexe 2 of this circular for annual accounts, and to new article 110 for consolidated accounts).

(e) Deadline for filing the annual accounts

Article 71 of the Law of 17 June 1992, as amended, indicates that the annual accounts shall be filed not later than seven months after the end of the financial year.

(f) Report of the statutory auditor(s)

The content of the statutory auditor(s)’ report is detailed in the new article 75a of the Law of 17 June 1992, as amended, included in annexe 2 of this circular, for annual accounts, and in the new article 111 for consolidated accounts.

⁵ As defined in the context of IFAC (International Federation of Accountants) standards.

I.2.5. Publication of consolidated accounts according to LUX GAAP with “IAS options”

The Law of 17 June 1992, as amended, remains applicable as regards the conditions for the preparation of consolidated accounts (obligation to draw up consolidated accounts and exemptions), irrespective of the applicable accounting regime. The Law of 16 March 2006 brought however an important change in relation to the conditions for the preparation of consolidated accounts. Indeed, as regards the exemptions to the obligation to draw up consolidated accounts, credit institutions whose shares or bonds are listed may no longer benefit from the “group exemption” provided for in article 80(1) and (2) of the Law of 17 June 1992, as amended, in accordance with the new paragraph (3) of article 80. In other words, a Luxembourg parent credit institution whose shares or bonds are listed must prepare consolidated accounts in accordance with IAS/IFRS standards in conformity with the IAS Regulation and a consolidated management report, even if the Luxembourg parent credit institution is part of an EU-group publishing consolidated accounts and in which the Luxembourg credit institution and its subsidiaries are included (please refer to point I.3.1. below for further details).

Moreover, as regards the consolidation scope a credit institution preparing consolidated accounts under LUX GAAP with “IAS options” shall take into account, the Law of 16 March 2006 introduced the following two changes⁶:

- subsidiary shall mean any undertaking over which the credit institution may exercise or effectively exercises a dominant influence or control, or with which it is placed under the same management, even where there are no capital ties, the obligation of a participation in the form of ownership (provided for in article 77(1)(d)) having been removed;
- subsidiaries with a different activity shall forthwith also be consolidated, considering that article 84 of the Law of 17 June 1992, as amended, has been repealed; this change applies in particular to subsidiaries of insurance companies, unless they are only of negligible interest.

Comment on the interaction between the regime for the legal publication of accounts and the new prudential financial reporting:

The prudential consolidation scope laid down according to the provisions of the law of 5 April 1993 on the financial sector, as amended, should be used for the prudential reporting on a consolidated basis to be submitted to the CSSF. However, the consolidation scope applicable for the legal publication of accounts may also be used for the prudential financial reporting, provided the difference between them is not material. In such cases, the prior consent of the CSSF is required.

⁶ The consolidation scope will now be similar to the consolidation scope defined in the IAS/IFRS standards.

Sub-chapter I.3. IAS/IFRS accounting regime

This sub-chapter only applies to credit institutions which publish their annual accounts or, where applicable, their consolidated accounts, in accordance with the IAS/IFRS standards.

I.3.1. General principles

Credit institutions, whose securities are listed, shall publish their consolidated accounts according to IAS/IFRS pursuant to the mandatory regime of the IAS Regulation (article 4).

Moreover, the new Parts IIa and IIIa of the Law of 17 June 1992, as amended, (transposing the optional regime of the IAS Regulation, article 5) allow listed and unlisted credit institutions to apply the IAS/IFRS standards for the preparation of annual accounts, and unlisted credit institutions to apply the IAS/IFRS standards for the preparation of consolidated accounts.

All credit institutions intending to apply the IAS/IFRS standards, pursuant to Parts IIa (annual accounts) and IIIa (consolidated accounts) are authorised to do so pursuant to this circular.

For credit institutions opting for the publication of annual accounts and/or consolidated accounts according to the IAS/IFRS standards, and for those for which the IAS Regulation requires to draw up consolidated accounts pursuant to IAS/IFRS standards, the provisions of the Law of 17 June 1992, as amended, relating to the annual accounts or consolidated accounts are no longer applicable, as far as these provisions are covered by the IAS/IFRS standards. The aforementioned law, as amended by the Law of 16 March 2006, remains applicable in relation to the provisions not covered by the IAS/IFRS standards.

The provisions of the Law of 17 June 1992, as amended, on the management report and the statutory auditor's report as well as those relating to the publication of accounts remain applicable to credit institutions publishing their accounts under IAS/IFRS.

Moreover, certain provisions of the Law of 17 June 1992, as amended, relating to the notes to the accounts remain applicable as they are not covered by the IAS/IFRS standards. In particular, the following items are concerned:

- the number of staff members (article 68 point 5) for annual accounts, or article 107 point 8) for consolidated accounts);
- the remuneration, pension commitments, loans and advances granted to members of the administrative, management or supervisory bodies (article 68 points 8) and 9) for annual accounts, or article 107 points 11) and 12) for consolidated accounts);
- overview of the group composition (article 68 points 2) and 10) for annual accounts, or article 107 points 2), 3), 4) and 5) for consolidated accounts);
- the fees of the statutory auditor (article 68 point 12) for annual accounts, or article 107 point 15) for consolidated accounts).

Observations:

1) *It should be noted that, as according to the IAS/IFRS standards, revaluation reserves have to be constituted for the revaluation of certain assets and other specific elements (cf. IAS 1.99), they may not be distributed and shall be assimilated to an unavailable reserve. In particular, latent gains on certain balance sheet items (line 3.4 of table B1.1⁷ of the new prudential financial reporting) are concerned, as they must be directly included in equity, pursuant to IAS/IFRS standards, without affecting the profit or loss account. These gains are, in principle, transferred to the profit and loss account when the items concerned are sold and may only be distributed in that case.*

2) *As opposed to credit institutions using LUX GAAP or LUX GAAP with “IAS options”, credit institutions using IAS/IFRS standards may revalue their tangible and intangible assets (other than goodwill) (IAS 16 and 38).*

3) *Interaction between the regime of the legal publication of accounts and the new prudential financial reporting:*

- According to Circular CSSF 07/316, points 22(a) and (b), a credit institution shall only be permitted to measure its tangible and intangible assets (other than goodwill) at their revalued amount (options provided for by IAS 16.31 and IAS 38.75), or its investment property at fair value (option provided for by IAS 40.33) in the prudential financial reporting to be submitted to the CSSF, where these assets are also shown at their revalued amount or this investment property is also shown at its fair value in the financial statements/consolidated financial statements to be published.

- In order to determine the prudential own funds, “prudential filters” shall be applied. This means that for the calculation of prudential own funds, unrealised gains on tangible assets valued at their revalued amount (in revaluation reserves) as well as the latent gains included (in the profit and loss account) in investment property valued at fair value are not admitted (i.e. these gains are excluded, by the application of prudential filters) (cf. Part IV, sub-sections 3.3.2.3 and 3.3.3.2 of Circular CSSF 06/273 as amended by Circular CSSF 07/317).

⁷ Item 3.4 Revaluation reserves (+/-) includes the following sub-items: 3.4.1 Tangible assets, 3.4.2 Intangible assets, 3.4.3 Hedge of net investment in foreign operations (effective portion), 3.4.4 Foreign currency translation 3.4.5 Cash flow hedges (effective portion), 3.4.6 Available-for-sale financial assets, 3.4.7 Non-current assets and disposal groups held for sale, 3.4.8 Other items.

I.3.2. Publication of consolidated accounts according to IAS/IFRS

The Law of 17 June 1992, as amended, remains applicable as regards the preparation of consolidated accounts (obligation to draw up consolidated accounts and exemptions), irrespective of the accounting regime used.

Indeed, as regards the preparation of consolidated accounts under IAS/IFRS, the document “Comments”⁸ of the European Commission dated November 2003 specifies that the question on whether a company shall or not present consolidated accounts shall further be decided by referring to the national law transposing the 7th Council Directive, i.e. by referring to the Law of 17 June 1992, as amended (articles 77, 78 and 79).

In this case, the exemptions to the general obligation to prepare consolidated accounts are also included in the national law transposing the 7th Directive, i.e. in the Law of 17 June 1992, as amended (articles 80, 81 and 82).

The Law of 16 March 2006 brought however an important change in relation to the conditions for the preparation of consolidated accounts.

Credit institutions whose shares or bonds are listed may no longer benefit from the “group exemption” provided for in article 80(1) and (2) of the Law of 17 June 1992, as amended, in accordance with the new article 80(3). In other words, a Luxembourg parent credit institution whose shares or bonds are listed shall prepare consolidated accounts and a consolidated management report, even if the Luxembourg parent credit institution is part of an EU-group publishing consolidated accounts and in which the Luxembourg credit institution and its subsidiaries are included. These credit institutions shall thus publish their consolidated accounts and shall, as they are listed, mandatorily refer to the IAS/IFRS standards pursuant to the mandatory regime of the IAS Regulation (article 4).

Moreover, for credit institutions preparing consolidated accounts under IAS/IFRS, the document “Comments” of the European Commission dated November 2003 indicates that the IAS/IFRS standards which have been adopted define the consolidation scope, and thus the entities which must be included in the consolidated accounts and how.

Comment on the interaction between the regime of the legal publication of accounts and the new prudential financial reporting:

The prudential consolidation scope laid down according to the provisions of the law of 5 April 1993 on the financial sector, as amended, should be used for the prudential reporting on a consolidated basis to be submitted to the CSSF. However, the consolidation scope applicable for the legal publication of accounts may also be used for the prudential financial reporting, provided the difference between them is not material. In such cases, the prior consent of the CSSF is required.

⁸ “Comments concerning certain Articles of the Regulation (EC) No1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards and the Fourth Council Directive 78/660/EEC of 25 July 1978 and the Seventh Council Directive 83/349/EEC of 13 June 1983 on accounting”.

Chapter II. Clarification of certain issues related to the legal publication of accounts

Sub-chapter II.1. VISA procedure/Published annual accounts

~~The “VISA” procedure is detailed in the *Recueil des instructions aux banques* in the documents “*Information to be published under LUX GAAP or LUX GAAP with “IAS options”*” and “*Information to be published under IAS/IFRS*”. These documents are available on the CSSF website in the section: *Legal reporting/ Periodic reporting/ Recueil des instructions/ Legal publication of accounts.*~~

~~In accordance with the “VISA” procedure,~~ Credit institutions must transmit to the CSSF ~~for prior approval~~ all the documents submitted to legal publication at the latest two weeks before the general shareholder meeting, irrespective of the accounting regime used. The list of these documents is ~~included in the *Recueil des instructions aux banques* in the documents mentioned above~~ available on the CSSF website.

Moreover, credit institutions must submit to the CSSF the final versions of the prudential financial reporting tables (FINREP) (B 1.1/B 1.6, B 2.1/B 2.5, B 6.1/B 6.6, B 6.2/B 6.7), prepared under IAS/IFRS and corresponding to the situation as at the end of the financial year. These final tables shall be reported annually, jointly with the documents for the legal publication of accounts.

In order to enable a **reconciliation** between the published accounts and the final versions of the prudential financial reporting where published accounts are prepared under LUX GAAP or LUX GAAP with “IAS options”, credit institutions must provide the CSSF with a reconciliation table (please also refer to the summary table in annexe 3). This table must have the form of an internal table of the credit institution (including where applicable explanations in a text attached to the data) and must provide explanations on major differences in relation to own funds and the profit and loss account (for example: IAS/IFRS result = LUX GAAP result + x + y – z). This table must be submitted to the CSSF jointly with the documents relating to the legal publication of accounts.

~~The reconciliation must be described and assessed by the statutory auditor in an *ad hoc* report to be submitted to the CSSF jointly with the documents relating to the legal publication of accounts.~~

Observations:

- Any decision on interim dividends to be paid to shareholders during the year must be first reported to the CSSF.
- If the appropriation of the results decided by the general meeting differs from the one suggested by the Board of Directors, the credit institution must inform the CSSF.

Sub-chapter II.2. Statutory auditor’s report on annual and consolidated accounts (audit report)

The content of the audit report is detailed in a new article 75a of the Law of 17 June 1992, as amended, (please refer to annexe 2) for annual accounts, or in new article 111 for consolidated accounts, and is applicable to all accounting regimes (LUX GAAP, LUX GAAP with “IAS options” or IAS/IFRS).

Part II of Circular CSSF 01/27 specifies that the statutory auditor shall issue its audit opinion in accordance with the ISA 700⁹ standard as adopted in Luxembourg in its audit report. The formulation of this opinion differs depending on the accounting regime used (LUX GAAP or LUX GAAP with “IAS options” and IAS/IFRS).

Concerning the audit opinion for credit institutions publishing under LUX GAAP, no changes affect the formulation as compared to the situation prior to the Law of 16 March 2006.

Credit institutions using LUX GAAP with “IAS options” shall indicate this information in the notes to the accounts in the section concerning the accounting methods used. In such cases, the statutory auditor issues an opinion stating that the accounts are prepared in accordance with LUX GAAP, the use of “IAS options” being detailed in the notes to the accounts relating to the accounting methods.

As regards the audit opinion for credit institutions publishing their accounts under IAS/IFRS (either in accordance with the mandatory regime of the IAS Regulation or in accordance with Parts IIa and IIIa of the Law of 17 June 1992, as amended), the document “Comments”¹⁰ of the European Commission dated November 2003 specifies that the statutory auditor shall certify that the accounts have been prepared in accordance with all international financial information standards adopted in view of their application in the European Union. The document however states that, if the application of the adopted IFRS implies the preparation of financial statements compliant with all IFRS – no standard having been rejected and all standards issued by the IASB having been approved –, the only indication required is that the financial statements have been prepared in compliance with all international financial information standards.

Sub-chapter II.3. Long-form report (annual and consolidated)

The provisions relating to the long-form report (LFR) are included in Circular CSSF 01/27.

It should be noted that, pursuant to Circular CSSF 01/27, the statutory auditor shall describe and assess, in the long-form report, the systems and infrastructures put in place in order to establish periodical prudential reports to be submitted to the CSSF and the

⁹ International Standard on Auditing n° 700: The auditor’s report on financial statements

¹⁰ “Comments concerning certain Articles of the Regulation (EC) No1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards and the Fourth Council Directive 78/660/EEC of 25 July 1978 and the Seventh Council Directive 83/349/EEC of 13 June 1983 on accounting”

internal control measures aiming at ensuring that the data transmitted to the CSSF is complete, correct and prepared according to the rules applicable, irrespective of the accounting regime used for the needs of the legal publication of accounts.

The annual long-form report and the consolidated analytical report must be based on the figures of the prudential reporting under IAS/IFRS and on the prudential consolidation scope.

Sub-chapter II.4. Circular CSSF 01/32

Credit institutions publishing their accounts under LUX GAAP or LUX GAAP with “IAS options” standards must publish in their notes to the accounts or in the annual report additional information on financial instruments as defined under point II.2 of Circular CSSF 01/32, except for the points that are forthwith covered by the application of the amendments introduced into the Law of 17 June 1992, as amended, by the Law of 16 March 2006.

Credit institutions publishing under IAS/IFRS do not need to apply the provisions of Circular CSSF 01/32, as the information to publish in accordance with the above circular are covered by the IFRS 7 standard.

Sub-chapter II.5. Disclosure of prudential figures

If a credit institution refers, in its published accounts or in other publications, to own funds or to prudential ratios (as for example the capital adequacy ratio), the own funds indicated must correspond to the prudential own funds as shown in the IAS/IFRS prudential financial reporting (table B 1.4/B6.4), i.e. to the prudential own funds under IAS/IFRS after application of prudential filters (please refer to Part IV of Circular CSSF 06/273 as amended by Circular CSSF 07/317), or where applicable, the prudential ratios indicated shall be calculated based on the figures of the IAS/IFRS prudential financial reporting. Moreover, credit institutions proceeding to such publications are recommended to provide explanations on the definitions used.

PART II. FIRST-TIME APPLICATION OF IAS/IFRS STANDARDS TO THE PRUDENTIAL FINANCIAL REPORTING (01.01.2008)

Credit institutions applying IAS/IFRS standards to the prudential financial reporting for the first time on 1 January 2008¹¹ shall transmit to the CSSF a table illustrating the **transition** from prudential financial reporting under LUX GAAP to prudential financial reporting under IAS/IFRS¹² (please also refer to the summary table in annexe 3).

This table shall have the form of an internal table of the credit institution (including, where applicable, explanations in a text attached to the data). It shall provide details on the major differences on own funds resulting from the first application of the IAS/IFRS accounting standards at the level of the prudential financial reporting. The table must be sent to the CSSF only once as an *ad hoc* table, together with the first prudential financial reporting under IAS/IFRS.

This transition shall be described and assessed by the statutory auditor in an *ad hoc* report to be submitted to the CSSF at the latest by 30 September 2008.

For information: Credit institutions publishing their accounts for the first time under IAS/IFRS standards must explain the transition from LUX GAAP to IAS/IFRS pursuant to IFRS 1.38 and this transition must be covered by the statutory auditor in the context of its audit.

PART III. AMENDMENTS TO CIRCULAR CSSF 01/27

This circular amends the following points of Circular CSSF 01/27 relating to the practical rules on the role of external auditors:

- In Chapter I “Mandate”, the following new point 5a is added:

“The annual long-form report must be based on the accounting situation prepared based on the instructions relating to tables B 1.1/B 1.6 and B 2.1/B 2.5 included in the *Recueil des instructions aux banques*.”.

- In Chapter I “Mandate”, paragraph 2 of point 6 is replaced by the following text:

“The consolidated long-form report must be based on the consolidated accounting situation corresponding to the consolidated control exercised by the CSSF. This consolidated accounting situation must be prepared based on the instructions relating to

¹¹ Credit institutions which already submit a prudential IAS/IFRS reporting to the CSSF before 2008 are not required to provide a table illustrating the transition.

¹² Circular CSSF 07/279 states under point 27: “The accounting methods used in the IAS/IFRS opening balance sheet may differ from those used under Lux GAAP. According to IFRS 1 standard, the resulting adjustments (positive or negative) shall be accounted for directly in retained earnings or, where applicable, in a revaluation reserve”.

tables B 6.1/B 6.6 and B 6.2/B 6.7 included in the *Recueil des instructions aux banques*. However, the consolidated control applicable for the legal publication of accounts may also be used for the prudential financial reporting, provided the difference between them is not material. In such cases, the prior consent of the CSSF is required.”.

This circular comes into force with immediate effect.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Simone DELCOURT
Director

Jean-Nicolas SCHAUS
Director general

Annexes.

Summary table of the different accounting regimes
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	Accounting regimes		
Legal publication	IAS/IFRS regime	LUX GAAP regime	Mixed regime
Consolidated accounts <i>Listed banks</i> <i>(shares or bonds)</i>	mandatory	not applicable	not applicable
Consolidated accounts <i>Unlisted banks</i>	optional	optional	optional with prior consent of the CSSF for the different “IAS options”
Annual accounts <i>Listed banks/</i> <i>Unlisted banks</i>	optional	optional	optional with prior consent of the CSSF for the different “IAS options”

Details of certain changes introduced by the Law of 16 March 2006
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- The content of the management report is more detailed

Article 70 of the Law of 17 June 1992, as amended, now reads as follows:

“(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 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;*
- (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.”*

- The law specifies the content of the statutory auditor(s)' report

The following article 75a is inserted into the Law of 17 June 1992, as amended:

“Art. 75a. (1) The report of the 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 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 statutory auditors are unable to express an audit opinion, a disclaimer of opinion;*
 - (d) a reference to any matters to which the 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 statutory auditors.”*

Summary table of the reconciliations to be submitted

	Concerns	Reconciliation	Form	Transmission/Presentation	Frequency	Intervention by the statutory auditor
<u>Legal publication of accounts</u>	Banks publishing their accounts according to IAS/IFRS for the first time	Reconciliation of the transition from LUX GAAP to IAS/IFRS in the published accounts	Pursuant to the provisions of IFRS 1.38	To present in the notes of the published accounts	Only once during the transition to IAS/IFRS standards in the published accounts	The reconciliation will be covered by the statutory auditor within the context of his legal audit of the accounts
<u>Prudential reporting</u>	All banks (except those already transmitting an IAS/IFRS prudential reporting to the CSSF before 2008)	Reconciliation of the transition from LUX GAAP reporting to IAS/IFRS reporting (01.01.2008)	Internal reconciliation table of the bank (including, where applicable, explanations in a text attached to the data) and explanations on major differences in relation to own funds	To be submitted to the CSSF as an <i>ad hoc</i> table.	Only once during the transition to IAS/IFRS standards in the prudential reporting, jointly with the first IAS/IFRS prudential financial reporting	The statutory auditor must describe and assess the reconciliation provided by the bank in an <i>ad hoc</i> report to be transmitted to the CSSF at the latest on 30 September 2008
<u>Legal publication of accounts – Prudential reporting</u>	Banks publishing their accounts under LUX GAAP or LUX GAAP with “IAS options”	Reconciliation between the accounts published under LUX GAAP or LUX GAAP with “IAS options” and the final versions of the prudential reporting under IAS/IFRS	Internal reconciliation table of the bank (including, where applicable, explanations in a text attached to the data) and explanations on major differences in relation to own funds and the profit and loss account	To be submitted to the CSSF jointly with the other documents to be published that are included in the VISA procedure	Yearly, two weeks before the general shareholder meeting	The statutory auditor must describe and assess the reconciliation provided by the bank in an <i>ad hoc</i> report to be transmitted to the CSSF together with the other documents included in the VISA procedure