

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

Luxembourg, 3 July 1992

To all credit institutions

Circular IML 92/86

Re: 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**

Ladies and Gentlemen,

We draw your attention to the publication in the Mémorial A n° 39 of 19 June 1992 of the law of 17 June 1992 relating to the publication of the accounts of credit institutions.

This circular aims to clarify the new rules as regards the preparation of the accounts intended for publication and to provide recommendations on the implementing rules of the law.

When reading this circular, reference should be made in parallel to the comments on the new law which are published in parliamentary document no 3468 of 22.11.1991 (available from the Service central des imprimés de l'État) and provide very detailed explanations on the new provisions.

I. General provisions on the publication of the accounts

The provisions of the law shall apply, for the first time, to the annual and consolidated accounts of the financial year beginning on 1 January 1993 or during the calendar year 1993. Thus, for credit institutions which close their

accounts on 31 December 1993, the first accounts which comply with the new law will be those as at 31 December 1993 and for credit institutions which close their accounts in the course of the year (for instance on 31 March), it will be those published in the course of 1994 (for instance on 31 March 1994).

Whereas the regulations currently applicable provide that the accounts of banks shall be published in full in the Mémorial, the new law provides that the documents to be published shall only be filed with the trade and companies register of Luxembourg, as is the case with other commercial companies. Mention of the filing shall be made in the Mémorial.

The publication will, from now on, cover the annual accounts - which include the balance sheet, the off-balance sheet, the profit and loss account and the notes to the accounts - the management report and the audit report drawn up by the statutory auditors. Any publication of the accounting documents shall comply with Articles 72 and 73 of the law.

As regards the management report, it should be specified that it is the report drawn up by the bodies of the bank on the company's business development and its position as well as on certain specific aspects relating to it (cf. Article 70 of the law). Moreover, it should be noted that the audit report shall refer to the statutory auditors' short form report as defined in item 3 of Circular IML 89/60. In this context, it does not refer to the long form audit report defined in item 4 of the same circular.

The annual accounts of the Luxembourg credit institutions shall be published in all EEC Member States where these institutions have branches and in compliance with the accounts' publication methods in these Member States. The IML shall be informed by the relevant institutions that they proceeded with this publication, not later than one month after the date of filing of the documents to be published in Luxembourg.

As regards the credit institutions governed by Luxembourg laws, the new rules replace the existing rules which are laid down in the ministerial order of 31 October 1983 approving IML regulation no 1 of 14 October 1983 on the publication and filing of the balance sheets and accounting statements to be drawn up by the credit institutions.

From now on, the credit institutions governed by Luxembourg laws are also required to publish their consolidated accounts if they are parent companies within the meaning of Article 77 of the new law and if they do not benefit from the exemptions provided for in this respect in Articles 80 to 82 of this law (see item III below). The consolidated management report and the consolidated audit report of the statutory auditors are subject to this publication.

Similarly to the provisions of the current scheme, branches of credit institutions governed by foreign laws and established in Luxembourg will not be required to publish accounts relating to their sole activity but they shall publish the overall annual accounts of the credit institution to which they belong. However, the following documents will be added to this list: the management report and the audit report of the annual accounts and, where appropriate, the consolidated accounts, the consolidated management report and the consolidated audit report of the credit institution governed by foreign laws.

As regards branches of credit institutions having their registered office in another EEC country, the documents to be published will be those drawn up in accordance with the new European laws.

As regards branches of credit institutions having their registered office outside the EEC, the documents in question shall be reprocessed when not drawn up in accordance with Parts II, III and V of the law on bank accounts or in an equivalent manner. The IML will assess whether equivalence is established or whether a reprocessing shall be carried out. In this respect, the relevant institutions shall provide it with a model of the accounts scheme it proposes to publish in the future no later than 30 September 1993.

It should be noted that the new law shall also apply to branches of financial institutions having their registered office in another EEC country insofar as Directive 86/635/EEC is applicable to them in their home country.

II. Special scheme for the Raiffeisen system

The new law provides that the rural banks affiliated to the Caisse Centrale Raiffeisen will not be required to apply the new rules as regards the drawing up of the banks' accounts intended for publication. This exemption is however subject to the condition that their accounts are consolidated with those of the

Caisse Centrale Raiffeisen and that the consolidated accounts as well as the management report relating thereto, including the whole constituted by the central body and its affiliated institutions, shall be drawn up, audited and published in accordance with the new law.

However, the rural banks will continue to publish their individual accounts on the basis of a balance sheet and profit and loss account scheme determined by the IML. They shall, in any case, organise their internal accounting, so that their own accounts may be included in the consolidated accounts of the Raiffeisen system, which will have to be prepared in accordance with the new European rules.

It should be noted that this exemption does not discharge the Caisse Centrale Raiffeisen from drawing up and publishing its non consolidated individual accounts and having them audited in accordance with the new law.

III. Exemptions as regards the publication of consolidated accounts

All credit institutions which are branches of credit institutions governed by the laws of an EEC Member State and which fulfil the conditions provided for in Articles 80 and 81 will be exempted from the obligation to draw up consolidated accounts and a consolidated management report at their level. The IML will assess, based on the information to be submitted to it no later than 30 September 1993, whether a given institution benefits from this exemption.

All credit institutions which are branches of credit institutions not governed by the laws of an EEC Member State but which fulfil the conditions provided for in Article 82 will be exempted from the obligation to draw up consolidated accounts and a consolidated management report. In particular, the consolidated accounts published by the parent undertaking of these institutions shall be drawn up in accordance with the provisions of the law or in an equivalent manner. The credit institutions which intend to benefit from this exemption are requested to send an exemption application to the IML no later than 30 September 1993. This application shall be accompanied by all the necessary documents on the laws of the home country as regards the drawing up, audit and publication of the consolidated accounts in order to enable the IML to check the compliance or equivalence of these provisions with those of the law.

The credit institutions which benefit from the exemption in accordance with Articles 80 to 82 shall include the following in the notes to their annual accounts:

a) the name and the registered office of the parent company that draws up the consolidated accounts;

b) the exemption from the obligation to draw up consolidated accounts and a consolidated management report.

Credit institutions will not be able to publish their consolidated accounts voluntarily as long as they are exempted.

Even if the institutions referred to above are exempted from drawing up consolidated accounts for publication purposes, they are however required to draw up consolidated accounts for prudential supervision purposes if they are subject to the IML's consolidated supervision.

IV. IML's intervention in the publication

The current practice according to which the accounting documents to be published are first to be visaed by the IML remains applicable. This rule concerns both the non consolidated annual accounts and the consolidated accounts. The procedure to be followed to obtain a visa is set out in the new Recueil des instructions aux banques.

Moreover, the use of a number of exemptions provided for by the law is subject to a prior specific authorisation of the IML even if this authorisation is not *expressis verbis* provided for by the law. Such cases are referred to in the Recueil des instructions aux banques.

V. Audit by the statutory auditors

The annual accounts and consolidated accounts shall be audited by a statutory auditor. This audit also relates to the consistency of the management report with the annual accounts or consolidated accounts of the financial year.

The auditor to whom the bank entrusted the audit of the consolidated accounts shall be the same as the one in charge of the audit of the non consolidated annual accounts.

VI. New structure of non consolidated annual accounts

Pursuant to Article 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."

As regards the publication of annual accounts of banks in Luxembourg, the notes to the accounts constitute an innovation as credit institutions are currently only required to prepare and publish a balance sheet and a profit and loss account.

The form of the periodic communications to the IML as regards the balance sheet and the profit and loss account (tables IML 1.1. and 2.1.) was amended to be adapted to the new structure of accounts defined at European level. A new version of the Recueil des instructions aux banques was made available to the banks (cf. Circular IML 92/85).

1. Balance sheet

The new layout of the balance sheet and off balance sheet is referred to in Article 7. It is largely similar to that currently applicable. The main differences are as follows:

The new scheme has no longer distinct categories for fixed assets and current assets. However, for valuation purposes, it is necessary to make this distinction.

The content of the item "Bills" is defined in a more restrictive way in the new scheme. Conversely, the securities portfolio is more broadly defined.

The items "Leasing transactions", "Special items with a reserve quota portion" and "Fund for general banking risks" are part of the items newly introduced in the scheme.

Fiduciary transactions shall from now on publish in the off-balance sheet accounts.

The content of the item "Provisions for risks and charges" is not the same as that of the item "Provisions" in the existing scheme. The new item includes provisions for outstanding debts as well as provisions intended to cover risks on off-balance sheet items. The "specific provisions" of the existing scheme are treated in the new scheme as value adjustments, to be deducted directly from the assets concerned. The lump sum provision is to be treated as a value adjustment. The "provisions deducted from an asset item" are to be treated as non published reserves within the meaning of Article 62. Moreover, the general provisions other than those "deducted from an asset item" and those relating to the lump sum provision are to be mentioned in principle in the new scheme under item "Fund for general banking risks" (cf. Article 63).

The subscribed capital unpaid will be recorded in the assets of the balance sheet and will no longer be clearly deducted from the liabilities.

The profit and loss accounts appear, in any case, in the liabilities of the balance sheet, with the obligation that the amounts in question shall be preceded by a minus sign in case of losses.

2. Profit and loss account

The new profit and loss account layout is provided for in Articles 41 and 42. The banks may choose between vertical layout and horizontal layout. The new structure is more detailed than that currently in place. With the creation of the item "Net profit or net loss on financial operations", two changes were introduced as regards the existing regulations:

1) Creation of a special section for the results of trading activities (trading results or "Handelsergebnisse").

2) Information on the net profit or loss on transactions in transferable securities, currencies, precious metals, derivative instruments and other financial instruments, insofar as these are trading transactions.

Moreover, the new scheme provides for a breakdown of the taxes according to whether they are relating to ordinary or extraordinary activities. However, pursuant to Article 50, these two amounts may be combined subject to a change in the layout and additional explanations in the notes to the accounts.

3. Notes to the accounts

a) Purpose and legal basis of the notes to the accounts

The notes to the accounts first aim to provide information deemed necessary for the understanding of the activities and the position of the undertaking, which are difficult to include in tables such as the balance sheet and the profit and loss account. Moreover, the notes to the accounts aim to further explain certain items included in the balance sheet and the profit and loss account by providing details and comments thereon for a better understanding of the meaning of the words used in the documents in question.

The notes to the accounts shall be drawn up clearly and in accordance with the law and shall give - together with the balance sheet (and the off-balance sheet) and the profit and loss account - a true and fair view of the assets and liabilities, the financial position and the profit or loss of the bank. The notes to the accounts shall be consistent from year-to-year.

Certain articles (cf. Articles 65 to 69) are dedicated exclusively to the content of the notes to the accounts. References to the notes to the accounts are however also made in some other articles of the law. Part V of the Recueil des instructions aux banques provides for a list including all articles which require information to be included in the notes to the accounts.

b) Form et nature of the information required in the notes to the accounts

To make it easier to read and to control, it is recommended to publish the information of the notes to the accounts by following, as far as possible, the order set out in the law, i.e.:

- a) First, the information on the balance sheet (Articles 65 and 66).
- b) Then, the information which relates to the off-balance sheet and service transactions (Article 67).
- c) Finally, the information relating to the profit and loss account, valuation methods and other information (Articles 68 and 69).

In respect of the other information to be published in the notes to the accounts, it is recommended to include as far as possible the scheme outlined above. In other words, the information which relates to the balance sheet shall

appear after that provided for by Articles 65 and 66; the information relating to the off-balance sheet and service transactions after Article 67, etc.

The nature of the information to be published in the notes to the accounts is partly quantitative and partly qualitative. In some cases, the notes to the accounts shall include information on a specific item where it is "of some importance" or where "its scale is material" as compared to other items or the activities as a whole; in other cases, the information is to be provided where the information is "essential to the comprehension of the annual accounts".

VII. New layout of the consolidated accounts

1. Balance sheet and consolidated profit and loss account

The layout of the balance sheet and the consolidated profit and loss account, as laid down in the principles of the law, was communicated to the banks within the context of the new Recueil. However, it should be noted that this structure is that which shall normally apply to credit institutions. This structure does not take into account the necessary adjustments resulting from the technique and scope of consolidation which the credit institutions may be required, where applicable, to carry out. These adjustments will be carried out in compliance with the law and in particular in accordance with Articles 85 and 86.

2. Notes to the consolidated accounts

Given that the requested information is practically the same as that required for the individual accounts, reference is made to the comments on the notes to the individual accounts. The information to be provided clearly relates to all undertakings included in the scope of consolidation and not just to the parent undertaking.

VIII. Valuation rules

The changes to the valuation rules focus mainly on the valuation of transferable securities. The instructions on the valuation of currencies and precious metals have not changed significantly.

First, the concept of "transferable security" is defined in the new instructions in a broader sense. For valuation purposes, credit institutions are moreover required to divide their securities portfolio into three categories: transferable securities held as financial fixed assets ("Anlagebestand", "investment portfolio"), those included in the trading portfolio ("Handelsbestand") and those included in the investment portfolio.

The credit institutions may, subject to compliance with some conditions, value the transferable securities of the financial fixed assets portfolio at purchase price. Nevertheless, the banks, that so wish, may continue to apply the "lower of cost or market" method. The banks are authorised to have in the financial fixed assets portfolio both transferable securities valued at their acquisition price and transferable securities valued according to the "lower of cost or market" method.

The basic rule for the valuation of transferable securities of the trading portfolio is that which requires the application of the "lower of cost or market" method. The derogation regime is that provided for in Article 58(3) pursuant to which banks may apply to all fixed-income transferable securities of the trading portfolio the mark-to-market method, subject to disclosure in the notes to the accounts. This disclosure shall relate to the difference between the purchase price and the higher market value. The banks may chose among one of the two methods without prior approval of the IML.

The transferable securities of the investment portfolio shall be valued mandatorily according to the "lower of cost or market" method. Pursuant to Article 62 of the law, banks may apply additional value adjustments - up to a certain limit - to the investment portfolio, where that is required by the prudence dictated by the specific risks inherent to bank transactions.

The current practice which maintains an earlier value adjustment of a security (by applying the "lower of cost or market" method), but which no longer complies with a capital loss following an increase of the value of this security, is not affected by the new provisions, insofar as this practice is in line with the tax regulations. Articles 56(2)(f) et 58(2)(e) actually enable to carry out "exceptional value adjustments for taxation purposes alone" for the purpose of guaranteeing, from a tax standpoint, a neutral implementation of the EEC directive. However, the banks are required to include the duly substantiated amount in the notes to the accounts.

The definition of the various categories of transferable securities as well as the detailed valuation rules are set out in the new Recueil des instructions aux banques.

IX. Accounting of repurchase agreement transactions

Unlike current practice, the assets transferred within the context of a repurchase agreement transaction based on a genuine sale and repurchase agreement still appear in the balance sheet of the transferor. The purchase price paid to the transferor appears as liability vis-à-vis the transferee and the amount of the assets sold is included in the notes to the accounts of the transferor. The transferee shall not be entitled to show the assets transferred in the balance sheet; the purchase price paid by the transferee shall be shown as an amount owed by the transferor.

As regards genuine sale transactions with a repurchase option, the differences with the current practice are not significant and only relate to the item to be recorded in the off-balance sheet (current item "Contingent liabilities"; new item: "Commitments").

Yours faithfully,

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