

How does the law of 16 March 2006 change the Banking Accounting Law of June 1992?

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The main changes in the law of 16 March 2006 modifying the 17 June 1992 Banking Accounting Law (the « Law ») are related to the introduction of IFRS options. However, there are also other changes not in relation to IFRS.

The most important one is probably the change in the scope of consolidation:

- a subsidiary included in the consolidated accounts of its head office is no longer exempted from preparing consolidated accounts at a sub-level if it has securities listed on a EU stock exchange;
- special purpose entities have now to be consolidated;
- there is no longer a scope exemption for entities with dissimilar activities.

Other changes relate to:

- additional disclosures in the notes to the accounts
- presentation of annual accounts and notes to the accounts
- content of the Directors' report
- publication of annual accounts.

You will find on the following pages the details of the main changes, as well as guidance on how to disclose audit fees in the annual accounts.

Main changes in the banking accounting law – comparison between the former version and the new version of the law

Topic	Old version of the Law	Ref. to old version	New version of the Law	Ref. to new version
Changes linked to the IFRS options				
Fair valuing of financial instruments	Not allowed	-	Allowed, prior to CSSF authorisation	Chapter 7 bis, art. 64bis – quarter
Fair valuing of assets <u>other</u> than financial instruments	Not allowed	-	Allowed, prior to CSSF authorization. According to the comments of the draft law, this could be the case only for biological assets (IAS 41) and investment property (IAS 40). Fair valuing of tangible and intangible assets is not allowed.	Art. 64 quinquies and sixties
Preparation of annual accounts under full IFRS (consolidated and un-consolidated)				
Use “full IFRS” for annual accounts	Not allowed.	-	Mandatory if the bank is listed. If unlisted, full IFRS is allowed, prior to CSSF authorization. However, several statutory requirements have to be included: <ul style="list-style-type: none"> - Directors' report (art. 70) - Publication of annual accounts, control by an external auditor (art. 71-73, 75, 75bis) - Several disclosure requirements (art. 68 2), 5), 8), 9), 10), 12)) 	Art. 1 Part IIbis
Changes in relation to the preparation of consolidated accounts				
When to prepare consolidated accounts	One of the conditions is to hold a participation (ownership factor) and to exercise effectively significant influence or to manage it on a unified basis	Art. 77 (1) d)	This condition has been replaced by a more wider definition: the ownership factor (shareholdings) is no longer necessary. It is sufficient now to exercise significant influence or control, without necessarily having a shareholding. This has been changed in order to include in the scope of consolidation special purpose vehicles.	Same ref.
Consolidation at sub-group level	Not required if the subsidiary's head office is preparing consolidated accounts (in the EU, or, if outside the EU, under equivalent accounting rules)	Exemption in art. 80 (1) and (2)	A paragraph has been added to art. 80 stating that the exemption in art. 80 (1) and (2) does not apply if the subsidiary itself has issued securities quoted on a regulated market.	Art. 80 (3)
Scope exemptions of consolidation	Exclusion for subsidiaries: <ul style="list-style-type: none"> - held for re-sale in the near future - not material - information can not be obtained without disproportionate expenses or delay - restrictions on ownership rights - dissimilar activities hindering a true and fair view 	Art. 83 (3)c) Art. 83 (1) Art. 83 (3)b) Art. 83 (3)a) Art. 84	Same as in the old version of the law, except that the last condition is no longer valid (art 84 has been deleted on the dissimilar activities)	Art. 83

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Changes in relation to the presentation of annual accounts (stand-alone and consolidated)				
Content of annual accounts	The annual accounts comprise the balance sheet, the profit and loss account and the notes to the accounts.	Art.1	Other statements may be included in the annual accounts, prior to CSSF authorization.	Same reference
Substance over form principle	Not formally foreseen.	-	Substance over form principle formally introduced in the law.	Art. 4(5)
Presentation schemes of balance sheet and profit and loss account	Strict presentation scheme for balance sheet and profit and loss account to be respected.	Art.7 and 40	Different presentation if the information given is at least equivalent to the former information.	Art. 7bis and 40
Provisions	Provisions for risk and charges	Art. 31 (1)	The term "provisions for risks and charges" has been changed to "provisions", but the definition has not changed: provisions are intended to cover liabilities the nature of which is clearly defined and which at the date of the B/S 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.	Same reference
Evaluation rules				
Prudence principle has been slightly reworded	Account <u>must</u> be taken of <u>all foreseeable liabilities and potential losses</u> arising in the course of the financial year 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.	Art. 51 (1) c) bb)	<p>In the old version, it was mandatory to take into account all foreseeable liabilities and potential losses. Now, the rule is stricter (closer to IAS 37):</p> <p>Account <u>must</u> be taken of <u>all liabilities</u> 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.</p> <p>However, it is still possible to take into account foreseeable liabilities and potential losses:</p> <p>In addition to those amounts stated in Art. 51 (1) c) bb), banks <u>may consider all foreseeable liabilities and potential losses</u> arising in the course of the financial year 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.</p> <p>In practice, this change of definition should not have major impacts on the provisioning policy for risks and charges of banks.</p>	<p>Art. 51 (1) c) bb)</p> <p>Art. 51 (1) bis</p>
Notes to the accounts				
Indication of fair value of financial instruments not measured at fair value	Required through circular 01/32.	Circ. 01/32	Now introduced formally into the law, but no changes compared to the requirements based on the circular 01/32.	Art. 68 (11)a)
Financial instruments measured at cost (less durable impairment)	No specific disclosure required.	-	Indicate book value and fair value of financial assets kept at cost (individually or grouped) if book value above fair value and reasons why no impairment booked (nature of elements indicating that there is no durable impairment).	Art. 68 (11)b)

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Auditor fees	No disclosure required.	-	Total fees paid to auditors, with a distinction between audit fees, other assurance services, fees for tax services and other non-audit related fees. Guidance on audit fee disclosure is provided below.	Art. 68 (12)
Content of Directors' report				
Fair review of the development and the performance of the business	No precision – indicates only to give a fair review of the development and the performance of the bank.	Art. 70 (1)	More precisions are given on how to present the fair review of the development and performance of the bank: - fair review of the activities, results and performance, together with a description of main risks and uncertainties the bank is facing. This review shall be a balanced and comprehensive analysis of the development and performance of the bank, and of its position, consistent with the size and complexity of the business; - if necessary to the understanding of the bank's situation, the report should include both financial and, where appropriate, non-financial key performance indicators, including information relating to the environmental and employee matters - it is recommended to highlight the analysis by references to figures presented in the annual accounts with additional explanations.	Same ref.
Other indications in the Directors' report	A number of other indications is required.	Art. 70 (2)	New requirements are added: - existence of branches - use of financial instruments: objectives and policies in relation to risk management / exposure to credit, price, liquidity and treasury risks (this requirement has already been introduced by circular 01/32)	Same ref.
Publication of annual accounts				
Delay of publication	Not indicated in the law – commercial companies law would apply	Art. 71	7 months after the closing (this is the transposition of the requirements of the December 2002 law "Registre de commerce").	Same ref.
Publication of annual accounts in EUR, if established in a currency other than the EUR	Not possible.	-	Possibility to publish accounts in EUR, if they are established in a currency other than the EUR.	Art. 74 bis

Guidance on how to disclose audit fees in the annual accounts

We propose to disclose the audit fees in the following way:

Note xxx: Fees of the independent auditor / Honoraires du réviseur d'entreprises / Honorar des Abschlussprüfers

- The fees of the independent auditor of the Bank for the year ending XXX are as follows:
- Les honoraires du réviseur d'entreprises de la banque de l'année XXX se présentent comme suit:
- Das im Geschäftsjahr als Aufwand erfasste Honorar für den Abschlussprüfer setzt sich wie folgt zusammen :

English:	French:	German:	In CCY	
			Year N	Year N-1
Audit	Contrôle légal des comptes annuels	Abschlussprüfung		
Other assurance services	Autres services d'assurance	Andere Prüfungsleistungen		
Tax	Services fiscaux	Steuerberatungsleistungen		
Other ¹	Autres	Sonstige Leistungen		
Total				

General comments:

- Fees should encompass those billed to the bank by the independent auditor² and its respective entire network (e.g. including audit, tax, advisory, and services provided by offices located outside Luxembourg).
- Fees should be shown on an accrual basis (including non deductible VAT³) for the year, and not on the basis of only payments made by the audited entity, nor to the invoices sent out by the audit firms, nor the budget of the year.
- For consolidated accounts, fees should include those incurred by the parent (reporting) entity as well as those incurred by its subsidiaries, if it is the same audit firm.
- Prior year figures have to be disclosed.

In order to ensure that the fees are correctly allocated to the corresponding categories, you will find below explanations for the different categories:

	Description	Examples
1. Audit fees	Audit Fees consist of fees billed ⁴ for the audit of the bank's annual accounts. Audit Fees in consolidated accounts consist of fees billed for the audit of the bank's accounts and the statutory annual accounts of the bank's subsidiaries. Audit Fees also include fees billed for other audit services, which are those services that only the external auditor reasonably can provide, such as in connection with statutory, regulatory or other filings or engagements or any other service performed by the audit firm to comply with International Standards on Auditing.	<ul style="list-style-type: none"> • Annual audit • Quarterly Reviews • Regulatory reports such as long form report
2. Other assurances services	Audit-Related Fees consist of fees billed for assurance and related services that are reasonably related to the performance of the audit or review of the bank's financial statements or that are traditionally performed by the external auditor, and which are not reported under 'Audit Fees'.	<ul style="list-style-type: none"> • Other agreed-upon procedures engagements • Regulatory compliance reviews • Internal control reviews • Consultations concerning financial accounting and reporting standards • Merger report • Interim dividend report • Comfort/consent letters in relation to financing transactions

¹ Even if there are no "Other" fees, we recommend to keep the line with a nil amount.

² Fees are only those billed by the independent auditor of the bank. This does not encompass fees billed by other audit firms.

³ If, for practicability reasons, this split is not possible, we recommend showing the fees without VAT.

⁴ Billed = fees recorded in the P&L of the bank. Example: audit budget of EUR 100,000 and invoiced, but the bank only provided for EUR 95,000. The amount of EUR 95,000 should be disclosed.

3. Tax fees	Tax Fees include fees for services relating to the preparation and review of tax returns and related compliance assistance and advice, tax consultation and advice relating to Group tax planning strategies and initiatives and assistance with assessing compliance with tax regulations.	
4. All other fees	All Other Fees comprise fees for all other services not included in any of the other categories noted above.	

Contact

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