

# MODERNISATION OF LUXEMBOURG ACCOUNTING LAW APPLICABLE TO COMPANIES - DRAFT BILL 8286

## OVERHAUL AND MODERNISATION OF THE LUXEMBOURG ACCOUNTING LAW

### Legal framework

On 28 July 2023, a draft law concerning accounting, annual and consolidated financial statements of companies and related reports, and abolishing the function of “commissaire” under company law, has been published (known as the “New Draft law”). From the announcement of the draft law in July 2023, the legislative process of transposition into national law should take approximately one or two years. The law is expected to come into force by the end of 2024 or in early 2025. It will be effective for financial periods beginning on or after 1 January 2025.

### Purpose of the new law

The project aims to completely overhaul the Luxembourg accounting law applicable to companies, with a view to modernize it, restructure it and provide more clarity to the reader. It also aims to achieve “the right balance between compliance with the European Accounting Directive (Directive 2013/34/EU) and its adaptation to specific national requirements”.

### Main changes

- ▶ Regrouping of all accounting provisions within a single accounting law
- ▶ Adoption of a bottom-up approach and a list-based approach
- ▶ Creation of a new category of companies - so-called “micro-entities” and increased thresholds for small-sized entities
- ▶ Introduction of an audit requirement for holding companies classified as “large holding companies”
- ▶ Extension of the scope of the Accounting Law to other forms of companies
- ▶ Alignment with the European Accounting Directive, with adaptation to national specificities and certain clarifications, particularly with regards to IFRS options, fair value and substance.
- ▶ Modernization of the accounting regime for dissolved companies and companies in liquidation
- ▶ Abolition of the function of “commissaire” (Supervisory auditor)

### Other envisaged changes/clarifications include the following:

- ▶ introduction of an article of definitions of specific accounting concepts, such as “significant influence”, “materiality”, the definition of “holding companies”,....)
- ▶ introduction of the definition of “control” for consolidation purposes
- ▶ integration of several recommendations of the CNC (aka Q&A’s) into the law
- ▶ option to recognize deferred tax assets in statutory accounts and consolidated accounts

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- ▶ option to recognize intangible assets with an indefinite useful life, subject to impairment testing
- ▶ possibility for newly incorporated entities to have an extended first financial year of up to 18 months; but maximum of 12 months in case of transitional financial years
- ▶ ....

### “Bottom up” approach and list approach

As 97% of Luxembourgish companies are small-sized entities, the “bottom up” approach introduced by Directive 2013/34/EU and predominantly followed by the latter will be the rule applicable to all entities (except micro-entities), unlike the “top down” approach currently adopted (i.e. large companies are the rule and small companies the exception). Additional scoping provisions will be added to this basic regime for large and medium-sized entities as well as for public interest entities. Exhaustive lists of the types and categories of companies covered will clarify the scope of accounting obligations.

### Raising the thresholds for small businesses and introduction of micro-entreprises

Size criteria (in EUR)	Micro-Entities	Small-sized entities	
		Current threshold	Proposed threshold
Balance sheet total	350.000	4.400.000	6.000.000
Net turnover	700.000	8.800.000	12.000.000
Average number of full-time employees during the financial year	10	50	50

Micro-entreprises will have to comply with the accounting and legal obligations of small businesses but will be exempt from drawing up notes to the annual accounts. The annual accounts of micro-companies will be based solely on the historical cost method.

Holding companies, credit institutions, entities subject to CSSF supervision, insurance companies, securitization vehicles governed by the 2004 law and RAIFs are excluded from the micro-entity regime.

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### The introduction of the category of large holding companies and the audit requirement

	Holding Companies	Large Holding Companies
Balance sheet total	≤ EUR 500 million	>EUR 500 million
Accounting system	Small-sized entity (unless 2 of the 3 size criteria are exceeded)	
Additional information in appendix	Information on shareholdings	
Statutory audit of by an independent auditor (Réviseur d'entreprises agréé)	No	Yes

When calculating the thresholds for determining whether or not a statutory audit is required, the European Directive 2013/34/EU allows Member States to include income from other sources when the amounts derived from the sale of products and the provision of services (“net turnover”) is not relevant for the entity. Likewise the Directive allows to calculate the thresholds on a consolidated basis rather than on an individual basis.

The draft law does not include these options, but uses instead a balance sheet total criterion that seems more representative of the notion of risk associated with holding companies.

The annual accounts of holding companies may be drawn up in accordance with the rules for small-sized entities, with the exception of the additional requirement to include in the notes the information relating to companies holding a participating interest, which is essential for the true and fair view principle.

### Extension of the scope of the Single Accounting Act

The draft law also proposes to extend the scope of the Accounting Act to non-commercial companies, such as:

- ▶ companies under civil law (“sociétés civiles”)
- ▶ agricultural, mutual insurance and pension savings associations
- ▶ mutual funds (Fonds Commun de Placement)
- ▶ temporary commercial companies and joint ventures

SCSp (Special Limited Partnership Companies) which are generally exempt from the obligation to prepare annual accounts, will have certain filing/publication obligations.



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### New obligations for companies dissolved or in liquidation

	Interim financial statements	Closure of the liquidation
Drawing up financial statements (balance sheet, income statement and notes)	Yes	Yes
AGM	Submission within 6 months of closure or the anniversary of the liquidation	Approval
Filing and publication of financial statements (*)	Yes	Yes
Information on the progress of liquidation work	Yes. To shareholders, third-party creditors and any other interested parties	N/A
Intervention of an auditor to the liquidation	Covered by the review of financial statements at closure of liquidation	Yes

(\*) This also applies to SCAs, SASs and even SCs in the form of SAs.

Common accounting law will continue to apply to companies until their final liquidation, with accounting methods and valuation methods being adapted to reflect the company's discontinued operation. The annual financial statements of a company in liquidation will have to be filed with the RCS and published in the RESA, but will not be subject to approval by the AGM, unlike the financial statements for the close of liquidation, which will have to be approved by the AGM.

### Abolition of the function of “commissaire” (supervisory auditor)

The draft law proposes to abolish the outdated function of “commissaire” in its current form. This Luxembourgish peculiarity has tended to confuse foreign investors especially when it came to explaining and translating the role of the supervisory auditor in an international context (for example: statutory auditor vs supervisory auditor).

The legislator provides the possibility for shareholders/associates of small-sized entities to request a contractual audit of their annual accounts by an auditor or a chartered accountant, for example by indicating this in their articles of association.

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## INTERESTED?

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