Luxembourg's New Accounting Law: The Three Cs

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1. The changes aim to streamline accounting requirements in Luxembourg.

2. Of the 12 amendments, 5 will have significant impact on fund managers.

3. One of the most significant changes is the need for an annual impairment test for intangible assets with indefinite useful life.

Clarification. Consolidation. Codification. These are the three Cs that the amendments to the Luxembourg Accounting Law are set to deliver for fund managers operating in the jurisdiction. Stephanie Gray and Stephanie Atnas break down what managers need to take into consideration in the short and medium term before the Law comes into force (provisional implementation date is for financial periods starting from 1 January 2025).

The draft bill (8286) will streamline almost all accounting requirements into a single law. It will also broaden the Law's scope and is designed to integrate market practices. There are some actions fund managers could put into motion now or seek assistance to ensure immediate compliance.

Here are the most important adjustments that help to clarify, consolidate and codify the requirements to make doing business in the jurisdiction as seamless as possible for fund managers, and more secure for investors.

The 5 changes most likely to impact your business are:

1. Filing requirements for SCSp's

The Draft Bill states that Special Limited Partnerships (SCSp) are generally exempt from the obligation to prepare annual financial statements, if they annually submit their trial balances as outlined in the Luxembourg Standard Chart of Accounts (plan comptable normalisé – PCN).

However, certain other SCSp entities will be required to establish financial statements in accordance with Title III of the New Law. If entities are doing filings in-house it is likely the additional requirements of the New Law could make it necessary to use an administrator. These filings will however not be subject to publication, nor accessible to the public.

2. Audit requirement for large holding companies

Large holding companies with a balance sheet that exceeds EUR 500 million will still need to comply with the accounting law applicable to small-sized undertakings and will also be obligated to have their financial statements audited annually by an independent auditor (Réviseur d'Entreprises Agréé).

Practically, this new requirement would mainly affect holding companies of groups that are not governed by any Product Laws. For example, there is a derogation in the New Law from audit, this means companies that are investment companies would not be subject to audit.

3. Measurement option for intangible assets with indefinite useful life

Where intangible assets such as trademarks or databases have an indefinite useful life, an annual Impairment Test needs to be done at the same time each year. This means these assets can be valued at cost less impairment.

The general principle that intangible assets are amortised over their useful life is maintained in the New Law. However, the key development is the recognition in the New Law of exceptional cases where intangible assets (including goodwill) are deemed to have an indefinite useful life.

To this end, companies are required:

- To carry out an impairment test, at least at each annual closing date, in accordance with IAS 36 “Impairment of Assets” or an EU member state’s standard, for example, French or Belgian accounting standards. The reason for this is that the absence of systematic amortisation means reserves are created which could potentially be distributed.
- To reverse any impairment loss recognised when the circumstances that caused the impairment loss are favourably resolved, with the exception that impairment loss on goodwill remains permanent.
- To disclose in the notes to the financial statements any significant disclosures prescribed by the accounting standard applied by the undertaking to perform an annual impairment test.

4. Introduction of the definition of control for consolidation purposes

The definition of control, a key concept for consolidation, has been introduced in the New Law as the power to decisively influence or to govern the management and financial policies of another company. Specifically, control results exclusively from the following situations:

- the parent undertaking has the majority of the voting rights as shareholders/partners of another undertaking; or
- the parent undertaking has the right to appoint or dismiss the majority of the members of another undertaking’s administrative, management or supervisory body; or
- the parent undertaking controls, by virtue of an agreement concluded with other shareholders or partners of this undertaking, the majority of the voting rights of the shareholders or partners of the latter.

The concept of agent versus principal would apply in certain cases where there is competition between at least two of the three scenarios above. For instance, where the power of the general partner over the management of the company – and thus the control over the company – is exercised on behalf of the limited partner(s) (“agent vs. principal”). In this case, it is the limited partner with the majority of voting rights who will have control and will have to prepare consolidated financial statements (unless the limited partner has an exemption).

Fund administrators can help clients to complete the assessment of whether this action is required, and if it is, complete the financial statements as required.

5. New requirements for entities in liquidation / dissolved

The draft legislation clarifies that the general accounting principles continue to apply before and after dissolution with liquidation, with the necessary adaptations for the accounting principles and valuation methods that such operational discontinuity induced.

If the financial statements of a company dissolved in liquidation are not approved by the general meeting, companies in liquidation are required to prepare and file interim annual liquidation financial statements within six months of the end of the financial year, or of the anniversary of the liquidation. Such information will be publicly available for the companies which were required to publish their financial statements.

Upon the closure of the liquidation, the closing financial statements must be filed with the Trade Register and, depending on the entity's legal form, they must also be published (e.g.: S.A. or S.à r.l.).

Here are all the key changes:

- Filing requirements for Special Limited Partnerships (SCSp's)
- Introduction of audit requirements for large holding companies
- Creation of a micro-entity regime and increased thresholds for small-sized entities
- Measurement option for intangible assets with indefinite useful life
- Introduction of the definition of control for consolidation purposes
- Deferred tax asset recognition option
- Modernisation in the context of the accounting provisions filling in certain gaps, embedding into law certain 'Currently Not Collectable' (CNC) Q&As/questionnaires
- Restrictions of derogation from the accounting law
- Abolition of the supervisory audit ("Commissaire")
- New requirements for entities in liquidation or dissolved
- A modernisation in the form through a single accounting law
- Extension of undertakings in scope of the application of the single accounting law

Aztec can help guide you to understand and implement these changes. Our team of experts are able to help you perform a gap analysis and offer support in preparing in good time before the New Law comes into force.

If you'd like to discuss how to leverage these changes positively for your fund, contact Stephanie Gray or Stephanie Atnas.