

## **CNC Opinion 02/2014**

### **Accounting concept of an investment company**

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#### **1. The accounting concept of investment company: what is its scope?**

Article 30 of the law of 19 December 2002 on the trade and companies register as well as the bookkeeping and annual accounts of undertakings (the amended law of 2002) provides that investment companies shall present their annual accounts by derogating on certain points from the general accounting law provided for by the amended law of 2002.

Investment companies are defined as "(...) *companies the sole object of which is to invest their funds in various securities, real property and other assets with the sole aim of spreading investment risks and giving their shareholders or members the benefit of the results of the management of their assets*"<sup>1</sup>.

While this definition of the concept of investment company does not refer to a specific regulatory status, it should be noted that article 30 of the amended law of 2002 – by laying down the principle of a derogation from the layouts of balance sheet and profit and loss account as provided for in Articles 34 and 46 of the amended law of 2002 – makes a direct reference to the sector-specific accounting provisions and layouts applicable to undertakings for collective investment (UCI / OPC)<sup>2</sup> and for specialised investment funds (SIF / FIS)<sup>3</sup>.

In this context, the **question arises as to the scope of application of the accounting concept of investment company referred to in Article 30 of the amended law of 2002** and – more specifically – **whether this concept covers only the regulated investment companies** referred to in that Article (UCIs referred to in the amended law of 17 December 2010 and SIFs referred to in the amended law of 13 February 2007) **or whether this accounting concept may also include other regulated (e.g. SICAR) or non-regulated investment vehicles such as alternative investment funds (AIF / FIA)**<sup>4</sup>.

<sup>1</sup> Article 30, paragraph (1), 2<sup>nd</sup> subparagraph of the amended law of 19 December 2002

<sup>2</sup> Article 151 (3) and (5) of the amended law of 17 December 2010 relating to undertakings for collective investment

<sup>3</sup> Article 52, paragraph (4) of the amended law of 13 February 2007 on specialised investment funds

<sup>4</sup> The Law of 12 July 2013 on alternative investment fund managers defines alternative investment funds in Article 1, point (39) as follows:

*"collective investment undertakings, including investment compartments thereof, which:*

*(a) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and*

*b) do not require authorisation pursuant to Article 5 of Directive 2009/65/EC;"*

## 2. The restrictive interpretation given to the accounting concept of investment company

The Accounting Standards Board (CNC) first notes that in the recent amendment of Article 30 of the amended law of 2002 by the Law of 30 July 2013<sup>5</sup>, the amendment of the said Article<sup>6</sup> was justified as follows by the legislator:

*"It is proposed that Article 30 be amended to specify that **investment companies – which are, within the meaning of Luxembourg accounting law UCITS Part I and UCI Part II organised as companies and governed by the law of 17 December 2010 relating to undertakings for collective investment as well as specialised investment funds organised as companies and governed by the law of 13 February 2007 relating to specialised investment funds – have the option of presenting their annual accounts in accordance with the sector-specific provisions which apply to them, in order to avoid a costly duplication of their financial information which would consist in disconnecting, on the one hand, the annual accounts drawn up in application of general accounting law and, on the other hand, the annual report drawn up in application of sector-specific accounting law**".*

It is clear from the above that the derogation provided for in Article 30 of the amended law of 2002 applies only to investment companies governed by sector-specific accounting provisions and for which there are sector-specific accounting layouts.

Consequently, and having regard to the foregoing comments, the Accounting Standards Board (CNC) is of the opinion that it is appropriate – in the current state of the accounting law – to give a restrictive interpretation to the accounting concept of investment company as referred to in Article 30 of the amended law of 2002 by limiting it to investment companies in the regulated sector, namely:

- Part I UCITS and Part II UCIs organised as companies and governed by the amended law of 17 December 2010 on undertakings for collective investment, and
- specialised investment funds (SIFs) organised as companies and governed by the amended law of 13 February 2007 on specialised investment funds

It follows from the foregoing that other investment vehicles are excluded from the benefit of Article 30 of the amended law of 2002, as they are not – for the purposes of accounting law – investment companies, without prejudice to the classification of such vehicles for the purposes of other disciplines. As a result, and unless they obtain an individual exemption pursuant to Article 27 of the amended law of 2002<sup>7</sup>, the other investment vehicles generally fall within the scope of general accounting law<sup>8</sup> and must – save for exceptions<sup>9</sup> – prepare their balance sheet, profit and loss account and

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<sup>5</sup> Law of 30 July 2013 reforming the Accounting Standards Board (CNC) and amending various provisions relating to the bookkeeping and annual accounts of undertakings and the consolidated accounts of certain types of companies, Mem. A - No. 177 of 2 October 2013.

<sup>6</sup> Parliamentary document 6376<sup>7</sup>, Draft law reforming the Accounting Standards Board (CNC) and amending various provisions relating to bookkeeping and annual accounts of undertakings and consolidated accounts of certain types of companies, Amendments adopted by the Legal Affairs Committee, Amendment 2 concerning point 5, p. 2

<sup>7</sup> Pursuant to article 27, 1<sup>st</sup> indent, of the amended law of 2002, the Minister of Justice may, in special cases and subject to the reasoned opinion of the Accounting Standards Board (CNC), grant derogations from the rules laid down by virtue of chapters II and IV of title II of the amended law of 2002 provided that such derogations remain in conformity with the European accounting directives where these are applicable.

<sup>8</sup> The application of general accounting law implies – with certain exceptions – the use of the balance sheet and profit and loss account layouts provided for in Articles 34 and 46 of the amended law of 2002.

<sup>9</sup> Exceptions include:

- undertakings subject to prudential supervision by the CSSF which are (with the exception of support PFS) excluded from the scope of application of the Standard chart of accounts (PCN) (art. 13, 5<sup>th</sup> indent, C.Com.) and which are therefore not subject to the obligation to file their accounting package via the eCDF platform (Art. 2 GDR of 14 December 2011);
- non-regulated investment vehicles that choose to use IFRS accounting standards pursuant to article 72bis of the amended law of 2002;

trial balance of accounts in accordance with the standard chart of accounts (PCN) on the basis of the standard forms made available on the eCDF platform<sup>10</sup>.

Without prejudice to the foregoing, the Accounting Standards Board (CNC) notes that the opportunity of introducing standardised eCDF forms adapted to the specific nature of the activities of undertakings in a given economic sector may be the subject of discussion and initiatives, as appropriate. In the meantime, undertakings required to file their accounting package via the eCDF platform shall use the standardised forms provided.

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Luxembourg, 3<sup>rd</sup> July 2014

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Alphonse KUGELER  
Chairman

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Secretary

### **Disclaimer**

**This document – provided as a courtesy – is an unofficial translation of the French original document entitled “*Notion comptable de société d’investissement*”. In case of discrepancy in interpretation, the French version shall prevail.**

The “questions and answers” published by the “Commission des normes comptables (CNC)” (Accounting Standards Board):

- are of a general nature and do not refer to the specific situation of any natural or legal person;
- are intended to contribute to the development of accounting doctrine in accordance with Article 73(b) of the amended Law of 19 December 2002 on the trade and companies register, as well as on the bookkeeping and annual accounts of undertakings;
- only represent the opinion of the GIE CNC on a number of doctrinal and interpretative issues.

The administrative or management bodies of undertakings remain responsible under general law for any decision taken on the basis of this document.

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- special limited partnerships (SCSp) which are exempt from the PCN (Art. 13, 1<sup>st</sup> indent, C.Com.) and from drawing up annual accounts in accordance with chapter II of title II of the amended law of 2002.

<sup>10</sup> Pursuant to Article 4 of the Grand-Ducal Regulation of 14 December 2011 determining the procedure for filing the accounting package with the manager of the Trade and companies register (RCS).