

**CNC
Opinion
09/001
(repealed)**

Withdrawal of CNC Opinion 09/001 interpreting Article 312 of the amended law of 10 August 1915 on commercial companies and Article 31 of the amended law of 19 December 2002 on the trade and companies register as well as the bookkeeping and annual accounts of undertakings – FINANCIAL HOLDING COMPANIES

On 18 February 2009, the “Commission des normes comptables (CNC)” (Accounting Standards Board) had issued CNC Opinion 1-1, which had since been renumbered CNC Opinion 09/001, aimed at **interpreting the accounting concept of a financial holding company**, which was used both in Article 312 of the amended law of 10 August 1915 on commercial companies (LSC) and in Article 31 of the amended law of 19 December 2002 on the trade and companies register as well as the bookkeeping and annual accounts of undertakings (LRCS).

Article 312 LSC was repealed by Article 1 point 3 of the law of 18 December 2015¹ aimed at transposing Directive 2013/34/EU², the latter no longer allowing, unlike the Seventh Directive 83/349/EEC on consolidated accounts which it replaces, an exemption from consolidation in favor of certain financial holding companies.

Article 31 para. 1 LRCS provides that financial holding companies may present their balance sheet and their profit and loss account in accordance with a special layout determined by Grand-Ducal regulation. As Directive 2013/34/EU no longer provides for special layouts of accounts for financial holding companies, the **Grand Ducal Regulation of 29 June 1984³ was repealed by Article 2 of the Grand Ducal Regulation of 15 December 2016⁴.**

In view of the above, it follows that financial holding companies are now subject to general accounting law applicable to all undertakings and that CNC Opinion 09/001 has become obsolete.

Consequently, CNC has decided to withdraw its CNC Opinion 09/001.

¹ Law of 18 December 2015 amending, with a view of transposing Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC:

- 1) the amended law of 10 August 1915 on commercial companies;
- 2) Title II of the amended law of 19 December 2002 on the trade and companies register as well as the bookkeeping and annual accounts of undertakings;
- 3) Title II of Book I of the Commercial Code.

² Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings and amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC

³ Grand-Ducal regulation of 29 June 1984 determining the layout according to which financial holding companies must present their annual accounts.

⁴ Grand-Ducal Regulation of 15 December 2016

1. introducing certain derogations from the standard layouts of balance sheet and of profit and loss account pursuant to article 27 of the amended law of 19 December 2002 on the trade and companies register as well as the bookkeeping and annual accounts of undertakings and,
2. repealing the grand-ducal regulation of 29 June 1984 determining the layout according to which financial holding companies must present their annual accounts.



Luxembourg, 18 February 2009

CNC OPINION 1-1

Interpretation of Article 312 of the amended law of 10 August 1915 on commercial companies and of Article 31 of the amended law of 19 December 2002 on the trade and companies register as well as the bookkeeping and annual accounts of undertakings – FINANCIAL HOLDING COMPANIES

Article 31 of the law of 19 December 2002 on the trade and companies register as well as the bookkeeping and annual accounts of undertakings (the law of 2002) provides that all financial holding companies must present their annual accounts in accordance with a special layout, which was laid down by the Grand Ducal regulation of 29 June 1984.

Article 312 of the amended law of 10 August 1915 on commercial companies (the law of 1915) lists the conditions that a financial holding company must meet in order to be exempted from the obligation to draw up consolidated accounts and a consolidated management report.

This raises the question of the definition to be given to the "financial holding company" referred to in Articles 31 of the law of 2002 and 312 of the law of 1915.

The legislative preparatory works state that Article 31 of the law of 2002¹ "[...] is based on paragraph (3) of Article 5 of the Directive². It provides for a special layout for the type of company specified therein, the definition of which largely corresponds to that given by the amended law of 31 July 1929 on the tax regime applicable to financial holding companies".

The legislative preparatory works indicate for article 312 of the law of 1915 that "A first exception to the rule that any corporation ("société de capitaux") which holds one or more direct or indirect subsidiaries must draw up consolidated accounts and a consolidated management report exists for the benefit of financial holding companies. The draft bill of law makes use of an option granted to Member States by the directive, which authorises them to exempt this category of companies from the obligation to consolidate under the conditions defined in the directive.

Indeed, there is no real need for financial holding companies to draw up consolidated accounts. The preparation and publication by such companies of an individual balance sheet and profit and loss account in accordance with the rules and in the form laid down by the law of 4 May 1984, which became Section XIII of the amended law of 10 August 1915, is sufficient to satisfy the legitimate need for information of shareholders and third parties.

¹ Commentary on former Article 209 of the law of 1915, which became Article 31 of the law of 2002 following the entry into force of that law (doc. parl. n°2657, pp. 24 and 25)

² Directive 78/660 EEC

The financial holding companies which may be exempted, subject to the conditions laid down, are those which meet the definition given in Article 209 paragraph (2) of the law of 4 May 1984, namely: "companies whose sole object is to acquire holdings in other undertakings and to manage such holdings and turn them to profit, without involving themselves directly or indirectly in the management of those undertakings, the foregoing without prejudice to the rights as shareholders or members [...]".

Articles 31 and 312 above therefore only apply to companies which fall within the scope of the amended law of 31 July 1929 on financial holding companies and, by extension, to family wealth management companies covered by the law of 11 May 2007 on the creation of a family wealth management company ("SPF").

However, the aforementioned articles do not apply to companies commonly known as "soparfi", which are ordinary commercial companies whose sole corporate purpose is not to acquire holdings in other undertakings, since a soparfi may carry out mixed activities such as industrial or commercial activities or the performance of services.

On the question of whether Article 31 of the law of 1915 allows or requires any financial holding company to present its annual accounts in accordance with the layout set out by the Grand Ducal regulation of 29 June 1984, the Accounting Standards Board (CNC) is of the opinion that this article requires any financial holding company (i.e. a holding company organised under the law of 1929 or an SPF) to present its annual accounts in accordance with the layout set out by the Grand Ducal regulation of 29 June 1984.

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This document – provided as a courtesy – is an unofficial translation of the French original document entitled “Retrait de l’avis CNC 09/001 portant interprétation de l’article 312 de la loi modifiée du 10 août 1915 concernant les sociétés commerciales et de l’article 31 de la loi modifiée du 19 décembre 2002 concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises – SOCIETE DE PARTICIPATION FINANCIERE”. In case of discrepancy in interpretation, the French version shall prevail.