

Deloitte regulatory news alert

EU Audit Market Reform – Are you ready?! - Luxembourg Draft Law n° 6969

25 March 2016

On 22 March 2016, the *Chambre des Députés* published draft Law 6969 ("the draft Law") implementing:

- [Directive 2014/56/EU](#) amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts ("the Directive"); and
- [Regulation \(EU\) No 537/2014](#) on specific requirements regarding statutory audit of public-interest entities ("the Regulation").

The implementation deadline for the Directive and the entry into force of the Regulation are 17 June 2016. The new requirements will impact Public Interest Entities (PIEs), their parent undertakings and controlled undertakings within the European Union.

EU Audit Market Reform in a nutshell

Which entities will be impacted...

- Companies governed by EU Law and listed on an EU regulated market
- Credit institutions
- Insurance and reinsurance undertakings
- Subsequent Luxembourg regulation could designate additional PIE
- Uncertainty regarding funds listed on an EU regulated market

... then some or all restrictions will apply:

- Mandatory firm rotation and tendering
- Prohibited non-audit services (NAS)
- Permissible NAS with a cap based on statutory audit fees
- Enhanced responsibilities of audit committees
- Expanded auditor reporting (including the disclosure of key audit matters)
- Sanctions for auditors and PIEs relating to non-compliance with the Law

Overview of new requirements

Mandatory firm rotation and tendering

Luxembourg draft Law foresees a maximum duration of audit engagement of 20 years, with a tendering obligation after 10 years. PIEs are to perform a transparent audit tendering process with a close involvement of the audit committee when a tender does occur. A cooling-off period of 4 years shall be respected after the end of the statutory audit services before audit firm can undertake the audit of the entity again.

The text sets also the minimum duration of audit firm appointments for statutory audits as a three-year term.

Prohibited non-audit services (NAS)

The EU regulatory package on Audit Market Reform introduces a “black list” approach regarding non-audit services provided by the audit firm and its network. The current Luxembourg draft Law exercises the option to authorize certain tax and valuation services by the entity’s audit firm.

Permissible NAS with a cap based on statutory audit fees

Fees for permissible NAS provided by the audit firm to the audited entity, its parent undertaking or its controlled undertakings (EU), where performed for three consecutive financial years, must not exceed, each year, 70% of the average annual fees paid in the last three consecutive financial years for statutory audits of the PIE, its parent or controlled undertakings (EU+world), and of the group consolidated financial statements.

The audit committee shall approve non-audit services that are not prohibited.

Enhanced responsibilities of audit committees

Each PIE shall establish an audit committee composed of non-executive members of administrative body and/or members of the supervisory body and/or members appointed by the general meeting of shareholders.

According to the current Luxembourg draft Law, the following entities could be exempted (use of a Member States option):

- Small or medium-sized undertakings (functions of the audit committee are performed by an administrative or supervisory body);
- PIEs with a body performing equivalent functions.
- PIEs which are Undertakings for Collective Investment in Transferable Securities (UCITS) or Alternative Investment Funds (AIFs).

The audit committee is in charge of the selection of the auditor / audit firm, and it shall perform the pre-approval of permissible services.

Expanded auditors reporting

Auditors of PIEs will have to prepare a more comprehensive report directly to the audit committee, including:

- More detailed information on the results of the audit;
- Disclosure of quantitative level of materiality applied to perform the statutory audit, materiality level(s) for particular classes of transactions, account balances or disclosures, and qualitative factors used to determine materiality; and
- Report and explain judgments about events or conditions identified during the audit that may cast significant doubt on the entity's ability to continue as a going concern and whether they constitute a material uncertainty, and provide a summary of all measures that have been taken into account when making a going concern assessment.

Sanctions

Sanctions are foreseen for auditors and PIEs in case of non-compliance with the Law (up-to EUR 1 million or 5% of annual turnover).

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