

## Banks Distributable results and reserves

### Regulatory News Alert

#### In case of use of fair value method for the statutory accounts or the IAS/IFRS accounting standards

On 9 January 2015, the CSSF published Regulation N°14-02 relating to the determination of distributable results and reserves of credit institutions when using the fair value method for the statutory annual accounts (Mémorial A – N°4). This regulation is applicable from the period ended 31 December 2014.

#### Limitation to the distribution of unrealised results and reserves

The following provisions are applicable to credit institutions using the fair value option (Chapter 7bis, Part II of the Law of 17th June 1992, “the Law” hereafter) or the IAS/IFRS accounting standards (Part II bis of the Law) for statutory annual accounts.

The following items cannot be distributed:

- Unrealised gains recorded in the profit and loss account;
- Unrealised gains recorded in own funds which does not pass through the profit and loss account;
- Positive variation in own funds recognised in the “first-time application” balance sheet established in accordance with Part II bis of the Law.

These elements must be affected directly to an unavailable reserve or indirectly during the allocation of the fiscal year’s income. The following uses of the unavailable reserve are forbidden:

- Capital increase by capitalisation of reserves;
- Transfer to legal reserve;
- Set-up of non-distributable reserve relating to the acquisition of own shares;
- Set-up of non-distributable reserve relating to the granting of financial assistance for the acquisition of company’s shares by a third party;
- Set-up of the non-distributable reserve relating to the issue of redeemable shares;
- Determination of the loss amounting to half or three quarters of the share capital;
- Special reserve pursuant to paragraph (8a) of the Law of 16 October 1934 on wealth tax.

By exception, the following items are not considered as unavailable and can be distributed or used:

- Unrealised gains related to financial instruments held in trading portfolio;
- Unrealised gains related to foreign exchange and hedge accounting;
- Reversal of value adjustment in the context of the “first-time application” balance sheet established in accordance with Part II bis of the Law (excluding amortisation, lump-sum and AGDL).

If net annual results are below unrealized results, the unavailable reserve will be constituted by using the available reserves or, by default, imputing on the reported results.

## **Deferred tax liabilities under the regime of the fair value option**

Credit institutions using the fair value option in the statutory financial statements (Chapter 7bis, Part II of the Law) shall recognise deferred tax liabilities, if the gain related to the fair value appreciation of an eligible asset or liability will be subject to taxation during its realisation.

We trust this information is of assistance and remain at your disposal for any further questions.

# Your contacts

**Martin Flaunet**

Partner | Banking & Securities Leader

Tel/Direct: +352 451452 334

mflaunet@deloitte.lu

**Raphaël Charlier**

Partner | Banking

Tel/Direct: +352 451452 258

rcharlier@deloitte.lu

Deloitte Luxembourg

560, rue de Neudorf

L-2220 Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

[www.deloitte.lu](http://www.deloitte.lu)

Deloitte is a multidisciplinary service organisation which is subject to certain regulatory and professional restrictions on the types of services we can provide to our clients, particularly where an audit relationship exists, as independence issues and other conflicts of interest may arise. Any services we commit to deliver to you will comply fully with applicable restrictions.

Due to the constant changes and amendments to Luxembourg legislation, Deloitte cannot assume any liability for the content of this leaflet. It shall only serve as general information and shall not replace the need to consult your Deloitte advisor.

**About Deloitte Touche Tohmatsu Limited:**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/lu/about](http://www.deloitte.com/lu/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte has in the region of 200,000 professionals, all committed to becoming the standard of excellence.

© 2015 Deloitte General Services

Designed and produced by MarCom at Deloitte Luxembourg