

Circular “RCS”L 11/1

Subject: Procedure applicable to the lodging and publication of statutory accounts for any Luxembourg-based branches of foreign companies

Notes presented by the Luxembourg Trade and Companies Register (“RCS”):

- o Are of a general nature and are not aimed at any particular situation applicable to any individual natural person or legal entity ;
 - o Are of an documentary nature and for information only ;
 - o Are solely aimed at answering a number of questions raised by “RCS” users ;
 - o Are of no legal value and do not involve the liability of the “RCS” ;
 - o Are not necessarily up-to-date, exhaustive or comprehensive ;
 - o Are not to be used as a substitute for legal or professional advice ;
 - o Only reflect the opinion of the “RCS” on a number of questions which remain subject to any interpretation issued by Courts and Tribunals.
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The present circular sets out the procedure applicable to the lodging and publication of annual (statutory) company accounts for all Luxembourg-based branches of foreign companies which are not subject to any specific standards.

1. Filing requirements

Any Luxembourg-based branch of a foreign commercial company, European economic interest groupings, economic interest groupings or sole traders, are required to submit their annual accounts to the “RCS”, that is all accounts solely related to their branches, as per article 75 of the law of 19th December 2002 concerning the Luxembourg Trade and Companies Register as well as the accounting and the yearly company accounts, hereafter referred to as “the law of 2002”.

These accounts, with the exception of the case mentioned below, are not published within the Memorial C, Official Journal of Companies and Associations, and are not publicly available. These accounts are lodged with the “RCS” for the sole purpose of being forwarded to “STATEC” and thereby populate the Luxembourg Central Balance Sheet office records as well as to being communicated to the State authorities, as per articles 76 and 78 of the law of 2002.

Exception :

All annual accounts for branches of a commercial company based abroad or constituted in any such form must be submitted to the "RCS" and are subject to publication within the Memorial C in the presence of all the following circumstances:

- Its legal form is similar to those affected by the 68/151/ EEC directive,
- It is not regulated by laws of any other European member state,
- Its accounts are not kept as per either directive 78/660/EEC or 83/349/EEC or in any equivalent manner as per article 160-7 of the amended law of the 10th August 1915 concerning commercial companies.

2. Memorial C, Official Journal of Companies and Associations:

Branches of foreign companies with no commercial form, or any similar form are not subject to any publication of accounts, be it from the company or from any of its branches. Thus, the publication requirements set out below are only applicable to **branches of foreign commercial companies**.

2.1. Branch of a commercial company or constituted in any similar form as specified within the 68/151/EEC directive:

In such a case, distinction must be made as to whether the branch belongs to a company regulated by laws of any other European member state.

2.1.1. Branch of a company regulated by laws of a European member state

Articles 160-2 g) and 160-3 of the amended law of the 10th August 1915 concerning commercial companies are applicable.

2.1.1.1. Obligations of a company regulated by foreign law

All annual company accounts must be published in accordance to the specifications set out within article 9, paragraph 3 of the previously mentioned law of 1915. Publication of annual accounts within the Memorial C is thus completed by submitting these documents to the "RCS"(Article 160-2 g) of the abovementioned law of 1915).

2.1.1.2. Obligations regarding the Luxembourgish branch of a company under foreign law

No accounting information is to be published for the Luxembourgish branch (Article 160-3 of the abovementioned law of 1915).

2.1.2. Branch of a company under non-EU law

All specifications from articles 160-6 j) and 160-7 of the abovementioned law of 1915 are applicable.

It must be established whether the accounts of the company under foreign law have been compiled in compliance with directives 78/660/EEC and 83/349/EEC or in an equivalent manner.

2.1.2.1. Company accounts are compiled in accordance to the abovementioned directives

o Obligations of a company under foreign law

Annual (statutory) company accounts of any company under foreign law must be published according to the modalities set out within article 9, paragraph 3 of the abovementioned law of 1915, stating that the publication of annual accounts within the Memorial C is completed by mention of filing of these documents with the "RCS".
(Article 160-6 j) of the abovementioned law of 1915)

o Obligations of the Luxembourgish branch of a company under foreign law

No accounting information is to be published for the Luxembourgish branch. (Article 160-7 of the abovementioned law of 1915)

2.1.2.2. Accounts not compiled as per the abovementioned directives

o Obligations of the company under foreign law

It is not expected to publish any of the accounting information on the company's activity (Article 160-7 of the previously mentioned law of 1915).

o Obligations of the Luxembourg-based branch of a company under foreign law

Accounts of the Luxembourg-based branch with regards to its activity must be published in accordance with all the modalities set out within paragraph 3 of article 9 of the abovementioned law of 1915. Publication of annual accounts within the Memorial C is thus completed by submitting these documents to the "RCS" (Article 160-7 of the abovementioned law of 1915).

2.2. Branch of a commercial company or of a company established in similar form without any legal form similar to those referred to within the 68/151/ EEC directive:

- o Obligations of the company under foreign law

Annual company accounts of the company under foreign law must be published in compliance with the modalities set out within paragraph 3 of article 9 of the abovementioned law of 1915, stating that the publication of annual accounts within the Memorial C is completed by mention of filing of these documents with the "RCS". (Article 160 of the abovementioned law of 1915)

- o Obligations of a Luxembourg-based branch of a company under foreign law

No accounting information is to be published for the Luxembourgish branch.

Summary:

Foreign commercial companies with branches based in the Grand-Duchy of Luxembourg must comply with the following requirements:

- o Filing all annual accounts relevant to the branch with the "RCS".
- o Submitting the company's accounts to the "RCS" for publication by mention within the Memorial C.

Commercial companies under foreign law based outside of the European Union, with a legal form similar to those concerned with the 68/151/ EEC directive, and the accounts of which are not compiled in accordance with the 78/660/EEC and 83/349/EEC directives, or in any equivalent manner, and which have opened a branch within the Grand Duchy of Luxembourg, must comply with the following requirements:

- o Submitting the yearly accounts of the branch to the "RCS" for publication by mention within the Memorial C

European groupings of economic interest, foreign groupings of economic interest, and all foreign persons acting as traders with a Luxembourg-based branch must comply with the following requirements:

- o Filing the annual accounts relevant to the branch itself with the "RCS".

On behalf of the Manager of the Luxembourg Trade and Companies Register,

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Director