
The new Swiss financial reporting law

An overview of the most important changes, plus the revised wording of the law

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A paper produced by PwC for people responsible for financial reporting and auditing

Foreword

Dear reader

On 1 January 2013, new Swiss financial reporting legislation entered into force as a partial revision of the Swiss Code of Obligations (CO). The key changes from the previously applicable law concern the differentiation of companies by size rather than by legal form and a strengthening of the rights of minority shareholders.

Entities now have two (and in certain cases three) years to adapt to the new legal situation. The new provisions have to be implemented for annual accounts from the 2015 financial year onwards, and for consolidated accounts from 2016. But they can also be applied earlier on a voluntary basis.

PwC has produced this paper to explain and comment on the new financial reporting legislation. We take a look at the protracted story of how it came about, and set forth the legislative goals underlying the new law. There are also sections devoted to the minimum requirements for annual accounts, valuation and consolidated accounts.

In the annex you'll find the text of the revised financial reporting law, as well as the wording of the new provisions on auditing that went into force at the beginning of 2012. You can download this paper as a PDF. The introductory text and the revised sections of the Code of Obligations are linked: a click on the paragraphs cited in the commentary will take you straight to the relevant article of the law.

PwC trusts that this paper will help make your financial reporting easier. We wish you stimulating reading!

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1. The new Swiss financial reporting law

1.1 How it came about

Shortly after a reform of the law on companies limited by shares in 1991, the Swiss Federal Council charged a think tank on company law to come up with ways of harmonising the legislation governing financial reporting. In 1998 a commission of experts on financial reporting proposed drafts for a new federal law on financial reporting and auditing (VE RGG). But because the draft contained a limitation on hidden reserves, which would have had tax implications for businesses, it came in for much criticism and was put on ice.

In 2003 the Federal Department of Justice and Police (FDJP) joined forces with a group of outside experts headed by Prof. G. Behr to resume work on revising the financial reporting law. Their preliminary draft was put forward for consultation in December 2005.

Following yet another revision, on 21 December 1997 the Federal Council submitted a dispatch to Parliament to amend the Code of Obligations (law on companies limited by shares and financial reporting, and amendments to the law on general and limited partnerships, limited liability companies, cooperatives, the commercial register and business names).

In the meantime the rules governing auditing requirements in the law on companies and foundations were fundamentally rewritten in the course of a revision of the provisions governing limited liability companies (valid from 1 January 2008).

In autumn 2009, the Council of States began debating the individual articles, treating the reform of financial reporting law (Bill 2) separately from the provisions governing companies limited by shares and corporate governance (Bill 1).

The debate in the National Council took place in 2010. In the course of the debate the thresholds for entities subject to an ordinary audit were increased (Bill 3), with the new thresholds entering into force on 1 January 2012 (in an amendment to [Art. 727 of the Code of Obligations](#)).

The second round of debate on Bill 2 (financial reporting law) took place in both councils in the spring session of 2011, followed by the third round in autumn 2011. Four differences remained, which were ironed out in a reconciliation conference of members of the Council of States and National Council on 8 December 2011. In the final vote on 23 December 2011, Bill 2 (financial reporting law) was passed in its entirety by both chambers.

The referendum deadline elapsed without response in April 2012, and the Federal Council put the law into force on 1 January 2013.

1.2 What is the goal of the revision of the accounting legislation?

Like the old legislation, the aim of the new law is to ensure that an undertaking presents accounts that enable third parties to form a reliable judgement of its economic position.

The aims of the revision are as follows:

- To harmonise the rules laid down in the Code of Obligations for all legal forms under private law
- To differentiate between undertakings according to their size
- To introduce clear, understandable terms and rules on the structure of accounts and valuation
- To increase transparency
- To strengthen the rights of minority shareholders
- To ensure more meaningful and informative consolidated reporting
- To create a tax-neutral solution

1.3 Who is affected by the new rules?

The general duty to keep accounts and file financial reports applies to sole proprietorships and partnerships (general partnerships and partnerships limited by shares) that have achieved sales revenue of at least CHF 500,000 in the last financial year, as well as to all legal entities (companies limited by shares, limited liability companies, partnerships limited by shares, cooperatives, and associations and foundations). For all these, the law uses the term “undertakings” regardless of the legal form of the entity in question ([Art. 957 Code of Obligations \[CO\]](#)).

Small undertakings (sole proprietorships and partnerships with sales revenue of less than CHF 500,000, associations and foundations that do not have to be entered in the commercial register, and foundations exempt from the audit requirement) are only subject to reduced accounting requirements.

1.4 What requirements do undertakings have to comply with?

The following minimum requirements apply to all undertakings:

| | Accounting (Art. 957 CO) | Financial reporting (Art. 958 CO) ¹ |
|----------------------------|---|--|
| Purpose | <ul style="list-style-type: none"> • Basis for financial reporting • Record transactions and circumstances required to present undertaking's economic position | Present economic position of the undertaking so that third parties can reliably assess it |
| Assumption | | <ul style="list-style-type: none"> • Going concern • Chronological and material distinction |
| Principles | <ul style="list-style-type: none"> • Transactions recorded completely, truthfully and systematically • Documentary proof • Fitness for purpose given form and size of undertaking • Clarity • Verifiability (Art. 957a CO) | <ul style="list-style-type: none"> • Clear and understandable (Art. 958c CO) • Complete • Reliable • Include essential information • Prudent • Same rules applied in presentation and valuation • No offsetting |
| General rules | <ul style="list-style-type: none"> • Compliance with recognised accounting principles • Duty to keep accounts • Retention | <ul style="list-style-type: none"> • Compliance with recognised financial reporting principles • Obligation to produce proof • Retention period • Approval • Signing off |
| Components | <ul style="list-style-type: none"> • Accounting records • Accounting vouchers • Inventories | <ul style="list-style-type: none"> • Annual accounts (balance sheet, profit and loss account, notes; for larger undertakings cash flow statement) • Consolidated accounts ¹ (Art. 963 CO) • Annual report ² (Art. 961c CO) |
| Forms of accounting | Written or electronic | In account or report form, with prior-year figures |
| Currency | In CHF or currency required for business operations | In CHF or currency required for business operations (plus values in CHF) |
| Language | In official Swiss language or English | In official Swiss language or English |

¹ Reduced requirements for small undertakings

² If requested

The accounts are filed in the business report. This contains the annual accounts. The business report must be prepared within six months of the end of the financial year and submitted to the responsible management body or the responsible persons for approval (Art. 958 CO).

Creditors who prove a legitimate interest must also be allowed to inspect the annual and consolidated accounts and the relevant audit reports (Art. 958e CO). The accounting records and audit reports must be retained for ten years. Special rules apply if records and reports are retained electronically or in a comparable matter (Art. 958f CO).

2. Differentiation according to size of undertaking

2.1 How do the requirements differ for undertakings of different sizes?

The law lays down different accounting and financial reporting requirements depending on the size and economic significance of the undertaking in question.

Annual accounts (financial statements of the individual entity):

| | Sole proprietorships, partnerships and legal entities ("undertakings") | | | | |
|--|--|---|---|---|--|
| Size thresholds | Sole proprietorships and partnerships with sales revenue below CHF 500,000 Associations and foundations not entered in commercial register (small undertakings) | Sole proprietorships and partnerships | Legal entities | | Listed companies, cooperatives with 2,000 members or more, large foundations |
| | | | Required to have ordinary audit? | | |
| | | | 2 out of 3 criteria in 2 successive years: ³ Balance sheet total: CHF 20 m; Sales revenue: CHF 40 m; Headcount: 250 full-time positions on annual average | | |
| | | | Not met | Exceeded | |
| Audit | No | No ¹ | No audit or limited audit (Art. 729 CO) | Ordinary audit (Art. 727 CO) | Ordinary audit (Art. 727 CO) |
| Financial statements in accordance with CO | Simplified accounts of income, expenditure and asset position | Annual accounts <ul style="list-style-type: none"> Balance sheet P&L account Notes^{1,2} | Annual accounts <ul style="list-style-type: none"> Balance sheet P&L account Notes² | Annual accounts <ul style="list-style-type: none"> Balance sheet P&L account Notes + additional information⁴ <ul style="list-style-type: none"> – further details in notes – cash flow statement – annual report | |
| Financial statements in accordance with a recognised standard | On request of minority shareholders (Art. 962 para. 2 CO) | On request of minority shareholders | On request of minority shareholders | On request of minority shareholders | Mandatory (Art. 962 CO) |

¹ Partnerships are subject to a statutory audit if a personally liable partner demands financial statements in accordance with a recognised standard or if the company voluntarily prepares group financial statements in accordance with a recognised standard and has these audited. (Art. 962 para. 2 (3) in conjunction with Art. 962a para. 3 CO and Art. 962 para. 3 in conjunction with 963b para. 2 CO). Limited partners may demand that an audit be carried out by an expert (Art. 600 para. 3 CO).

² Sole proprietorships and partnerships (but not legal entities) are not obliged to produce notes to their financial statements (Art. 959c para. 3 CO).

³ The following criteria apply to associations: balance sheet total of CHF 10 million; revenues of CHF 20 million and 50 full-time employees (Art. 69b para. 1 SCC). An association member with personal liability or an obligation to make additional contributions may demand a limited audit.

⁴ Companies that are part of a group are not obliged to provide this additional information unless qualified minorities demand this additional information (Art. 961d CO).

2.2 What are the reduced requirements for small undertakings?

Sole proprietorships and partnerships with sales revenue of less than CHF 500,000 in the last business year, associations and foundations which do not have to be entered in the commercial register, and foundations exempt from the requirement to appoint an auditor need only keep accounts on income and expenditure and on their asset position, and do not need to prepare notes to the accounts (Art. 957 para. 2 CO).

These undertakings, as well as all legal entities with net proceeds from the sale of goods or services or financial income of less than CHF 100,000, may also dispense with accruals based on time, and instead make accruals based on expenditure and income (Art. 958b para. 2 CO).

2.3 What additional financial reporting requirements apply to larger undertakings?

Larger undertakings are defined as those that are required by law to have an ordinary audit (as per Art. 727 CO). These undertakings must

- provide additional information in the notes to the annual accounts on long-term interest-bearing liabilities and the fees paid to the auditor (Art. 961a CO)
- prepare a cash flow statement (Art. 961b CO)
- write an annual report providing – as a supplement to the annual accounts – information on the conduct of a risk assessment, orders and assignments, research and development activities, extraordinary events, and future prospects (Art. 961c CO).

The additional information in the notes to the annual accounts, the cash flow statement and the annual report may be dispensed with if the undertaking itself or a legal entity controlled by the undertaking prepares consolidated accounts in accordance with a recognised financial reporting standard, provided a qualified minority does not request this additional information (Art. 961d CO).

2.4 What further requirements apply to large companies?

Listed companies (if required by the stock exchange), large cooperatives (with at least 2,000 members) and foundations that are required by law to undergo an ordinary audit must prepare financial statements in accordance with a recognised financial reporting standard in addition to annual accounts under the Code of Obligations.

The Swiss Federal Council has issued an ordinance defining the following as recognised financial reporting standards: Swiss GAAP FER, IFRS (as approved by the IASB), IFRS for SMEs, US GAAP and IPSAS.

The obligation to prepare individual financial statements in accordance with a recognised financial reporting standard does not apply in cases where consolidated accounts are prepared in accordance with a recognised financial reporting standard. Nevertheless, a qualified minority may request financial reports in accordance with a recognised financial reporting standard for a subsidiary in which it holds an interest.

The financial statements prepared in accordance with a recognised standard must be presented to the competent body (for a company limited by shares, for example, the general meeting of shareholders) when the annual accounts are approved, but do not require approval as such.

2.5 Does presenting financial statements in accordance with a recognised standard mean an undertaking can dispense with financial statements under the Code of Obligations?

Originally the Swiss Federal Council had proposed that for reasons of cost, undertakings reporting in accordance with a recognised standard should be allowed to dispense with financial statements under the Code of Obligations. But for various reasons this proposal was dropped in the course of the parliamentary debate. There are certain other mandatory requirements that in specific cases apply in addition to the obligation to prepare financial statements under the Code of Obligations. These include measures that have to be taken in the event of over-indebtedness (Art. 725 CO).

However, the fact that accounts in accordance with a recognised standard give different – generally higher – figures for shareholders' equity than those under the Code of Obligations means that under certain circumstances the moment at which these measures must be taken may not be clearly defined.

2.6 Who can request financial statements in accordance with a recognised standard?

Under the terms of the law, listed companies, large cooperatives and foundations have to prepare financial statements in accordance with a recognised financial reporting standard in addition to annual accounts under the Code of Obligations (Art. 962 CO).

All other undertakings, regardless of their size, may be required to produce financial statements in accordance with a recognised standard by the following people:

- Company members who represent at least 20% of the basic capital
- 10% of cooperative members or 20% of the members of an association
- Any company member or any member subject to personal liability or a duty to pay in further capital

The supreme management or administrative body is responsible for choosing the recognised standard (from the list laid down by the Swiss Federal Council) unless the articles of association, the by-laws or the foundation deed provide otherwise.

The chosen recognised standard must be applied in its entirety and for the financial statements as a whole. If the law or a minority requires the use of a recognised standard, compliance with this standard must be verified by a qualified audit specialist on the basis of an ordinary audit (Art. 962a CO).

Implementing this provision, which applies to all undertakings regardless of their size, is likely to be a major practical challenge for those involved. The underlying aim of improving transparency to strengthen the rights of minority shareholders is understandable in itself, but putting this rule into practice is likely to lead to considerable problems. Introducing Swiss GAAP FER or IFRS is not something that can be done at the drop of a hat. It requires thorough preparation by management, the auditors and, in many cases, outside advisors.

3. What are the minimum requirements for the annual accounts?

3.1 What is the minimum structure for the balance sheet?

The law now defines a number of key terms in the provisions governing the balance sheet:

Items must be entered on the balance sheet as **ASSETS** if Art. 959 para. 1 CO

- they may be disposed of due to past events
- a cash inflow is probable
- their value can be reliably estimated.

Liabilities must be entered on the balance sheet as **BORROWED CAPITAL** if Art. 959 para. 5 CO

- they have been caused by past events
- a cash outflow is probable
- their value can be reliably estimated.

The **SHAREHOLDERS' EQUITY** must be shown and structured in the required legal form.

Art. 959 para. 7 CO

The balance sheet must have the following minimum structure:

| Art. 959a CO | |
|---|---|
| <p>ASSETS</p> <p>1. Current assets</p> <p>a) Cash and cash equivalents and current assets with a stock exchange price</p> <p>b) Trade receivables</p> <p>c) Other current receivables</p> <p>d) Inventories and non-invoiced services</p> <p>e) Accrued income and prepaid expenses</p> <p>2. Capital assets</p> <p>a) Financial assets</p> <p>b) Shareholdings</p> <p>c) Tangible fixed assets</p> <p>d) Tangible fixed assets</p> <p>e) Non-paid up basic, shareholder or foundation capital</p> | <p>LIABILITIES</p> <p>1. Current borrowed capital</p> <p>a) Trade creditors</p> <p>b) Current interest-bearing liabilities</p> <p>c) Other current liabilities</p> <p>d) Deferred income and accrued expenses</p> <p>2. Long-term borrowed capital</p> <p>a) Long-term interest-bearing liabilities</p> <p>b) Other long-term liabilities</p> <p>c) Provisions and similar items required by law</p> <p>3. Shareholders' equity</p> <p>a) Basic, shareholder or foundation capital, if applicable separately according to participation classes</p> <p>b) Statutory capital reserves</p> <p>c) Statutory retained earnings</p> <p>d) Voluntary retained earnings or accumulated losses as negative items</p> <p>e) Own capital shares as negative items</p> |

This structure must be adapted if necessary to take account of the undertaking's business activity or to enable third parties to assess its asset or financing position.

Receivables and liabilities vis-à-vis direct or indirect participants and management bodies and vis-à-vis undertakings in which there is a participation must be shown separately on the balance sheet or in the notes to the accounts.

Liabilities must be entered on the balance sheet as current liabilities if they are expected to fall due for payment within one year of the balance sheet date or within the normal operating cycle; cash and cash equivalents and other assets that will probably become cash or cash equivalent assets or otherwise be realised within one year of the balance sheet date or within the normal operating cycle must be entered on the balance sheet as current assets.

Assets are shown on the basis of their degree of liquidity, and liabilities on the basis of their due date.

The undertaking's own shares are no longer to be carried as assets, but are to be shown separately as a reduction in shareholders' equity. Interest-bearing liabilities (financial debts) are to be shown separately to make it easier to calculate and analyse key financials such as EBIT.

3.2 How does the profit and loss account have to be structured?

The profit and loss account can be prepared according to the period-based (nature of expense) accounting method or the cost of sales (activity-based costing) method (Art.959b CO).

| Period-based accounting | Cost of sales method |
|---|--|
| 1. Net proceeds from sales of goods and services | 1. Net proceeds from sales of goods and services |
| 2. Changes in inventories of unfinished and finished goods and in non-invoiced services | 2. Acquisition or manufacturing costs of goods and services sold |
| 3. Cost of materials | 3. Administrative costs and distribution costs |
| 4. Staff costs | 4. Financial costs and financial income |
| 5. Other operational costs | 5. Non-operational costs and non-operational income |
| 6. Depreciation and valuation adjustments on fixed asset items | 6. Extraordinary, non-recurring or prior-period costs and income |
| 7. Financial costs and financial income | 7. Direct taxes |
| 8. Non-operational costs and non-operational income | 8. Annual profit or annual loss |
| 9. Extraordinary, non-recurring or prior-period costs and income | |
| 10. Direct taxes | |
| 11. Annual profit or annual loss | |

Other items must be shown individually in the profit and loss account or in the notes to the accounts if this is essential for third parties to assess the undertaking's earnings position or is customary given the undertaking's business activity.

If the cost of sales method is used, the notes to the accounts must also show the staff costs and, as a single item, depreciation and valuation adjustments to fixed asset items.

Exceptional, non-recurring or prior-period items must be shown separately in the profit and loss account between financial costs and income and direct taxes. This means that without defining the terms in more detail, to a certain extent Swiss law goes against the practice of recognised financial reporting standards such as Swiss GAAP FER, IFRS and US GAAP, where exceptional items are tolerated only very rarely or not at all in an attempt to avoid controversial distinctions. Particularly in cases where there are incentives linked to the achievement of specific financial targets, undertakings will be more inclined to state an item of expenditure as exceptional. For the same reasons, in cases of doubt the tendency will be to state income as operational in nature.

3.3 What has to be disclosed in the notes?

All undertakings, with the exception of sole proprietorships and partnerships, must now present notes to supplement and explain the other parts of the annual accounts. The notes must fulfil certain minimum requirements.

Notes to the accounts

According to [Art. 959c CO](#), notes must contain the following:

- Details of the principles applied in the annual accounts
- Information and explanations relating to items on the balance sheet and in the profit and loss account
- The total amount of any net write-back of hidden reserves
- Other information required by law. This includes the following:
 - Name, legal form and registered office
 - Number of full-time positions
 - Shareholdings, stating share of capital and votes held
 - Number of shares in own company held by the undertaking
 - Acquisitions and sales of shares in own company, including shareholdings
 - Residual amount of liabilities from sale-like leasing transactions expiring in more than twelve months
 - Liabilities vis-à-vis pension schemes
 - Collateral for third-party liabilities
 - Assets used to secure own liabilities and assets under reservation of ownership
 - Contingent liabilities
 - Number and value of shares or options on shares held by management or administrative bodies and by employees
 - Explanations of exceptional, non-recurring or prior-period items in the profit and loss account
 - Significant events occurring after the balance sheet date
 - Reasons for premature resignation of the auditor, if applicable
 - Information on outstanding debentures (amounts, interest rates, maturity dates and other terms)*
 - Fees paid to the auditor, with separate items for audit services and other services*

* Only for larger undertakings as per [Art. 961a CO](#)

4. How is valuation done?

Assets and liabilities are normally valued individually, provided they are significant and not normally consolidated as a group for valuation purposes due to their similarity ([Art. 960 CO](#)).

Valuation must be carried out prudently.

If there are specific indications that assets have been overvalued or that provisions are too low, the values must be reviewed and adjusted if necessary (impairment test for assets).

4.1 Valuing assets

As is the case with recognised financial reporting standards such as Swiss GAAP FER, IFRS and US GAAP, in future the Code of Obligations will also distinguish between valuations of assets at the moment they are first recorded and any subsequent valuations.

When first recorded, assets must be valued no higher than their acquisition or manufacturing costs.

In any subsequent valuation, assets must not be valued higher than their acquisition or manufacturing costs, except in the case of provisions on individual types of assets.

Scheduled loss in value due to usage or age must be taken into account through depreciation, while other (unscheduled) losses in value must be taken into account through valuation adjustments.

The law lays down special provisions for the following items:

| Item | Provisions |
|---|--|
| Assets with observable market prices (Art. 960b CO) | In the subsequent valuation, assets with a stock exchange price or another observable market price in an active market may be valued at that price as of the balance sheet date, even if this price exceeds the nominal value or the acquisition value. This means that in addition to listed securities, other assets for which there is an active market (e.g. derivatives, commodities, oil, etc.) will in future be valued at the current market price. Reference must be made to this valuation in the notes to the accounts. |
| Inventories and non-invoiced services (Art. 960c CO) | Subsequent valuations are done at the lower of cost (acquisition or manufacturing costs) or market, taking account of costs incurred on sale. |
| Capital assets (Art. 960d CO) | Capital assets are assets that are acquired with the intention of using or holding them for more than twelve months. |
| Shareholdings | Shareholdings are shares in the capital of another undertaking that are held for the long term and confer a significant influence. |

4.2 Valuation of liabilities (Art. 960e CO)

Provisions must be made and charged to the profit and loss account if past events lead to the expectation of a cash outflow (without a consideration in return) in future financial years. The law expressly allows the creation of provisions for regularly incurred expenditures from guarantee commitments, renovations to tangible fixed assets, restructuring, and for “securing the long-term prosperity of the undertaking”.

4.3 Is it still possible to maintain hidden reserves?

The creation of valuation reserves (hidden reserves) is still permitted under commercial law. Additional write-downs and valuation adjustments may be carried out for replacement purposes and to “ensure the long-term prosperity of the undertaking”. Depreciation, valuation adjustments and provisions that are no longer required need not be canceled (Art. 960a para. 4 CO and Art. 960e CO).

Provisions for renovations to tangible fixed assets, restructuring and “securing the long-term prosperity of the undertaking” are also expressly permitted.

The existing rules contained in the provisions governing companies limited by shares still apply if hidden reserves are released; in this case the net amount of released hidden reserves must be shown in the notes to the financial statements Art. 959c para. 1 (3) CO).

A value adjustment to be charged to the profit and loss account may now also be made if assets are valued at the stock exchange price or at the market price to take account of fluctuations in the price development (fluctuation reserve) (Art. 960b CO). As these are to be clearly disclosed, such fluctuation reserves do not represent hidden reserves within the meaning of the CO despite their similar characteristics.

4.4 Will the new law really improve transparency?

Hidden reserves are still explicitly permitted. Given that the annual accounts – offsetting aside – will continue to serve as the basis for profit tax (in line with the principle that the principles of commercial accounting should be the basis for determining tax liability), and given that the new rules are designed to ensure that the overall effect is tax neutral, the scope for improving the transparency of financial statements is limited.

Minorities in particular still need to be able to get a “true and fair view” of the actual economic position.

To meet this need, a qualified minority can require that the undertaking produce additional financial statements in accordance with a recognised reporting standard alongside the tax-relevant annual accounts under the Code of Obligations.

The idea is that these additional financial statements create greater transparency in terms of giving a true and fair view, but without having any significance for tax. This dual reporting (with annual accounts under the Code of Obligations existing in parallel with statements under a recognised financial reporting standard) is already common practice.

5. Consolidated accounts (Art. 963 CO)

5.1 Who has to prepare consolidated accounts?

If a legal entity (an incorporated company, association or foundation) controls one or more undertakings that are required to file financial reports, in addition to annual accounts the entity must prepare consolidated accounts in the business report for all the undertakings controlled. Sole proprietorships and partnerships are exempt from the consolidation requirement.

A legal entity is exempt from the duty to prepare consolidated accounts if together with the controlled undertaking it has not exceeded two of the following thresholds in two successive financial years:

- A balance sheet total of CHF 20 million
- Sales revenue of CHF 40 million
- 250 full-time positions on annual average.

Sub-groups are also exempt from the consolidation requirement if the controlling undertaking’s consolidated accounts have been prepared, audited and made available in accordance with Swiss or equivalent foreign regulations.

Associations, foundations and cooperatives (but not companies limited by shares or limited liability companies) may delegate the duty to prepare consolidated accounts to a controlled undertaking provided the controlled undertaking concerned brings all the other undertakings together under a single management and actually exercises control.

Consolidated accounts must be prepared in any case where this is necessary to make the most reliable assessment of the economic position. Company members who represent at least 20% of the basic capital, 10% of the members of a cooperative, 10% of the members of an association, or a company member or an association member subject to personal liability or a duty to pay in further capital may also demand that consolidated accounts be prepared.

The requirement that companies limited by shares and limited liability companies have both the annual accounts and the consolidated accounts approved by the general meeting of shareholders or members’ general meeting continues to apply (Art. 698 CO and Art. 804 CO).

5.2 How is control defined?

A legal entity is deemed to control another undertaking if it

- holds a majority of votes in the highest management body
- has the right to appoint or remove a majority of the members of the supreme management or administrative body
- is able to exercise a controlling influence based on the articles of association, foundation deed or comparable instruments.

5.3 What principles have to be followed when preparing consolidated accounts?

Listed companies (if required by the stock market), large cooperatives (with at least 2,000 members) and foundations required by law to undergo an ordinary audit must prepare financial statements in accordance with a recognised financial reporting standard (Swiss GAAP FER, IFRS, IFRS for SMEs, US GAAP or IPSAS) (Art. 963b CO).

The consolidated accounts of other undertakings are governed by recognised financial reporting principles. However, they need not apply any recognised financial reporting standards, meaning that they are to a large extent free to choose any consolidation and valuation rules they wish within the scope of recognised accounting principles. As under the old provisions governing companies limited by shares, they have to specify the rules used in the notes to the consolidated accounts (Art. 963b para. 3 CO).

However, in such cases company members who represent at least 20% of the basic capital, 10% of the members of a cooperative, 20% of the members of an association, or a company member or an association member subject to personal liability or a duty to pay in further capital may require that consolidated accounts nevertheless be prepared in accordance with a recognised financial reporting standard.

² Where the general meeting has approved the special audit, the company bears the costs.

Art. 697h³⁹⁷

Section Three: Organisation of the Company Limited by Shares

A. The General Meeting

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Art. 698

I. Powers

¹ The supreme governing body of a company limited by shares is the general meeting.

² It has the following inalienable powers:

1. to determine and amend the articles of association;
2. to elect the members of the board of directors and the external auditors;
- 3.³⁹⁸ to approve the management report and the consolidated accounts;
4. to approve the annual accounts and resolutions on the allocation of the disposable profit, and in particular to set the dividend and the shares of profits paid to board members;
5. to discharge the members of the board of directors;
6. to pass resolutions concerning the matters reserved to the general meeting by law or the articles of association.³⁹⁹

Art. 699

II. Convocation and agenda items

1. Right and duty⁴⁰⁰

¹ The general meeting is convened by the board of directors or, where necessary, by the external auditors.⁴⁰¹ The liquidators and the representatives of bond creditors also have the right to convene general meetings.

³⁹⁷ Inserted by No I of the Federal Act of 4. Okt. 1991 (AS **1992** 733; BBl **1983** II 745). Repealed by No I 1 of the Federal Act of 23 Dec. 2011 (Financial Reporting Law), with effect from 1 Jan. 2013 (AS **2012** 6679; BBl **2008** 1589).

³⁹⁸ Amended by No I 1 of the Federal Act of 23 Dec. 2011 (Financial Reporting Law), in force since 1 Jan. 2013 (AS **2012** 6679; BBl **2008** 1589).

³⁹⁹ Amended by No I of the Federal Act of 4 Oct. 1991, in force since 1 July 1992 (AS **1992** 733 786; BBl **1983** II 745).

⁴⁰⁰ Amended by No I of the Federal Act of 4 Oct. 1991, in force since 1 July 1992 (AS **1992** 733 786; BBl **1983** II 745).

⁴⁰¹ Term in accordance with No II 2 of the Federal Act of 4 Oct. 1991, in force since 1 July 1992 (AS **1992** 733 786; BBl **1983** II 745). This amendment has been made throughout the Code.

5. Registered attorneys and commercial agents⁴⁴⁷

Art. 721⁴⁴⁶

The board of directors may appoint registered attorneys and other commercial agents.

VI. Directors' and officers' liability⁴⁴⁹

Art. 722⁴⁴⁸

The company is liable for any loss or damage caused by unauthorised acts carried out in the exercise of his company function by a person with authority to represent the company or manage its business.

Art. 723–724⁴⁵⁰

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Art. 725⁴⁵¹

VII. Capital loss and overindebtedness

1. Duty to notify

¹ Where the last annual balance sheet shows that one-half of the share capital and the legal reserves are no longer covered, the board of directors must without delay convene a general meeting and propose financial restructuring measures.

² Where there is good cause to suspect overindebtedness, an interim balance sheet must be drawn up and submitted to a licensed auditor for examination.⁴⁵² If the interim balance sheet shows that the claims of the company's creditors are not covered, whether the assets are appraised at going concern or liquidation values, the board of directors must notify the court unless certain company creditors subordinate their claims to those of all other company creditors to the extent of the capital deficit.

⁴⁴⁶ Amended by No I of the Federal Act of 4 Oct. 1991, in force since 1 July 1992 (AS **1992** 733 786; BBl **1983** II 745).

⁴⁴⁷ Amended by No I 3 of the Federal Act of 16 Dec. 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan. 2008 (AS **2007** 4791 4839; BBl **2002** 3148, **2004** 3969).

⁴⁴⁸ Amended by No I of the Federal Act of 4 Oct. 1991, in force since 1 July 1992 (AS **1992** 733 786; BBl **1983** II 745).

⁴⁴⁹ Amended by No I 3 of the Federal Act of 16 Dec. 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan. 2008 (AS **2007** 4791 4839; BBl **2002** 3148, **2004** 3969).

⁴⁵⁰ Repealed by No I of the Federal Act of 4 Oct. 1991 (AS **1992** 733; BBl **1983** II 745).

⁴⁵¹ Amended by No I of the Federal Act of 4 Oct. 1991, in force since 1 July 1992 (AS **1992** 733 786; BBl **1983** II 745).

⁴⁵² Amended by No I 3 of the Federal Act of 16 Dec. 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan. 2008 (AS **2007** 4791 4839; BBl **2002** 3148, **2004** 3969).

³ If the company does not have an auditor, the licensed auditor must comply with the reporting duties of the auditor conducting a limited audit.⁴⁵³

Art. 725a⁴⁵⁴

2. Commencement or stay of insolvency proceedings

¹ On receiving notification, the court commences insolvency proceedings. On application by the board of directors or by a creditor it may grant a stay of insolvency proceedings where there is a prospect of financial restructuring; in this case the court orders measures to preserve the company's assets.

² The court may appoint an administrative receiver and either deprive the board of directors of its power of disposal or make its resolutions conditional on the consent of the administrative receiver. It defines the duties of the administrative receiver.

³ Public notice of the stay of insolvency proceedings is required only where necessary to protect third parties.

Art. 726

VIII. Dismissal and suspension⁴⁵⁵

¹ The board of directors may dismiss committees, managing directors, executive officers, registered attorneys and other commercial agents that it has appointed at any time.

² The registered attorneys and commercial agents appointed by the general meeting may be suspended from their duties at any time by the board of directors, providing a general meeting is convened immediately.

³ Claims for compensation by persons dismissed or suspended are reserved.

⁴⁵³ Inserted by No I 3 of the Federal Act of 16 Dec. 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan. 2008 (AS 2007 4791 4839; BBl 2002 3148, 2004 3969).

⁴⁵⁴ Inserted by No I of the Federal Act of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733 786; BBl 1983 II 745).

⁴⁵⁵ Amended by No I of the Federal Act of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733 786; BBl 1983 II 745).

C. ⁴⁵⁶ The External Auditors

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Art. 727

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I. Audit requirement
1. Ordinary audit

¹ The following companies must have their annual accounts and if applicable their consolidated accounts reviewed by an auditor in an ordinary audit:

1. publicly traded companies; these are companies that:
 - a. have shares listed on a stock exchange,
 - b. have bonds outstanding,
 - c. contribute at least 20 per cent of the assets or of the turnover to the consolidated accounts of a company in terms of letter a or b;
- 2.⁴⁵⁷ companies that exceed two of the following thresholds in two successive financial years:
 - a. a balance sheet total of 20 million francs,
 - b. sales revenue of 40 million francs,
 - c. 250 full-time positions on annual average;
3. companies that are required to prepare consolidated accounts.

² An ordinary audit must be carried out if shareholders who represent at least 10 per cent of the share capital so request.

³ If the law does not require an ordinary audit of the annual accounts, the articles of association may provide or the general meeting may decide that the annual accounts be subjected to an ordinary audit.

Art. 727a

2. Limited audit

¹ If the requirements for an ordinary audit are not met, the company must have its annual accounts reviewed by an auditor in a limited audit.

² With the consent of all the shareholders, a limited audit may be dispensed with if the company does not have more than ten full-time employees on annual average.

³ The board of directors may request the shareholders in writing for their consent. It may set a period of at least 20 days for reply and give notice that failure to reply will be regarded as consent.

⁴⁵⁶ Amended by No 11 of the Federal Act of 16 Dec. 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan. 2008 (AS **2007** 4791 4839; BBl **2002** 3148, **2004** 3969).

⁴⁵⁷ Amended by No 1 of the Federal Act of 17 June 2011 (Auditing Law), in force since 1 Jan. 2012 (AS **2011** 5863; BBl **2008** 1589). See also the transitional provision below relating to this amendment.

Art. 728b

- b. Audit report
- ¹ The auditor provides the board of directors with a comprehensive report with conclusions on the financial reporting, the internal system of control as well as the conduct and the result of the audit.
- ² The auditor provides the general meeting with a summary report in writing on the result of the audit. This report contains:
1. an assessment on the result of the audit;
 2. information on independence;
 3. information on the person who managed the audit and on his specialist qualifications;
 4. a recommendation on whether the annual accounts and the consolidated accounts should be approved or rejected with or without qualification.
- ³ Both reports must be signed by the person who managed the audit.

Art. 728c

- c. Duty to notify
- ¹ If the auditor finds that there have been infringements of the law, the articles of association or the organisational regulations, it gives notice of this to the board of directors in writing.
- ² In addition, it informs the general meeting of any infringements of the law or the articles of association, if:
1. these are material; or
 2. the board of directors fails to take any appropriate measures on the basis of written notice given by the auditor.
- ³ If the company is clearly overindebted and the board of directors fails to notify the court of this, then the auditor will notify the court.

[Back to p. 7](#)**Art. 729**

- IV. Limited audit (Review)
1. Independence of the auditor
- ¹ The auditor must be independent and form its audit assessment objectively. Its true or apparent independence must not be adversely affected.
- ² Involvement in the accounting and the provision of other services for the company being audited are permitted. In the event that the risk of auditing its own work arises, a reliable audit must be ensured by means of suitable organisational and staffing measures.

2. Duties of the auditor
 a. Subject matter and extent of the audit

Art. 729a

¹ The auditor examines whether there are circumstances that indicate that:

1. the annual accounts do not comply with the statutory provisions or the articles of association;
2. the motion made by the board of directors to the general meeting on the allocation of the balance sheet profit does not comply with the statutory provisions and the articles of association.

² The audit is limited to conducting interviews, analytical audit activities and appropriate detailed inspections.

³ The management of the board of directors is not the subject matter of the audit carried out by the auditor.

Art. 729b

b. Audit report

¹ The auditor provides the general meeting with a summary report in writing on the result of the audit. This report contains:

1. a reference to the limited nature of the audit;
2. an assessment on the result of the audit;
3. information on independence and, if applicable, on participation in accounting and other services provided to the company being audited;
4. information on the person who managed the audit, and on his specialist qualifications.

² The report must be signed by the person who managed the audit.

Art. 729c

c. Duty to notify

If the company is obviously overindebted and the board of directors fails to notify the court, then the auditor will notify the court.

Art. 730

V. Common provisions
 1. Appointment of the auditor

¹ The general meeting appoints the auditor.

² One or more natural persons or legal entities or partnerships may be appointed.

³ Public audit offices or their employees may also be appointed as auditor provided they meet the requirements of this Code. The provisions on independence apply *mutatis mutandis*.

⁴ At least one member of the auditor must be resident in Switzerland, or have its registered office or a registered branch office in Switzerland.

⁴ If the members' general meeting refuses to provide information or allow access without justification, the court may issue the relevant order at the request of the company member.

Art. 803

L. Duty of loyalty and prohibition of competition

¹ Company members are obliged to safeguard business secrets.

² They must refrain from doing anything detrimental to the interests of the company. In particular, they may not carry on business that brings them a special advantage but which adversely affects the objects of the company. The articles of association may provide that company members be prohibited from carrying on any activities in competition with the company.

³ The company members may carry on any activities that are contrary to the duty of loyalty or a prohibition of competition provided all the other company members consent in writing. The articles of association may provide that the consent of the members' general meeting be required instead.

⁴ The special regulations on prohibition of competition clauses applicable to managing directors are reserved.

Section Three: Organisation of the Company

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Art. 804

A. Members' general meeting
I. Responsibilities

¹ The supreme governing body of the company is the members' general meeting.

² The members' general meeting has the following inalienable powers:

1. to amend the articles of association;
2. to appoint and the remove the managing directors;
3. to appoint and remove the members of the auditor;
- 4.⁴⁹⁷ to approve the management report and the consolidated accounts;
5. to approve the annual accounts and the resolution on the allocation of the balance sheet profit, and in particular to set the dividend and the shares of profits paid to managing directors;
6. to determine the fees paid to managing directors;
7. to discharge the managing directors;

⁴⁹⁷ Amended by No I 3 of the Federal Act of 23 Dec. 2011 (Financial Reporting Law), in force since 1 Jan. 2013 (AS 2012 6679; BBl 2008 1589).

Art. 954a⁵⁶²

B. Obligation to use business and other names

¹ In correspondence, on order forms and invoices and in official communications, the business or other name entered in the commercial register must be given in full and unamended.

² Shortened names, logos, trade names, brand names and similar may also be used.

Art. 955

B. Monitoring⁵⁶³

The registrar is obliged ex officio to ensure that the interested parties comply with the provisions governing the composition of business names.

Art. 956

C. Protection of business names⁵⁶⁴

¹ The business name of a sole proprietor or commercial company or cooperative entered in the commercial register and published in the Swiss Official Gazette of Commerce is for the exclusive use of the party that registered it.

² A party whose interests are injured by the unauthorised use of a business name may apply for an injunction banning further abuse of the business name and sue for damages if the unauthorised user is at fault.

Title Thirty-Two:⁵⁶⁵ **Commercial Accounting and Financial Reporting** **Section One: General Provisions**

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Art. 957

[Back to p. 6](#)

A. Duty to keep accounts and file financial reports

¹ The duty to keep accounts and file financial reports in accordance with the following provisions applies to:

- ⁵⁶² Inserted by No I 3 of the Federal Act of 16 Dec. 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan. 2008 (AS **2007** 4791 4839; BBl **2002** 3148, **2004** 3969).
- ⁵⁶³ Amended by No I 3 of the Federal Act of 16 Dec. 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan. 2008 (AS **2007** 4791 4839; BBl **2002** 3148, **2004** 3969).
- ⁵⁶⁴ Amended by No I 3 of the Federal Act of 16 Dec. 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan. 2008 (AS **2007** 4791 4839; BBl **2002** 3148, **2004** 3969).
- ⁵⁶⁵ Amended by No I 2 of the Federal Act of 23 Dec. 2011 (Financial Reporting Law), in force since 1 Jan. 2013 (AS **2012** 6679; BBl **2008** 1589). See also the Transitional Provision to this Amendment at the end of the text.

1. sole proprietorships and partnerships that have achieved sales revenue of at least 500,000 francs in the last financial year;
2. legal entities.

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² The following need only keep accounts on income and expenditure and on their asset position:

1. sole proprietorships and partnerships with less than 500,000 francs sales revenue in the last financial year;
2. associations and foundations which are not required to be entered in the commercial Register;
3. foundations that are exempt from the requirement to appoint an auditor under Article 83*b* paragraph 2 Swiss Civil Code⁵⁶⁶.

³ For undertakings in accordance with paragraph 2, recognised accounting principles apply *mutatis mutandis*.

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Art. 957*a*

B. Accounting

¹ Accounting forms the basis for financial reporting. It records the transactions and circumstances that are required to present the asset, financing and earnings position of the undertaking (the economic position).

² It follows the recognised accounting principles. Particular note must be taken of the following:

1. the complete, truthful and systematic recording of transactions and circumstances;
2. documentary proof for individual accounting procedures;
3. clarity;
4. fitness for purpose given the form and size of the undertaking;
5. verifiability.

³ An accounting voucher is any written record on paper or in electronic or comparable form that is required to be able to verify the business transaction or the circumstances behind an accounting entry.

⁴ Accounting is carried out in the national currency or in the currency required for business operations.

⁵ It is carried out in one of the official Swiss languages or in English. It may be carried out in writing, electronically or in a comparable manner.

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C. Financial reporting
I. Aim and constituent elements

Art. 958

¹ Financial reporting is intended to present the economic position of the undertaking in such a manner that third parties can make a reliable assessment of the same.

² The accounts are filed in the annual report. This contains the annual accounts (the financial statements of the individual entity), comprising the balance sheet, the profit and loss account and the notes to the accounts. The regulations for larger undertakings and corporate groups are reserved.

³ The annual report must be prepared within six months of the end of the financial year and submitted to the responsible management body or the responsible persons for approval. It must be signed by the chairperson of the supreme management or administrative body and the person responsible for financial reporting within the undertaking.

Art. 958a

II. Principles of financial reporting

1. Going-concern assumption

¹ Financial reporting is based on the assumption that the undertaking will remain a going concern for the foreseeable future.

² If it is intended or probably inevitable that all or some activities will cease in the next twelve months from the balance sheet date, then the financial reports for the relevant parts of undertaking must be based on realisable values. Provisions must be made for expenditures associated with ceasing activities.

³ Derogations from the going-concern assumption must be specified in the notes to the accounts; their influence on the economic position must be explained.

Art. 958b

2. Chronological and material distinction

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¹ Expenditure and income must be entered separately depending on the date and nature of the transaction.

² Provided the net proceeds from the sale of goods or services or financial income does not exceed 100,000 francs, accruals based on time may be dispensed with and instead based on expenditure and income.

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III. Recognised financial reporting principles

Art. 958c

¹ The following principles in particular apply to financial reports:

1. they must be clear and understandable.
2. they must be complete.
3. they must be reliable.
4. they must include the essential information.

5. they must be prudent.
6. the same rules must be applied in presentation and valuation .
7. assets and liabilities and income and expenditure may not be offset against each other.

² The sum entered for the individual items on the balance sheet and in the notes to the account must be proven by an inventory or by some other method.

³ Financial reports must be adapted to the special features of the undertaking and the sector while retaining the statutory minimum content.

Art. 958d

IV. Presentation,
currency and
language

¹ The balance sheet and the profit and loss account may be presented in account or in report form. Items that have no or a negligible value need not be shown separately.

² In the annual accounts, the corresponding values of the previous year must be shown alongside the figures for the relevant financial year.

³ Financial reports are presented in the national currency or in the currency required for business operations. If the national currency is not used, the values must also be shown in the national currency. The exchange rates applied must be published in the notes to the accounts and if applicable explained.

⁴ Financial reports are presented in one of the official Swiss languages or in English.

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Art. 958e

D. Publication
and inspection

¹ Following their approval by the competent management body, the annual accounts and consolidated accounts together with the audit reports must either be published in the Swiss Official Gazette of Commerce or sent as an official copy to any person who requests the same within one year of their approval at his or her expense where the undertaking:

1. has outstanding debentures; or
2. has equity securities listed on a stock market.

² Other undertakings must allow creditors who prove a legitimate interest to inspect the annual report and the audit reports. In the event of a dispute, the court decides.

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Art. 958f

E. Keeping and
retaining
accounting
records

¹ The accounting records and the accounting vouchers together with the annual report and the audit report must be retained for ten years. The retention period begins on expiry of the financial year.

² The annual report and the audit report must be retained in a written form and signed.

³ The accounting records and the accounting vouchers may be retained on paper, electronically or in a comparable manner, provided that correspondence with the underlying business transactions and circumstances is guaranteed thereby and provided they can be made readable again at any time.

⁴ The Federal Council shall issue regulations on the accounting records that must be kept, the principles for keeping and retaining them and on the information carriers that may be used.

Section Two: Annual Accounts

Art. 959

A. Balance sheet
I. Purpose of the balance sheet, duty to prepare a balance sheet and balance sheet eligibility

¹ The balance sheet shows the asset and financing position of the undertaking on the balance sheet date. It is structured into assets and liabilities. [Back to p. 10](#)

² Items must be entered on the balance sheet as assets if due to past events they may be disposed of, a cash inflow is probable and their value can be reliably estimated. Other assets may not be entered on the balance sheet.

³ Cash and cash equivalents and other assets that will probably become cash or cash equivalents assets or otherwise be realised within one year of the balance sheet date or within the normal operating cycle must be entered on the balance sheet as current assets. All other assets are entered on the balance sheet as capital assets.

⁴ Borrowed capital and shareholders' equity must be entered on the balance sheet as liabilities.

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⁵ Liabilities must be entered on the balance sheet as borrowed capital if they have been caused by past events, a cash outflow is probable and their value can be reliably estimated.

⁶ Liabilities must be entered on the balance sheet as current liabilities if they are expected to fall due for payment within one year of the balance sheet date or within the normal operating cycle. All other liabilities must be entered on the balance sheet as long-term liabilities.

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⁷ The shareholders' equity must be shown and structured in the required legal form.

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Art. 959a

II. Minimum structure

¹ Among the assets, the liquidity ratio must be shown based on at least the following items, both individually and in the specified order:

1. current assets:
 - a. cash and cash equivalents and current assets with a stock exchange price,
 - b. trade receivables,
 - c. other current receivables,
 - d. inventories and non-invoiced services,
 - e. accrued income and prepaid expenses;
2. capital assets:
 - a. financial assets,
 - b. shareholdings,
 - c. tangible fixed assets,
 - d. intangible fixed assets,
 - e. non-paid up basic, shareholder or foundation capital.

² The due date of liabilities must be shown based on at least the following items, both individually and in the specified order:

1. current borrowed capital:
 - a. trade creditors,
 - b. current interest-bearing liabilities,
 - c. other current liabilities,
 - d. deferred income and accrued expenses;
2. long-term borrowed capital:
 - a. long-term interest-bearing liabilities,
 - b. other long-term liabilities,
 - c. provisions and similar items required by law;
3. shareholders' equity:
 - a. basic, shareholder or foundation capital, if applicable separately according to participation classes,
 - b. statutory capital reserves,
 - c. statutory retained earnings,
 - d. voluntary retained earnings or accumulated losses as negative items,
 - e. own capital shares as negative items.

³ Other items must be shown individually on the balance sheet or in the notes to the accounts, provided this is essential so that third parties can assess the asset or financing position or is customary as a result of the activity of the company.

⁴ Receivables and liabilities vis-à-vis direct or indirect participants and management bodies and vis-à-vis undertakings in which there is a direct or indirect participation must in each case be shown separately on the balance sheet or in the notes to the accounts.

[Back to p. 11](#)**Art. 959b**

B. Profit and loss account; minimum structure

¹ The profit and loss account presents the earnings of the company over the financial year. It may be prepared according to the period-based accounting method or the cost of sales method.

² If the period-based accounting method is used (nature of expense method), a minimum of the following items must be shown individually and in the specified order:

1. net proceeds from sales of goods and services;
2. changes in inventories of unfinished and finished goods and in non-invoiced services;
3. cost of materials;
4. staff costs;
5. other operational costs;
6. depreciation and valuation adjustments on fixed asset items;
7. financial costs and financial income;
8. non-operational costs and non-operational income;
9. extraordinary, non-recurring or prior-period costs and income;
10. direct taxes;
11. annual profit or annual loss.

³ If the cost of sales method is used (activity-based costing method), a minimum of the following items must be shown individually and in the specified order:

1. net proceeds from sales of goods and services;
2. acquisition or manufacturing costs of goods and services sold;
3. administrative costs and distribution costs;
4. financial costs and financial income;
5. non-operational costs and non-operational income;
6. extraordinary, non-recurring or prior-period costs and income;
7. direct taxes;
8. annual profit or annual loss.

⁴ If the cost of sales method is used, the notes to the accounts must also show the staff costs and, as a single item, depreciation and valuation adjustments to fixed asset items.

⁵ Other items must be shown individually in the profit and loss account or in the notes to the accounts to the extent that this is essential in order that third parties can assess the earning power or is customary as a result of the activity of the company.

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Art. 959c

C. Notes to the accounts

¹ The notes to the annual accounts supplement and explain the other parts of the annual accounts. They contain: [Back to p. 13](#)

1. details of the principles applied in the annual accounts where these are not specified by law;
2. information, breakdowns and explanations relating to items on the balance sheet and in the profit and loss account;
3. the total amount of replacement reserves used and the additional hidden reserves, if this exceeds the total amount of new reserves of the same type where the result achieved thereby is considerably more favourable;
4. other information required by law.

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² The notes to the accounts must also include the following information, unless it is already provided on the balance sheet or in the profit and loss account:

1. the business name or name of the undertaking as well as its legal form and registered office;
2. a declaration as to whether the number of full-time positions on annual average is no more than 10, 50 or 250;
3. the business name, legal form and registered office of undertakings in which direct or substantial indirect shareholdings are held, stating the share of the capital and votes held;
4. the number of its own shares that the undertaking itself holds and that are held by undertakings in which it has shareholdings;
5. acquisitions and sales of its own shares and the terms on which they were acquired or sold;
6. the residual amount of the liabilities from sale-like leasing transactions and other leasing obligations, unless these expire or may be terminated within twelve months of the balance sheet date expiry or be terminated may;
7. liabilities vis-à-vis pension schemes;
8. the total amount of collateral for third party liabilities;
9. the total amount of assets used to secure own liabilities and assets under reservation of ownership;
10. legal or actual obligations for which a cash outflow either appears unlikely or is of an amount that cannot be reliably estimated (contingent liabilities);
11. the number and value of shares or options on shares held by management or administrative bodies and by employees;

12. explanations of exceptional, non-recurring or prior-period items in the profit and loss account;
13. significant events occurring after the balance sheet date;
14. in the event of the auditor's premature resignation: the reasons therefor.

³ Sole proprietorships and partnerships may dispense with notes to the accounts if they are not required to file financial reports under the regulations for larger undertakings. If additional information is required in the regulations on the minimum structure of the balance sheet and profit and loss account and the notes to the accounts are dispensed with, this information must be shown directly on the balance sheet or in the profit and loss account.

⁴ Undertakings with outstanding debentures must provide information on the amounts concerned, interest rates, maturity dates and other conditions.

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Art. 960

D. Valuation
I. Principles

¹ Assets and liabilities are normally valued individually, provided they are significant and not normally consolidated as a group for valuation purposes due to their similarity.

² Valuation must be carried out prudently, but this must not prevent the reliable assessment of the economic position of the undertaking.

³ If there are specific indications that assets have been overvalued or that provisions are too low, the values must be reviewed and adjusted if necessary.

Art. 960a

II. Assets
1. In general

¹ When first recorded, assets must be valued no higher than their acquisition or manufacturing costs.

² In any subsequent valuation, assets must not be valued higher than their acquisition or manufacturing costs. Provisions on individual types of assets are reserved.

³ Loss in value due to usage or age must be taken into account through depreciation, while other losses in value must be taken into account through valuation adjustments. Depreciation and valuation adjustments must be applied in accordance with generally recognised commercial principles. They must be deducted directly or indirectly from the relevant assets and charged to the profit and loss account and may not be shown under liabilities.

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⁴ For replacement purposes and to ensure the long-term prosperity of the undertaking, additional depreciation and valuation adjustments may be made. For the same purposes, the cancellation of depreciation

and valuation adjustments that are no longer justified may be dispensed with.

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Art. 960b

2. Assets with observable market prices

¹ In the subsequent valuation, assets with a stock exchange price or another observable market price in an active market may be valued at that price as of the balance sheet date, even if this price exceeds the nominal value or the acquisition value. Any person who exercises this right must value all assets in corresponding positions on the balance sheet that have an observable market price at the market price as of the balance sheet date. In the notes to the accounts, reference must be made to this valuation. The total value of the corresponding assets must be disclosed separately for securities and other assets with observable market price.

² If assets are valued at the stock exchange price or at the market price as of the balance sheet date, a value adjustment to be charged to the profit and loss account may be made in order to take account of fluctuations in the price development. Such valuation adjustments are not permitted, however, if they would result in both the acquisition value and the lower market value being undercut. The total amount of fluctuation reserves must be shown separately on the balance sheet or in the notes to the accounts.

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Art. 960c

3. Inventories and non-invoiced services

¹ If the realisable value in the subsequent valuation of inventories and non-invoiced services taking account of expected costs is less than the acquisition or manufacturing costs on balance sheet date, this value must be entered.

² Inventories comprise raw materials, work in progress, finished goods and resale merchandise.

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Art. 960d

4. Capital assets

¹ Capital assets are assets that are acquired with the intention of using or holding them for the long-term.

² Long-term means a period of more than twelve months.

³ Shareholdings are shares in the capital of another undertaking that are held for the long-term and confer a significant influence. This is presumed if the shares confer at least 20 per cent of the voting rights.

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Art. 960e

III. Liabilities

¹ Liabilities must be entered at their nominal value.

² If past events lead to the expectation of a cash outflow in future financial years, the provisions probably required must be made and charged to the profit and loss account.

³ Provisions may also be made in particular for:

1. regularly incurred expenditures from guarantee commitments;
2. renovations to tangible fixed assets;
3. restructuring;
4. securing the long-term prosperity of the undertaking.

⁴ Provisions that are no longer required need not be cancelled.

Section Three: Financial Report for Larger Undertakings

Art. 961

A. Additional requirements for the annual report

Undertakings that are required by law to have an ordinary audit must:

1. provide additional information in the notes to the annual accounts;
2. prepare a cash flow statement as part of the annual accounts;
3. draw up a management report.

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Art. 961a

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B. Additional information in the notes to the annual accounts

The notes to the annual accounts must also contain the following information:

1. long-term interest-bearing liabilities, arranged according to due date within one to five years or after five years;
2. on the fees paid to the auditor, with separate items for audit services and other services.

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Art. 961b

C. Cash flow statement

The cash flow statement presents separately changes in cash and cash equivalents from business operations, investment activities and financing activities.

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Art. 961c

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D. Management report

¹ The management report presents the business performance and the economic position of the undertaking and, if applicable, of the corporate group at the end of the financial year from points of view not covered in the annual accounts.

² The management report must in particular provide information on:

1. the number of full-time positions on annual average;
2. the conduct of a risk assessment;
3. orders and assignments;
4. research and development activities;
5. extraordinary events;
6. future prospects.

³ The management report must not contradict the economic position presented in the annual accounts.

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Art. 961d [Back to p. 8](#)

E. Simplification due to consolidated accounts

¹ The additional information in the notes to the annual accounts, the cash flow statement and the management report may be dispensed with if the undertaking itself or a legal entity that controls the undertaking prepares consolidated accounts in accordance with a recognised financial reporting standard.

² The following persons may request financial reports in accordance with the regulations in this Section:

1. company members who represent at least 10 per cent of the basic capital;
2. 10 per cent of cooperative members or 20 per cent of the members of an association;
3. any company member or any member subject to personal liability or a duty to pay in further capital.

Section Four: Financial Statements in accordance with Recognised Financial Reporting Standards

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Art. 962 [Back to p. 8](#) [Back to p. 9](#)

A. General

¹ In addition to annual accounts under this Title, the following must prepare financial statements in accordance with a recognised financial reporting standard:

1. companies whose equity securities are listed on a stock market, if the stock market so requires;
2. cooperatives with a minimum of 2000 members;
3. foundations that are required by law to have an ordinary audit.

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² The following may also request financial statements in accordance with a recognised standard:

1. company members who represent at least 20 per cent of the basic capital;

2. 10 per cent of cooperative members or 20 per cent of the members of an association;
3. any company member or any member subject to personal liability or a duty to pay in further capital.

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³ The duty to prepare financial statements in accordance with a recognised standard ceases to apply if consolidated accounts are prepared in accordance with a recognised standard.

⁴ The supreme management or administrative body is responsible for choosing the recognised standard, unless the Articles of Association, the by-laws or the foundation deed provide otherwise or the supreme management body fails to specify the recognised standard.

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B. Recognised financial reporting standards

Art. 962a

¹ If financial statements are prepared in accordance with a recognised financial reporting standard, details of the standard must be given in the financial statements.

² The chosen recognised standard must be applied in its entirety and for the financial statements as a whole.

³ Compliance with the recognised standard must be verified by a qualified audit specialist. An ordinary audit must be made of the financial statements.

⁴ Financial statements in accordance with a recognised standard must be submitted to the supreme management body when the annual accounts are submitted for approval, although they do not require approval.

⁵ The Federal Council shall specify the recognised standards. It may stipulate requirements that must be met when choosing a standard or when changing from one standard to another.

Section Five: Consolidated accounts

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A. Duty to prepare

Art. 963

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¹ Where a legal entity that is required to file financial reports controls one or more undertakings that are required to file financial reports, the entity must prepare consolidated annual accounts (consolidated accounts) in the annual report for all the undertakings controlled.

² A legal entity controls another undertaking if it:

1. directly or indirectly holds a majority of votes in the highest management body;

2. directly or indirectly has the right to appoint or remove a majority of the members of the supreme management or administrative body; or
3. it is able to exercise a controlling influence based on the articles of association, the foundation deed, a contract or comparable instruments.

³ A recognised standard under Article 963*b* may define the group of undertakings.

⁴ Associations, foundations and cooperatives may delegate the duty to prepare consolidated accounts to a controlled undertaking provided the controlled undertaking concerned brings all the other undertakings together under a single management by holding a voting majority or in any other way and proves that it actually exercises control.

Art. 963*a*

B. Exemption from the duty to prepare accounts

¹ A legal entity is exempt from the duty to prepare consolidated accounts if it:

1. together with the controlled undertaking has not exceeded two of the following thresholds in two successive financial years:
 - a. a balance sheet total of 20 million francs,
 - b. sales revenue of 40 million francs,
 - c. 250 full-time positions on annual average;
2. is controlled by an undertaking whose consolidated accounts have been prepared and audited in accordance with Swiss or equivalent foreign regulations; or
3. it has delegated the duty to prepare consolidated accounts to a controlled undertaking in accordance with Article 963 paragraph 4.

² Consolidated accounts must nonetheless be prepared where:

1. this is necessary in order to make the most reliable assessment of the economic position;
2. company members who represent at least 20 per cent of the basic capital or 10 per cent of the members of a cooperative or 10 per cent of the members of an association so require;
3. a company member or an association member subject to personal liability or a duty to pay in further capital so requires; or
4. the foundation supervisory authority so requires.

³ If a legal entity in accordance with paragraph 1 number 2 dispenses with preparing the consolidated accounts for the subsidiary group, it must disclose the consolidated accounts of the parent group in accordance with the regulations for its own annual accounts.

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C. Recognised
financial
reporting
standards**Art. 963b**

¹ The consolidated accounts of the following undertakings must be prepared in accordance with a recognised financial reporting standard:

1. companies whose equity securities are listed on a stock market, if the stock market so requires;
2. cooperatives with a minimum of 2000 members;
3. foundations that are required by law to have an ordinary audit.

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² Article 962a paragraphs 1–3 and 5 apply *mutatis mutandis*.

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³ The consolidated accounts of other undertakings are governed by recognised financial reporting principles. In the notes to the consolidated accounts, the undertaking shall specify the valuation principles. If it derogates from such rules, it shall give notice thereof in the notes to the accounts and provide the information required for assessing the asset, financing and earnings of the corporate group in a different form.

⁴ Consolidated accounts must nonetheless be prepared in accordance with a recognised financial reporting standard where:

1. company members who represent at least 20 per cent of the basic capital or 10 per cent of the members of a cooperative or 20 per cent of the members of an association so require;
2. a company member or an association member subject to personal liability or a duty to pay in further capital so requires; or
3. the foundation supervisory authority so requires.

Art. 964⁵⁶⁷**Division Five:⁵⁶⁸ Negotiable Securities****Title Thirty-Three: Registered Securities, Bearer Securities and Instruments to Order****Section One: General Provisions****Art. 965**A. Definition
of negotiable
security

A negotiable security is any instrument to which a right attaches in such a manner that it may not be exercised or transferred to another without the instrument.

⁵⁶⁷ Repealed by No I of the Federal Act of 22 Dec. 1999, with effect from 1 June 2002 (AS 2002 949; BBl 1999 5149).

⁵⁶⁸ Amended by the Federal Act of 18 Dec. 1936, in force since 1 July 1937 (AS 53 185; BBl 1928 I 205, 1932 I 217). See the Final and Transitional Provisions to Title XXIV-XXXIII at the end of the CO.

Notes

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