Art. 954*a*[562]

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 must be given in full and unamended.

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

Art. 955

B. Monitoring[563]

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 names[564]

[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

Art. 957

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.

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 Code[566].

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

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.

566 SR **210**

Art. 958

C. Financial reporting
I. Aim and constituent elements

[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. 958*a*

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. 958*b*

2. Chronological and material distinction

[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.

Art. 958*c*

III. Recognised financial reporting principles

[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. 958*d*

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.

Art. 958*e*

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.

Art. 958*f*

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.

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.

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.

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

Art. 959*a*

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.

Art. 959*b*

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 been 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.

Art. 959*c*

C. Notes to the accounts

[1] The notes to the annual accounts supplement and explain the other parts of the annual accounts. They contain:

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.

[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.

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. 960*a*

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.

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.

Art. 960*b*

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.

Art. 960*c*

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.

Art. 960*d*

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.

Art. 960*e*

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.

Art. 961*a*

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.

Art. 961*b*

C. Cash flow statement

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

Art. 961*c*

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.

Art. 961*d*

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 controlled by 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

Art. 962

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.

[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.

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.

Art. 962*a*

B. Recognised financial reporting standards

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 entirely 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

Art. 963

A. Duty to prepare

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.

Art. 963*b*

C. Recognised financial reporting standards

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.

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

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. 964[567]

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.