

Preparation and filing of consolidated accounts and consolidated annual reports

1. CONSOLIDATION OBLIGATION

1.1. GENERAL

The obligation to draw up and file consolidated annual accounts and a consolidated annual report is governed by Articles 108 to 121 of the Companies Code (hereinafter "the Code"), Articles 106 to 169 of the Royal Decree of 30 January 2001 implementing that Code (hereinafter "the implementing decree") and Article 11, § 1 of the law of 17 July 1975 on corporate accounting. These provisions, which constitute the transposition into Belgian law of the 7th Directive of the Council of the European Communities of 13 June 1983 (RL 83/349/EEG), can be consulted on the Central Balance Sheet Office's website.

1.2. SCOPE

Forementioned provisions on consolidation apply to companies incorporated in commercial form under Belgian law¹ and to public bodies not established in the form of a commercial company but having a statutory function of a commercial, financial or industrial nature².

The general law governing consolidation does not apply to credit institutions, investment firms and holding companies, which are subject to specific legislation for their consolidation obligations. Nor do general consolidation rules apply to economic interest groupings and agricultural cooperatives³.

In the case of insurance and reinsurance companies, the provisions on consolidation as laid down in the Code and the implementing decree only apply insofar as they are not waived by the provisions of the Royal Decree of 13 February 1996 on the consolidated annual accounts of insurance and reinsurance companies⁴.

1.3. CONSOLIDATION CRITERIA

All companies which are subject to the general law governing consolidation and which individually or jointly control one or more subsidiaries must prepare and have audited and published consolidated accounts and a consolidated annual report⁵.

Control over a company refers to the legal or *de facto* power to exert a decisive influence on the appointment of the majority of the directors or managers or over the policy direction⁶. A company that has controlling rights over another firm is called the **parent company**; the company with respect to which a controlling right exists is referred to as the **subsidiary**⁷.

Control may be exclusive or joint. In the latter case, a limited number of partners have agreed that decisions on the direction of the operations of the undertaking concerned can only be taken by their mutual agreement. In that case, the undertaking is referred to as a **joint subsidiary**⁸.

¹ Articles 110 and 111 of the Code.

² Article 11 of the law of 17 July 1975 on corporate accounting.

³ Article 108 of the Code.

⁴ Article 123, § 1, section 2 of the Code. With regard to their consolidated accounts, insurance and reinsurance companies are subject to the Royal Decree of 27 September 2009 on the consolidated accounts of insurance and reinsurance undertakings, with effect from the accounting year commencing on or after 1 January 2012.

⁵ Article 110 of the Code.

⁶ Articles 5 and 7 of the Code.

⁷ Article 6 of the Code.

⁸ Article 9 of the Code.

In application of the Code's specifications regarding consolidation, a **subsidiary undertaking**⁹, if it comes under the control of a Belgian firm, refers to:

- 1° the subsidiary under Belgian or foreign law
- 2° the European economic interest grouping with its headquarters based in Belgium or abroad, and
- 3° the institution established under Belgian or foreign law, whether public or not, profit-making or non-profit-making, which, by virtue of its statutory function or not, exercises an activity of a commercial, financial or industrial nature¹⁰.

An **associate company** is any company other than a subsidiary or joint subsidiary in which a company included in the consolidation holds a participating interest and exercises significant influence over the direction of its operations. Failing proof to the contrary, that significant influence is presumed if the voting rights attached to that participating interest represent one-fifth or more of the total voting rights of that company's shareholders or partners¹¹.

A **consortium** may also be required to draw up and publish consolidated accounts and a consolidated annual report¹². In that case, each of the companies forming that consortium is regarded as a consolidating company. A consortium has a central management board comprising its constituent companies, without those companies being parents and subsidiaries respectively, and without their being subsidiaries of one and the same company¹³.

1.4. CONSOLIDATION METHODS

There is a different method of consolidation for each type of undertaking mentioned above:¹⁴

a. exclusives subsidiaries are consolidated by full integration

According to the full integration, all the asset and liability items, all rights and obligations and the income and expenditure of the parent undertaking and its subsidiary are added in the consolidated accounts. The proportion of the capital of the controlled undertaking held by the minority shareholders is recorded under a separate item in the consolidated capital and in the consolidated profit and loss account¹⁵.

b. joint subsidiaries are consolidated by proportional integration

In the case of proportional consolidation, all items on both the assets and liabilities sides, all rights and obligations as well as all revenue and expenditure of the subsidiary are included in the consolidated accounts in proportion to the voting rights in its capital that are held by the consolidating company and by the subsidiaries included in the consolidation¹⁶.

c. participating interests in associate companies are valued according to the equity method

The equity method consists in revaluing the interests owned by the parent company: the historical acquisition value of the participating interest is replaced by the percentage which the parent company owns in the capital of the associate company. The same applies to the dividend. This method therefore does not integrate the associate company's accounts into those of the consolidating undertaking. Strictly speaking, this is therefore not a method of consolidation but a specific method of valuation¹⁷.

In the annex to the consolidated accounts, the parent company has to identify the undertakings included in the consolidation and indicate the consolidation method used. Undertakings excluded from the consolidation (see point 3) must also be mentioned, with a statement of the grounds for that exclusion.

⁹ The Code makes a terminological distinction between a subsidiary and a subsidiary undertaking

¹⁰ Article 109 of the Code.

¹¹ Article 12 of the Code.

¹² Article 111 of the Code.

¹³ Unified management is presumed beyond dispute if the consortium is run on the basis of contracts concluded between those companies or on the basis of clauses in the articles of association, or if the same people make up the members of the companies' management bodies. Failing proof to the contrary, it is also presumed if the majority of the shares or partners' rights are held by the same natural or legal persons, with the exception of public authorities (Article 10 of the Code).

¹⁴ Article 134 of the implementing decree.

¹⁵ Articles 136 to 149 of the implementing decree.

¹⁶ Article 150 of the implementing decree.

¹⁷ Articles 151 to 157 of the implementing decree.

2. EXEMPTIONS FROM THE CONSOLIDATION OBLIGATION

The Code provides for the following exemptions from the consolidation obligation:

2.1. CONSOLIDATION BY THE PARENT COMPANY

In order to avoid a situation in which, in large groups, all undertakings except for those at the lowest level are required to effect consolidation at their own level, a Belgian company (D) which controls one or more other undertakings may be exempt from consolidation if it satisfies the following conditions¹⁸:

- company D is itself the subsidiary of a Belgian or foreign parent company (M) which draws up, has audited, and publishes consolidated accounts and a consolidated report, in which company D and all its subsidiaries are included;
- D's shareholders approve that exemption by a qualified majority¹⁹
- M's consolidated accounts are published in Belgium in the language in which D's annual accounts are drawn up. If M is a Belgian company, it must arrange the publication itself so that D need only refer to that publication in its own annual accounts. If M is a foreign company, D will have to take responsibility itself for arranging a translation, if necessary, and for publication of M's consolidated accounts;
- D must present evidence in its annual accounts showing that it satisfies all the conditions governing exemption (section C 5.17 or A 5.9).

This exemption does not apply if all or part of the shares that are issued by one of the companies that must be consolidated, are admitted for trading on a regulated market in the sense of Article 2, 3°, of the Law of 2 August 2002 on the supervision of the financial and on financial services²⁰. This derogation from the exemption serves to protect the general public's right to information.

Likewise, the exemption does not apply if consolidated accounts or the consolidated annual report have to be drawn up for the purpose of informing the workers or their representatives or at the request of the administrative authorities or judicial bodies for their own information²¹.

2.2. SMALL GROUPS

The Code also stipulates that consolidation may be waived²² in the case of a parent company which does not exceed more than one of the following criteria on a consolidated basis²³:

- Annual turnover (excluding VAT)	EUR 29,200,000
- Balance sheet total	EUR 14,600,000
- Annual average number of employees	250

The Belgian Accounting Standards Board (BASB) laid down these criteria in its Recommendation C 103/1 published in Bulletin n° 44 of June 1998. Undertakings are not required to draw up and publish consolidated accounts and a consolidated annual report until they exceed the criteria in force on a second consecutive occasion.

For the transition to the criteria applicable for the first time to the financial year beginning on or after 1 January 2005, the following rule applies: an undertaking which did not exceed the old thresholds during the last financial year ending prior to 1 January 2005 but did exceed the new thresholds is not required to draw up and publish consolidated accounts and a consolidated annual report unless, following entry into force of the new basic thresholds, it exceeds the current thresholds for the second consecutive year.

Example:

For the year from 1 January 2004 to 31 December 2004, an undertaking exceeded the old thresholds but not the new ones in force at that time. It subsequently exceeds the new thresholds for the years covering the periods from 1 January 2005 to 31 December 2005 and from 1 January 2006 to 31 December 2006. It will only have to draw up and publish consolidated accounts and a consolidated annual report from the latter year onwards.

¹⁸ Articles 113 and 114 of the Code.

¹⁹ 90 % of the votes in the case of public limited companies, European companies, and partnerships limited by shares, 80 % of the votes for other legal forms.

²⁰ Article 114 juncto article 4 of the Code.

²¹ Article 115 of the Code.

²² Article 112 of the Code.

²³ Article 16 of the Code.

The BASB Bulletin n° 46 dated May 2000, page 21, contains a practical example.

In order to protect this right to information for the public at large, this exemption does not apply if all or part of the shares issued by one of the companies to be consolidated are admitted for trading on a regulated market in the sense of Article 2, 3°, of the Law of 2 August 2002 on the supervision of the financial and on financial services²⁴.

Likewise, the exemption does not apply if consolidated accounts or the consolidated annual report have to be drawn up for the purpose of informing the workers or their representatives or at the request of the administrative authorities or judge for his own information²⁵.

2.3. NON MATERIAL SUBSIDIARIES

Lastly, the Code provides that a parent company which only has subsidiary undertakings which, considering the evaluation of the consolidated assets and liabilities, the consolidated financial position or the consolidated profit or loss, are not material, both individually and as a whole, shall be exempted from the obligation to draw up consolidated accounts and a consolidated annual report²⁶.

The BASB is of the opinion that a parent company can only make use of the new article 110, section 2, of the Code if the exclusion from its consolidated accounts of subsidiary undertakings (and thus, in the case in point, if only annual accounts are drawn up) which, considering the evaluation of the consolidated assets and liabilities, the consolidated financial position or the consolidated profit or loss, are not material, both individually and as a whole, does not induce users to take decisions that differ from those that would be taken on the basis of consolidated accounts in which these subsidiary undertakings are actually included.

As stated by the competent Minister in the preparatory works, this rule can not be reduced to the determination of a percentage of the consolidated balance sheet total or the consolidated turnover, for example. On the contrary, the rule must be interpreted also qualitatively. (BASB Opinion 2012/10 of 4 July 2012; a full version of this opinion (only available in Dutch or French) can be found on the BASB's website)

3. CONSOLIDATION SCOPE

The following are included in the consolidation²⁷ :

- the consolidating company
- Belgian or foreign subsidiaries which are consolidated by full or proportional integration.

An associate company is not included in the consolidated entity, but is included in the consolidated accounts via the equity method²⁸.

A subsidiary is excluded from the consolidation²⁹ :

- if it is in liquidation or has decided to close down
- if its activities cannot be expected to continue
- if the consolidating undertaking has de facto control over it and its inclusion in the consolidation would be contrary to the principle of a true and fair view.

Such subsidiaries are included in the accounts via the equity method³⁰.

²⁴ See footnote 20.

²⁵ See footnote 21.

²⁶ Article 110, section 2 of the Code.

²⁷ Articles 106 to 112 of the implementing decree.

²⁸ Article 134, 3° of the implementing decree. Exception: if the application of this method would be of negligible interest in the light of the principle of a true and fair view (Article 157 of the implementing decree).

²⁹ Articles 108 and 109 of the implementing decree.

³⁰ Article 110 of the implementing decree.

A subsidiary may be omitted from the consolidation if³¹ :

- it is of negligible importance in relation to the consolidated entity³²
- serious and permanent restrictions have a substantial effect on the effective exercise of the parent company's control over that subsidiary
- information on that subsidiary, being necessary for its inclusion in the consolidation, cannot be obtained without disproportionate expense or without unjustifiable delay
- its shares are held only with a view to subsequent sale.

4. PUBLICATION OF THE CONSOLIDATED ACCOUNTS

4.1. FORMAL REQUIREMENTS

The filing conditions are practically the same as those applicable to the ordinary annual accounts.

There is no standard document which has to be used for the consolidated accounts. Nonetheless, they must be preceded by section 1.1 of the "Full model of annual accounts"³³. An electronic version of that first page (in MS-Word format) can be downloaded free of charge from the Central Balance Sheet Office website.

In collaboration with the BASB, the Central Balance Sheet Office has developed a standardised model for consolidated accounts. That model comprises both the balance sheet and profit and loss account and the annexes and information prescribed by the implementing decree in Title II Chapter VI . It can be downloaded free of charge from the Central Balance Sheet Office website. Use of this model is optional: in other words, there is no obligation to use it for the purpose of filing consolidated accounts with the National Bank.

4.2. MEDIUM FOR FILING CONSOLIDATED ACCOUNTS

The consolidated accounts are generally filed with the National Bank via the Internet in the form of a pdf file. However, the consolidated accounts of a foreign company or European economic interest group (EEIG) incorporated under foreign law may still be filed on paper³⁴.

4.3. CHOICE OF MONETARY UNIT AND CURRENCY

The consolidated accounts have to be presented in EUR thousands. However, undertakings with a consolidated balance sheet total in excess of 1 billion euro may present their consolidated accounts in EUR millions.

In either case the chosen monetary unit must be specified on the first page of the consolidated accounts.

However, the consolidated accounts may be drawn up in the currency of an OECD member country if that is the most important monetary unit for the operations, the assets and liabilities, and the results of the consolidated entity³⁵.

4.4. PAYMENT OF THE FILING FEES

The fees for filing consolidated accounts are the same as for filing annual accounts in accordance with the "Full model of annual accounts".

³¹ Article 107 of the implementing decree.

³² If this condition is met by more than one subsidiary, the right of exemption can only be exercised for all of them if those subsidiaries, when added together, still fulfil that condition.

³³ Article 174, § 3, section 1 of the implementing decree.

³⁴ Article 175, section 2 of the implementing decree.

³⁵ Article 171, section 2 of the implementing decree.

5. FILING OF THE CONSOLIDATED ACCOUNTS AND THE CONSOLIDATED ANNUAL REPORT OF A FOREIGN COMPANY

If need be, the obligation to file consolidated annual accounts and a consolidated annual report also applies to foreign companies with a branch in Belgium and foreign companies whose securities are listed in Belgium pursuant to Article 4 of the Code³⁶.

Foreign companies having a subsidiary in Belgium:

- originating from a Member State of the European Union, required by their national law to publish their consolidated accounts in their country of origin, are also required to file those consolidated accounts and the consolidated annual report in Belgium, alongside their annual accounts. If those companies are exempt in their country of origin, according to the 7th Directive, from the publication of consolidated accounts as a result of publication of consolidated accounts at a higher level, it is the latter consolidated accounts that must be filed in Belgium
- originating from a state not belonging to the European Union, with a legal form comparable to that of a European corporation, which control subsidiaries and which fulfil the size criteria defined by the 7th Directive, are also required to file their consolidated accounts and the consolidated annual report in Belgium, alongside their annual accounts.

The filing of the annual accounts and the ordinary annual report, on the one hand, and the filing of the consolidated accounts and the consolidated annual report on the other, are two independent legal acts. In both cases they must satisfy the formal requirements and payment conditions stipulated by Title III Chapter II of the implementing decree.

Further information about the reporting requirements for foreign companies established in Belgium can be found in Opinion 110-10 of 14 January 2009 of the Accounting Standards Commission (www.cnc-cbn.be).

³⁶ Articles 81, 82, 83 and 107 of the Code. Article 4 of the Code defines listed companies as companies whose shares issued are admitted for trading on a regulated market in the sense of Article 2, 3°, of the Law of 2 August 2002 on the supervision of the financial sector and on financial services.