

Exceptions to the binding force of the approved annual accounts

In what cases can companies adapt or modify the annual accounts which were approved by the general shareholders' meeting? The Accounting Standards Commission (ASC) comments in its advice 2014/4 on the different methods to correct approved annual accounts. Also the accounting aspects are discussed.

Managers or directors should draft annual accounts every year. They consist out of the balance sheet, profit and loss account and the explanation. Within six months after closing of the financial year, the annual accounts should be presented to the general shareholders' meeting. Afterwards they should be filed with the National Bank of Belgium within a thirty days period after approval of the annual accounts and at the latest seven months after closing of the financial year. The management has the right, during the meeting, to postpone the decision of the approval of the annual accounts for three weeks (or five weeks for listed public companies).

Possibilities to correct approved annual accounts

Once the annual accounts are approved, the directors or managers cannot reconsider them. However the binding force of the annual accounts is not absolute. Exceptions apply to this principle.

Changing entries of the previous financial year in the new annual accounts

When drafting the annual accounts it is possible to modify certain entries of the previous accounting year in these annual accounts in order to have sufficient comparability. Since the annual accounts should give a true and fair view on the capital, financial position and the result of the company, the amounts of the previous accounting year can be modified to ascertain comparability. These modifications do not require additional entries.

Adjusting previously approved annual accounts

In some cases the previously approved annual accounts can or should be adjusted retroactively.

Adjustable errors: material errors and factual and legal errors

In the first place material errors can be adjusted afterwards. Examples of such errors are: a wrong figure due to a typing error, a stock which was erroneously valued against sales price instead of purchase price, by mistake entering a certain profit onto the wrong account, accounting errors or any other factual mistakes which are made independently of any legal consideration. Also factual and legal errors, or even mistakes (not being distractibility) in the valuation of certain entries in the annual accounts can be adjusted. These adjustment contain an element of consideration.

Non-adjustable errors: actual decisions

Management decisions, actual decisions, expressed in the annual accounts, cannot be adjusted, even when it shows later that they were injudicious or frivolous. Certain accounting provisions, such as valuation rules, give the company a certain level of discretion. In the final advice of the ASC no examples are cited. Whether a decision was taken or an error was committed remains a matter of fact.

Adjustment by the general shareholders' meeting

If as a director you discover a breach to the accounting legislation, which occurred by mistake and only impacts the last filed annual accounts, an adjustment of the annual accounts is obligatory, and a special general meeting should be convened. The adjustment through the result of the financial year in with the breach was discovered, is not sufficient in this case.

If an older than the last filed annual accounts should be adjusted, then this can only be done by adapting the opening situation of the last filed annual accounts.

Adjustments of the last filed annual accounts should be done by:

- modifying comparable figures (in case of breach of the accounting legislation in the period before the last closed accounting period);
- making corrective entries in the last closed accounting period (adapting the opening situation in case of an error before the last closed accounting period and other corrective entries, both in the last closed accounting period);
- quoting in the explanation of the adjusted annual accounts the nature and the method of the adjustment. If the error took place in one of the previous accounting periods, sufficient information should be given in the explanation of the adjusted annual accounts concerning the origin and the nature of the error and its impact of the different annual accounts.

The adjusted annual accounts should also be filed with the National Bank of Belgium.

Exception: adjustment by management

In principle the general shareholders' meeting approves the annual accounts. But when correcting a material error which clearly shows from the approved annual accounts or from other acts of the general shareholders' meeting, the management can take itself the responsibility to adjust the errors, without convening a new general meeting.