Bundesministerium
der Justiz und
für Verbraucherschutz

Guide to the law on associations

Foreword

"Some things are easier when you're together." You know how apt this phrase is.
Millions of citizens who are involved in German clubs and associations. An association gives us the opportunity to cultivate common interests and, together with others, help a good cause to succeed. As an endurance athlete, I know exactly how important clubs are. After all, sport is at its best in a club, and as Federal Minister of Justice and Consumer Protection, I share responsibility for ensuring that there are clear legal rules for clubs. Good club law helps to ensure that civic involvement has a reliable framework.

In an association, the commitment to the common cause counts, not origin or status, therefore associations strengthen the cohesion of our society. Associations are also a living testimony to freedom and self-determination in the country, because in them citizens become active without waiting for the state and authorities to act. This makes associations a valuable addition to the services provided by the state. In youth and social work, in cultural
The more than 600,000 clubs and the people who are active in them do important work for our society in the fields of environmental protection and sport. They also prove that, at the end of the day, it is not only the "I" that counts, but also solidarity and the common good.

Anyone wishing to found an association, join an association or take over association offices will find a lot of useful information in this brochure.

Foreword

I hope that this guide to the law of associations will meet with great interest and offer assistance to many active members. Perhaps the guide can even encourage some people to get involved in an association themselves, because our country needs active citizens with commitment!

Heiko Maas
Bundesminister der Justiz
and for consumer protection

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A. What is an ideal club?

The so-called "ideal association" is the most common and typical form of an association.

An ideal club is a union,

to which several people belong under one club name,
which is voluntary and has been set up for a certain duration,
which pursues a common idealistic purpose,
which has a board of directors and
which exists as an association independent of a change of members and is therefore organised as a corporate body.

A non-material purpose is a purpose that is **not** directed towards an economic business operation. The possible non-material purposes are manifold. This is shown by the colourful club landscape in Germany: Associations for the promotion of sport, culture, nature and the environment or charitable purposes are predominantly organised as ideal associations.

A purpose is in particular directed at an economic business operation if the purpose itself is directed at an economic activity. It need not be the intention to make a profit. A purpose is already directed towards an economic business operation if economic goods are to be offered as planned and against payment, regardless of whether the payment only covers the costs or even leads to losses.

Example: An association with the purpose of acquiring apartments and renting them to its members without the intention of making a profit is geared to an economic business operation.

Even if a non-economic purpose is pursued through economic activity, the association is not an ideal association, unless the economic activity falls under

the **so-called secondary purpose privilege**. This secondary-purpose privilege also enables ideal associations

to be economically active, i.e. if this activity is clearly assigned and subordinated to the main non-material purpose.

Example: A sports club remains an ideal club even if it runs a restaurant in its clubhouse. In this case, economic activity is only a secondary purpose - the main purpose remains the promotion of sport.

An economic activity is determined by typological criteria. An economic activity is considered to be

entrepreneurial activity on an external market,
business activity in a single market (e.g. an association which offers goods or services only to its members, such as book clubs),
the joint performance of entrepreneurial activities (such as z. e.g. taxi companies).

B. Foundation of an ideal association

I. Preliminary considerations

The Idealverein can be entered in the register of associations. If the association is registered, one speaks of a **registered association** or also of a legally responsible ideal association (§ 21 BGB). If the association is not registered, it is called a **non-registered association** or a non-legally capable ideal association. Both the legally capable and the unlegally capable association can be carriers of rights and obligations, can sue and be sued and can acquire assets. However, there are differences between the ideal association with legal capacity and the ideal association without legal capacity in terms of **liability law**: Although the members are not personally liable for the obligations of the ideal association, neither in the case of the registered nor the unregistered association. In the case of the unregistered association, however, the persons acting on behalf of the association are liable not only for the association but also personally for legal transactions concluded in the name of the association (§ 54 sentence 2 BGB). Acting person is any person who acts directly on behalf of the association and in any way appears as part of the association. In contrast, there is no such liability of the acting person in the case of an association with legal capacity.

The registered association may acquire a plot of land or rights to a plot of land and may itself be entered in the land register. The **ability of** the non-registered association **to be registered in the land register** is disputed, however. The non-registered association cannot itself be entered as such in the land register, according to the prevailing opinion. Instead of the non-registered association, all members of the association must be registered with the addition "as a member of the non-registered association". This type of registration can cause problems if there is a frequent change of members.

There are therefore certain legal differences which should be taken into account when setting up the association.

Example: If, for example, a property is to be acquired in any case during the existence of the association and the association is to be open to all interested parties to join, so that a lively change of members is not excluded, a registered association has advantages.

An association that is not to be entered in the register of associations, on the other hand, is easier to found and there are also no registration obligations. For the pursuit of short-term goals, this form of association can be more sensible than the registered association.

II. founding members

At least two persons must be **involved** in the foundation of an association. The law does not specify the number of founders. The association is formed by **agreement of the founders on the statutes**, for which two persons are required.

However, the **entry in the register of associations** is only made if the association has **at least seven members** (§ 59 paragraph 3 BGB). It is therefore conceivable that the association is initially founded by two persons and that additional members are accepted until registration in the register of associations, so that a statute signed by seven members can then be submitted. However, an association can also be founded by seven or more persons, so that it is already registrable upon foundation.

Founding members can be all natural persons, but also, for example, stock corporations, limited liability companies, other associations with legal capacity, municipalities and districts or also general partnerships, limited partnerships and associations without legal capacity.

Founding members must have **legal capacity in** order to participate effectively in the foundation. Incapable persons and legal entities or associations of persons cannot effectively participate in the foundation of an association themselves. Their legal representatives or representative bodies must act on their behalf. The act of formation is a legal transaction which is regularly not only legally advantageous for the founders. When an association is founded, the founders commit themselves to regularly make certain contributions to the association as members of the association. Minors with limited legal capacity, who are at least seven but not yet 18 years old, can therefore only found an association with the consent of their legal representatives, i.e. usually their

parents. The same applies to persons for whom a guardian has been appointed and the guardianship court has ordered a reservation of consent in this respect.

If one of the founding members was not legally competent when the association was founded, the agreement on the statutes is still effective if the required minimum number of founding members was legally competent.

III. foundation protocol

To establish an association, the founding members must agree on the establishment of the statutes. This **agreement** forms the so-called "founding act". If the association is to be registered, the founding members must stipulate in the articles of association that the association is to acquire legal capacity through registration. The founders must also elect the first board of directors. The board of directors can consist of one or more persons. How many persons should form the board of directors is to be determined in the articles of association.

The agreement of the Statutes and the appointment of the Governing Board should be recorded in a founding protocol signed by all founding members.

With the agreement of the statutes and the election of the executive committee, a non-legally capable association is created. If it is intended to have the association entered in the register of associations, it is referred to as a **"pre-association"** until it is entered.

Note: A sample of a founding protocol can be found on the website of the Federal Ministry of Justice and Consumer Protection: http://www.bmjv.de/SharedDocs/Downloads/DE/Formulare/Muster_eines_Gruendungsprotokoll.pdf?__blob=publicationFile&v=2.

IV. statutes

Every association needs a statute, which is decided upon when the association is founded.

Members of the association have a right against the association to receive a copy of the statutes in their current form. This claim is derived from membership.

There is no obligation to publish the statutes of the association, since the statutes of the association can be viewed by anyone at the court that keeps the register of associations according to § 79 paragraph 1 BGB.

1. content

There are regulations which a club statute **must** contain, regulations which a club statute **should** contain and contents which a club statute **can** additionally contain.

a) MustContents of the statutes

The articles of association of a registered association **must be in** accordance with § 57 BGB:

define the purpose of the association,
give the association a name,
determine the seat of the association and
contain the statement that the association should be registered.

The **purpose of the association** should indicate which goals the association pursues and what is to be achieved by the association. It is the **guiding principle for the activities of the association**.

The founding members are in principle free to choose the **name of** the association. However, a mere sequence of letters that does not form a word may not be entered in the register of associations as the name of the association (example: "G.B.B."). Furthermore, according to § 57 Paragraph 2 BGB, the name should be clearly distinguishable from other associations registered in this town or municipality. Furthermore, the name to be registered must not contain any misleading information.

Example: The date of foundation included in the association name must be correct. An association founded in 1992 cannot include the year "1921" in its name, because this would give the impression that the association was founded in the year indicated and has existed continuously since then.

The name of the association may also not violate the rights of third parties to the name. If the name of the association violates the rights of a third party to a name, the third party can demand, according to § 12 BGB, that the association refrain from using the name of the association, i.e. change its name.

Every club needs a **seat**. The seat must be in Germany, because the seat determines the jurisdiction of the courts and authorities, in particular the jurisdiction of the register court. It is laid down in the statutes and is in principle freely definable. However, the prerequisite is that the association can actually be reached at its chosen seat at least actively or by post. It should also be noted that the location must be precisely determined. It is sufficient to indicate the name of a municipality as the seat (e.g. the seat of the association is Berlin).
If the seat is not determined, then according to § 24 BGB the seat is the place of administration, i.e. the place where the association's organs are mainly active. However, this provision is not relevant for registered associations. An association may not be registered if no seat has been determined in the statutes.

The statutes of a registered association must also specify that the association is to be entered in the register of associations (**willingness to register**).

b) Target content of the statutes

The statutes of a registered association **shall**, according to § 58 BGB, contain provisions on:

- the entry and exit of members,
- the contribution obligations (whether and which contributions are to be paid by the members),
- the formation of the Management Board, which clearly define the composition of the Management Board,
- the conditions and the form for convening the general meeting and notarising its decisions.

The statutes on the **entry and withdrawal of** members should make it clear how this is done. For example, the admission procedure should be regulated and the form in which the declaration of admission is to be submitted should be specified.

The rules on **contributions** must at least specify whether contributions are payable. The type and amount of the contributions need not be determined in the statutes, but can also be laid down in the rules of the association. It is advisable to name the body responsible for determining the contributions in the statutes.

The regulations on the **formation of the board of directors** must at least state how many people the board of directors is to consist of. The association can designate the offices of several board members according to its own ideas. However, the statutes should not leave any doubt as to which holders of the offices designated in the statutes form the executive committee. The executive committee in the sense of the law is the so-called legal representative of the association according to § 26 BGB, who represents the association in legal transactions and is responsible for the management.

Example: If a statute stipulates that a board of directors consists of a chairman and two deputy chairmen as well as two further board members and the association is only represented judicially and extrajudicially by the three chairmen, it is not clear who is the board of directors according to § 26 BGB. If only the three chairmen are to form the executive board according to § 26 BGB, the body of the association to which further members are to belong must be designated differently. In this respect, the terms "extended board of directors", "board of directors" or "full board" are used, which clearly distinguish these organs from the board of directors according to § 26 BGB.

In principle, the associations are free to decide on the **requirements and the form of convening the general meeting.** However, the regulations must be clear and specific.

The statutes may lay down a specific **form for the authentication of decisions**, but they may also exclude the authentication. However, it is not advisable to waive notarisation for resolutions that are to be entered in the register of associations, as they must be proven to the register court. It should also be stipulated that the minutes of the resolution must be signed and by whom.

Admittedly, § 58 BGB is only a mere "debit provision". However, an association may not be registered by the registration court under § 60 BGB if its articles of association do not contain these provisions.

c) CanContent of the statutes

In addition, §§ 21 et seq. BGB contain legal regulations for the internal organisation of associations, which are applicable if the statutes do not make any statements. There is thus a **"statutory regular association constitution"**, which in many cases leads to a balanced reconciliation of interests of all those involved. Statutory regulations are only necessary if other regulations are to apply to the association.

In principle, deviations are permitted. Due to its **autonomy,** the association can essentially determine its internal order itself. For example, the rights of the members can be restricted to a large extent; the executive committee can be granted a superior position or certain members can be granted special rights, such as multiple voting rights.

In addition to the two organs that an association must have, i.e. the general meeting and the board of directors, the statutes can also provide for **further association organs** that can be freely appointed. Usually these organs are called board of trustees, administrative board, presidency or advisory board. Since there are no legal regulations for these organs, the statutes must also make provisions as to which
tasks to be performed by the body established by the Statutes.

The statutes should also specify the composition of the body, the procedure for appointing the members of the body and the term of office. It should also lay down the procedural rules governing the activities of the institution. Especially where there is a majority of organs, clear structures and responsibilities are necessary to prevent differences of opinion between the organs.

However, even in those areas where the law grants statutory autonomy to associations, the statutes cannot provide for every regulation. For example, provisions in the statutes which allow arbitrariness for an organ of the association or which allow such strong external influence in the association that the association is no longer in a position to make its own decisions cannot be effectively agreed. If deviations from the legal regulations are desired, it is therefore advisable to seek legal advice.

The statutes may also provide for the creation of supplementary **rules of association**, such as rules of arbitration, rules of honour or rules on

contributions. These may not violate the statutes. However, they may be amended without complying with §§ 33, 71 BGB.

Note: When formulating such provisions in the statutes which provide for supplementary association regulations, care should be taken to ensure that it is clear from their wording that these association regulations should not be part of the statutes.

(d) Taxable content

Certain purposes that an association pursues are tax privileged. For this purpose, however, corresponding requirements are placed on the content of the statutes. Some information on this can be found in Chapter E **"General information on tax law"**.

2nd form

Although there are no formal requirements for drawing up the articles of association, in the case of a **registered association** the articles must be drawn up in such a way that the registration requirements according to § 59 BGB can be met. According to § 59 paragraph 2 BGB, a copy of the statutes and the documents concerning the appointment of the executive committee must be submitted with the application. The articles of association must be signed by at least seven members according to § 59 paragraph 3 BGB. The copy of the articles of association must be structured in such a way that the register court can verify on the basis of this copy that the original of the articles of association was signed by seven members. It is therefore advisable to draw up the statutes in writing in accordance with § 126 BGB, i.e. to lay down the text of the statutes in a deed and to have this deed signed personally by at least seven members. A copy of the charter can then be submitted as a copy. This can also be an electronic copy if state law also permits electronic applications to the register of associations. Even in the case of non-registered associations, it is recommended for reasons of proof to provide for the written form for the articles of association. The statutes must be written in **German.** In Saxony and Brandenburg, statutes in Sorbian with a German translation are also permissible.

Note: A sample of a charter can be found on the website of the Federal Ministry of Justice and Consumer Protection: http://www.bmjv.de/SharedDocs/Downloads/DE/Formulare/Mustersatzung_eines_Verein.pdf?__blob=publicationFile&v=3.

V. Application for registration in the register of associations

For the registration of the association in the register of associations, you must submit an application and certain documents to the local court responsible for the association.

Many registers of associations are already kept electronically. It may also be possible to apply for entry in the register of associations at a register court electronically, if this is provided for by state law. However, it is always possible to apply for registration in paper form. If you want to register an association electronically, you should always first enquire whether this is already possible at the relevant register court.

1. competent local court

In principle, the local court in whose district the association has its registered office is locally competent. However, the federal states may assign the association matters of several districts to a specific local court. Some federal states have made use of this so-called "power of concentration".

2. registration

For the registration of an association, the application must be submitted to the register of associations according to § 59 paragraph 1 and 2 BGB:

- a letter of application,
- a copy (for example, a duplicate) of the statutes, which allows verification that the original statutes have been signed by at least seven members, and
- a copy of the documents from which the appointment of the Board of Directors is derived (e.g. a copy of the minutes of the formation of the Board of Directors, which record the appointment of the Board of Directors)

(a) Letter of notification

The letter of registration must contain the request to register the association in the register of associations. The registration letter must contain the names, dates of birth and addresses of the board members.

The registration letter must be signed by the registering members of the Executive Committee in person. If the board consists of several members, as many board members must register the association and sign the registration letter as necessary to effectively represent the association. Their **signatures** must be **publicly certified** (§§ 59 paragraph 1, 77 BGB). For this purpose, the members of the board usually visit a notary, present an identity card or passport and sign the registration letter in front of the notary.
The latter then certifies the identity of the signatories.

Hint: In some federal states, signature certifications can also be carried out by other bodies, namely in **Baden-Württemberg** by the council clerks (§ 32 of the Baden-Württemberg state law on voluntary jurisdiction), in **Hesse** by the heads of the local courts (§ 13 of the Hessian local court law) and in **Rhineland-Palatinate** by the local mayors and heads of the local courts, the municipal administrations of the association-free municipalities and the association of municipal administrations as well as the municipal administrations of the independent and large independent towns (§§ 1, 2 of the Rhineland-Palatinate State Law on the power of attestation).

The registration letter can be issued by the association itself. But also the notary can create such a letter and he can forward the registration to the registration court. Additional costs must be paid for the preparation of an application for registration.

Note: A sample of an association registration can be found on the website of the Federal Ministry of Justice and Consumer Protection: http://www.bmjv.de/SharedDocs/Downloads/DE/Formulare/Muster_Anmeldung_Verein_Vereinsregister.pdf?__blob=publicationFile&v=2.

(b) Documents to be attached

A **copy of the statutes** must be attached to the application. From the The day of the establishment of the association shall be the day of the constitution (§ 59 paragraph 3 BGB). The original of the statutes must be **signed by at least seven members.** The copy must be designed in such a way that the court can check on the basis of the copy whether the original of the articles of association has been signed by the necessary number of association members. A copy of the articles of association, for example, meets these requirements. The association must therefore have at least seven members at the time of registration in the register of associations. If it is initially founded by two persons, further members must be recruited before the registration for the register of associations, who must then sign the articles of association afterwards.

In addition, a **copy of the documents concerning the appointment of the Executive Board** must be enclosed (§ 59 (2) BGB). If the appointment of the executive board is recorded in the foundation minutes, a copy of the foundation minutes can be submitted.

3. costs

Since 1 August 2013, the costs have been based on the Act on the costs of voluntary jurisdiction for courts and notaries (GNotKG). For the initial registration of an association, a fee of 75 euros is charged (number 13100 of the GNotKG cost register).

The notary's fees are calculated according to the value of the transaction. The fees are set out in Table B of Annex 2 to the GNotKG, depending on the amount of the goodwill.

If there are not enough indications to determine the goodwill, then in accordance with § 36 (3) GNotKG, a goodwill of 5,000 euros is to be assumed. Depending on the case, this value can be lower or higher.

According to number 25100 of the GNotKG cost list, the certification of a signature is subject to a fee with a rate of 0.2, which is at least 20 euros and at most 70 euros. If the notary prepares the draft of the application to be certified himself or notarises it, a fee with a fee rate of 0.5 arises in accordance with number 24102 of the GNotKG cost schedule in conjunction with § 92 Paragraph 2 GNotKG, which amounts to at least 30 Euro. After a

business value of 53,000 Euro, a full fee is currently 4526 Euro, so that the respective minimum fees in
rule come into effect. According to § 80 paragraph 1 number 1 KostO, the court costs for the registration of the association amount to twice the full fee, i.e. 52 Euro for the first registration in this calculation example. If the notary transmits the application electronically to the register of associations, further costs are incurred.

In addition, there are costs for the publication of the announcement of the registration of the association according to § 66 paragraph 1 BGB. The regulations under state law may exempt tax-privileged associations from paying court fees. In this case, only the incurred expenses (e.g. for publication) will be charged. Proof of the tax exemption must be submitted to the court. Details are regulated in the respective state laws on legal costs or exemption from fees of the federal states.

VI. the registration of the association in the register of associations

In the register of associations are entered according to § 64 BGB:

- the name of the association with the addition "eingetragener Verein" (registered association) or, according to differing statutes, in short form "e. V.",
- the seat,
- the day of the establishment of the statutes,
- the names, dates of birth and places of residence of all members of the Management Board - with members and
- the power of representation of the board members.

The entry is announced by the district court in an electronic information and communication system determined by the state justice administration (§ 66 paragraph 1 BGB).

With the entry in the register of associations, the association acquires legal personality as a legal entity (§ 21 BGB). The previous preliminary association becomes a registered association (e. V.). All rights and obligations of the pre-association are transferred to the registered association.

VII. inspection of the register of associations

The register of associations and the documents submitted by the association to the local court, e.g. a copy of the association's articles of association, can be inspected free of charge by anyone at the court that keeps the register of associations (§ 79 paragraph 1 BGB).

Insofar as the registers of associations are already maintained by the federal states in computerised form, the data from the registers of associations can also be accessed electronically via the common register portal of the federal states
(www.han dels register.de) can be accessed on the Internet for a small fee.

C.

2. Ongoing operation of an association

I. General Meeting

1. legal status of the general meeting

The members of the association come together in the general meeting to decide on matters of the association through resolutions. However, the members can also make decisions outside the general meeting. If nothing is regulated in the statutes, a **resolution outside the general meeting** is only possible **unanimously** according to § 32 paragraph 2 BGB. Each member must declare its agreement to the resolution in **writing** (§ 126 BGB) or in **electronic form** (§ 126a BGB). If individual members do not cast their votes or do not do so in the prescribed form when resolutions are passed outside the general meeting, an effective resolution does not come about according to § 32 paragraph 2 BGB. However, the legal regulation on the passing of resolutions outside the general meeting in § 32 paragraph 2 BGB is not mandatory. The statutes may also provide for other majority and formal requirements for voting outside the general meeting.

Note: If, to a greater extent, resolutions are to be permitted to be passed outside the General Meeting, it is advisable to regulate the procedure for such resolutions in detail in the Articles of Association in order to avoid disputes about the passing of resolutions. It is also advisable to specify in the articles of association within which period and to whom the vote is to be cast, who counts the votes and how the result of the vote is to be announced.

The Articles of Association may also provide for resolutions to be adopted in an **online General Meeting.** Statutory regulations on an online general meeting must structure the procedures of these meetings in such a way that only members of the association or their representatives, insofar as representation is permitted, can participate and cast their votes.

According to the statutory model, the members of an association should **personally** attend the general meeting and participate in the decision-making process. Membership in the association and the inseparably connected rights of the association members are not transferable and not hereditary according to § 38 sentence 1 BGB. However, the statutes may allow membership to be transferred or membership rights to be exercised by a representative.

If a member of the association is not capable of acting, the legal representative of the member can always exercise the membership rights. For example, the parents or a guardian can act for underage members of the association. If a legal entity or an association of persons with legal capacity is a member of an association, in principle the competent representative bodies exercise the membership rights.

2. tasks of the general meeting

The general meeting of members decides in accordance with the legal regulations:

: appointment of the executive committee (§ 27 paragraph 1 BGB), the endment of the association's statutes (§ 33 BGB) and the dissolution of the ociation (§ 41 BGB).

law, the General Assembly of Members is assigned the **basic decisions**, while the Board of ·ectors is responsible for the day-to-day business of the Association. There are good reasons for s. The executive committee can regularly make quicker and more informed decisions about the rent business of the association. A general meeting cannot be convened as easily as a board eting. However, the basic regulations concerning the tasks of the general meeting and the :cutive committee in § 27 paragraph 3 and §§ 32, 33 BGB can be changed by the statutes (§ 40 iB). The association's articles of association can therefore also distribute the tasks between the ıeral meeting and the executive board differently.

onvening of the general meeting

)rder that the members of the association can be informed at the general meeting about the ıe Board of Directors is able to decide on matters concerning the Association, it must be convened. : **executive committee** is responsible for convening the meeting, unless the statutes stipulate erwise. The conditions under which the general meeting is to be convened must be specified in statutes of registered associations (§ 58 number 4 BGB). **Association statutes** usually provide for inary general meetings within certain periods of time, e.g. at least once a year.

extraordinary general meeting is to be convened in accordance with § 36 BGB (German Civil de) if fundamental decisions are to be made in the interest of the association. In addition, § 37 iB provides that the general meeting is to be called if one tenth of the members request the eting in writing, stating the purpose and reasons. This right of the minority to demand the ıvening of the general meeting cannot be excluded by the statutes. However, the statutes may)ulate a different number of members who are entitled to demand the convening of the general eting. Since this is a minority right, the required number of members may not be half or more.

gistered associations must also specify the **form and procedure** for convening meetings in their tutes. As a rule, the articles of association provide that the executive committee convenes the ıeral meeting. This can be done by inviting the members to the general meeting by means of responding letters. However, the general meeting can also be convened by an announcement in a ly newspaper, in the association's newspaper, by e-mail, by fax or by a notice posted on the ociation's premises.

xample: If the articles of association regulate the form of convening by e-mail, members vithout e-mail access have no claim against the association for a summons by letter.

The invitation must state the **place and time of the meeting.** Some statutes already contain provisions on the place and time of the general meeting. If there are no provisions on the place of the meeting, the general meeting must generally take place at the location of the association's headquarters. The time of the general meeting must be reasonable for the members. They may not be prevented from attending in large numbers because an appointment has been set for a working day during normal working hours or during the main holiday period.

The invitation to the general meeting must include a **reasonable notice period** so that the members can attend the general meeting and properly prepare for it. In many association statutes, fixed invitation or convocation deadlines are laid down. Which convocation period is appropriate depends on the members of an association and their living circumstances: In the case of small, locally active associations the period can be shorter than in the case of large associations whose members also live further away from the place of assembly.

For the **calculation of the convocation period,** §§ 186 ff. BGB APPLY. The convocation period begins when the invitation is received by the last member after regular delivery, i.e. when it reaches the member's area of responsibility in such a way that under normal circumstances the member has the opportunity to take note of the contents of the invitation letter. However, the statutes can also regulate a fixed beginning of the invitation period. For example, the statutes may stipulate that the period for convening the general meeting begins a few days after the invitation letters have been sent to the members by post.

Unless otherwise provided for in the Articles of Association, the invitation to the General Meeting must specify the **matters** on which the General Meeting is to decide in accordance with § 32 (1) sentence 2 BGB. Items are understood to be the association matters on which the general meeting is to decide and which are usually listed as different items on the agenda. This information is intended to enable members to decide for or against participation in the general meeting and to prepare themselves for the discussion and adoption of resolutions. For this purpose, an item for resolution must be specified in sufficient detail. For example, it is not sufficient to merely state a "change to the articles of association" as an agenda item, but more details must be provided.

The general meeting cannot validly decide on matters which, contrary to § 32 paragraph 1 sentence 2 BGB, were not specified in the invitation. Violations of other legal or statutory regulations governing the convening of meetings can lead to the invalidity of the resolutions of the general meeting.

Note: A sample of an invitation to the General Meeting can be found on the website of the Federal Ministry of Justice and Consumer Protection: http://www.bmjv.de/SharedDocs/Downloads/DE/Forms/Model_Invitation_General Meeting.pdf?__blob=publicationFile&v=2.

ıolding the general meeting

ıeral meetings are to be held in such a way that the tasks of the association can be carried out ›perly, and in particular that resolutions can be passed properly.

ɛ association's statutes can determine the **head of the general meeting.** In the absence of a ˈresponding provision in the articles of association, the management of general meetings is ɜically the responsibility of the executive committee. If the board consists of several members, board determines which of its members should chair the general meeting. If the chairmanship of general meeting is not regulated by the statutes, the general meeting itself can also elect a ˈson to chair the meeting. This person must open the General Assembly of Members, establish a ›rum and chair the meeting in such a way that a flawless formation and determination of will is ɜsible.

ɛre are no legal regulations on how deliberations and resolutions should be conducted at general etings. The associations can regulate details in the statutes. If the statutes do not contain such ›visions, the general meeting or the person chairing the meeting shall decide on the manner of iberation and decision-making. The general meeting designs its procedure, as far as the statutes not contain binding regulations. The general meeting can determine the consultation and voting ›cedure by majority decision. The leader is bound by the decisions of the general meeting. wever, if a specific procedure is prescribed by the statutes,
ɛ.g. individual or block election for the election of the members of the executive committee, this ›cedure must also be followed.

ɛ law on associations does not make any special demands on the quorum of the general meeting. **ɛ general meeting has a quorum** if at least one member has appeared who can make decisions. wever, the statutes of an association often lay down special requirements for a quorum, ›ecially for decisions that are important for the association.

ɛ person who chairs the meeting has the following duties and rights:

ıannounces the agenda and determines the order in which it is to be dealt with; however, the General Assembly may also determine a different order by majority vote,
ɛalls the individual items on the agenda for discussion and resolution,
ıay also take regulatory measures to ensure the proper conduct of the General Assembly,
ıay limit the speaking time of Members,
ıay deprive members of the right to speak and also exclude them from the meeting if this is necessary to ensure the proper conduct of the general meeting, for example if the right to speak is abused or the general meeting is disturbed

ɡulatory measures must be proportionate and all club members must be treated equally. If a ıeral meeting is not properly conducted, this can lead to the invalidity of the decisions made in general meeting.

5. resolution of the general meeting

According to § 32 paragraph 1 sentence 1 BGB, the general meeting decides in principle by resolution. Unless the statutes stipulate otherwise, **each member of the association** has **a vote** in the general meeting, which he or she must always cast in person. According to § 38 sentence 2 BGB, the exercise of membership rights - which includes the right to vote in the general meeting - cannot be left to another member. However, the articles of association may permit the voting rights of an association member to be exercised by a representative. If a **member of the association is not capable of acting or doing business**, the legal representative may exercise the right to vote, unless the articles of association do not permit voting by the legal representative. If a **legal entity or an association of persons with legal capacity** is a **member of** an association, the representative bodies may cast a vote on behalf of the member. Parents or guardians can exercise the right to vote for **underage members of the association who are legally incompetent**, i.e. all association members who have not yet reached the age of seven years.

The legal representative may also participate and vote at the general meeting on behalf of a minor **member of the association with limited legal capacity.** However, a minor with limited legal capacity may always exercise his or her voting rights himself or herself with the **consent**, i.e. the prior consent **of the legal representative.** Consent is not required according to § 107 BGB (German Civil Code), if the limited legally competent person merely gains a legal advantage by voting. As a rule, with the consent to join the association, the legal representative also gives the minor his or her consent to exercise the rights of membership and thus also the right to vote. If it is doubtful whether the legal representative has given the necessary consent to vote, the chairman of the meeting can demand that an association member with limited legal capacity submit a written consent for his or her vote. If this is not done, the chairman of the meeting can reject the vote in accordance with § 111 sentence 2 BGB with the consequence that it is invalid.

Pursuant to Section 32 (1) sentence 3 BGB, an effective resolution requires a **majority of the votes cast**, i.e. abstentions are not taken into account in determining the majority. For **resolutions amending the statutes** and resolutions on the dissolution of the association, § 33 paragraph 1 sentence 1 and § 41 sentence 2 BGB each provide for a
of three quarters of the votes cast. For a resolution to **change the purpose of the association, the consent of all association members** is required according to § 33 paragraph 1 sentence 2 BGB. The purpose of the association according to § 33 paragraph 1 sentence 2 BGB is the highest guiding principle of the association's activities. The consent of all members of the association to a change of purpose is required because no member assumes such a fundamental change of the association when joining. It should therefore be concluded jointly by all members of the association

can be. In all cases, however, the Articles of Association may also stipulate different majority requirements.

Resolutions shall take effect upon adoption. However, some resolutions still require certain implementation or execution measures in order to have the desired effect. For example, according to § 71 Paragraph 1 Sentence 1 BGB, an amendment to the statutes only becomes effective when the corresponding resolution has been entered in the register of associations. A resolution by which a member or a third party has been elected to the association's executive committee does not yet make this person a member of the executive committee. The elected person must also agree to a declaration of appointment (see also C.II.3).

The person chairing the meeting shall present the content of the respective resolution and announces the result of the vote. The statutes of a registered association must also determine the form in which resolutions are recorded (§ 58 number 4 BGB).

The provision in the statutes governing the authentication of decisions should be adapted to the requirements of the law on registers. If a resolution is a prerequisite for entry in the register, as is the case, for example, with the entry of amendments to the articles of association, the provision in the articles should ensure that the register court can check whether the resolution has been duly adopted. For this reason, most of the association's statutes stipulate that minutes of the general meeting must be drawn up, in which at least the number of members present, the establishment of the quorum, the motions submitted, the type of vote and the exact result of the vote must be recorded. It should also be stipulated that the minutes of the resolution must be signed and by whom. According to the law on associations, however, notarisation is not a prerequisite for the validity of the resolution.

II. executive board

1. legal status of the management board

Every association must have a board of directors. This board can consist of one or more persons. According to § 64 BGB the members of the board and their power of representation are entered in the register of associations. Often the board of directors consists of several persons, because this way they can consult and control each other.

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If the board of an association consists of only one person, no one can act effectively on behalf of the association - for example, if the board member dies or is prevented from representing the association by illness. However, this can also occur in the case of a board consisting of several persons, where only all board members can jointly represent the association.

If an association is without a board of directors capable of acting, § 29 BGB allows the **emergency appointment of board members** by the local court in urgent cases. Responsible for the appointment of an emergency board is the district court, which keeps the register of associations for the district in which the association has its seat. Any member of the Association, any member of the Executive Board and any other person with an interest worthy of protection in the appointment of an Emergency Executive Board, e.g. also a creditor of the Association, may submit an application. The application can be made in writing or for the record of the registrar of the office at the local court. It is advisable that the application should also already name persons as possible members of the emergency board. In this case, the persons nominated should also be asked whether they are willing to take over the office. The application can then also be accompanied by statements from the proposed persons announcing that they are prepared to exercise the office of emergency board member if appointed by the court. 2. tasks of the board

2. tasks of the executive board

According to § 27 paragraph 3 BGB the executive committee is basically the **management organ** of the association. The management by the executive board includes all activities to promote the purpose of the association, unless they are assigned to another organ by law or the statutes.

By law, the business that affects the foundations of the association - such as amendments to the statutes or the dissolution of the association - is assigned to the general meeting. Larger associations often have full-time managing directors who manage the current business of the association. However, the articles of association can also assign further business to the executive committee.

The executive committee is the **representative body** of the association. It represents the association in and out of court. If the board consists of only one person, the board member is entitled to represent the association alone.

If the executive committee consists of several persons and the statutes do not contain any regulation on the type of representation, the association is represented by a majority of the members of the executive committee according to § 26 paragraph 2 sentence 1 BGB.

The **power of representation of** the Executive Board is comprehensive and unlimited pursuant to § 26 (1) sentence 2 BGB. However, the power of representation can be limited by the articles of association according to § 26 Paragraph 1 Sentence 3 BGB. However, restrictions on the active power of representation of the executive board may never render the association incapable of action. For example, the statutes can stipulate that the executive board can only conduct real estate transactions with the consent of another organ of the association. However, the statutes should clearly state that this is not only an internal agreement within the association, but that the power of representation of the board of directors is dependent on the agreement. Such a **restriction of the power of representation, which acts against third parties**, must be **entered** in the **register of associations in** accordance with § 64 BGB.

Note: An association has stipulated in its statutes that the board of directors can only conduct property transactions for the association with the approval of the general meeting. However, this restriction of the power of representation was not entered in the register of associations. A third party concludes a contract with the association's executive committee for the purchase of an association property. He does not know that the board of directors can only sell an association property with the approval of the general meeting. According to §§ 68 and 70 BGB, the association must let the contract apply against itself. In this case, it cannot invoke against the third party that the executive board could not effectively represent the association because the restriction of the power of representation was not entered in the register of associations. If the restriction of the power of representation had been entered in the register of associations, then the association could have invoked it against the third party in accordance with §§ 68 and 70 BGB, irrespective of whether the third party was aware of the entry.

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The passive power of representation of a board member, i.e. the power of representation to receive declarations, cannot be limited. If someone has to make a declaration of intent to the association, he can do so to any board member. According to the mandatory provision of § 26 paragraph 2 sentence 2 BGB, all board members are authorised to accept declarations made to the association.

The law expressly mentions **other tasks of the Management Board:**

- the registration of the association in the register of associations in order to obtain legal personality,
- the registration of changes to the statutes and the board of directors as well as the submission of a certificate on the number of members of the association upon request of the registration court.

The board is also obliged to fulfil the obligations of the association under insolvency law. In case of insolvency or over-indebtedness of the association, the board has to apply for the opening of insolvency proceedings according to § 42 paragraph 2 sentence 1 BGB. If the filing of the application is delayed, the members of the board may be liable to pay damages to the creditors of the association according to § 42 paragraph 2 sentence 2 BGB. The provision of § 15a of the Insolvency Code (InsO), which regulates the obligation to file for insolvency for the members of the representative bodies of legal entities, does not apply to associations. In this respect, § 42 BGB contains a conclusive special regulation, in addition to which the general provision of § 15a InsO does not apply.

3. appointment of the management board

The office of a member of the Management Board is established by the so-called "appointment". According to § 27 paragraph 1 BGB, this is always done **by the general meeting**. However, the articles of association can, according to prevailing opinion, also transfer this competence to another body - such as an advisory board - or to a third party. A third party can be, for example, another association or a state or church body.

The order is a two-part act. On the one hand, a **decision of the competent appointing body** is required; as a rule, this is done by an appointment resolution of the general meeting. If the election takes place in accordance with the statutory provisions, whoever receives the majority of the votes cast is elected in accordance with § 32 Paragraph 1 Sentence 3 BGB. On the other hand, a **declaration of appointment is** required. The declaration of appointment must be sent to the elected person and he or she must agree to it, as taking over the office is also associated with considerable duties. If the elected person takes part in the general meeting, the declaration of appointment will normally follow the election immediately. It is usual that the chairman of the meeting asks the elected person whether he accepts the election. This is the declaration of appointment. With the acceptance of the election, the elected person agrees to this declaration of appointment. The office of chairman is thus transferred to him.

Not only members of the association, but also non members of the association can be appointed to the board. However, the statutes of the association can stipulate that only members can hold executive board positions. Such a regulation is found in the statutes of many associations.

Members of the board can be natural and legal persons as well as other associations of persons with legal capacity. Since the appointment as a member of the board is also connected with obligations towards the association, minors with limited legal capacity who are at least seven but not yet 18 years old can only become a member of the board with the consent of their legal representatives - i.e. usually their parents. If a legal entity or an association of persons with legal capacity is a member of the board, it exercises its office through its representative body. In practice, however, the appointment of a legal person to the board of directors is rare. This is conceivable for associations, such as umbrella organisations, whose members are only legal entities.

Pursuant to § 27 (3) sentence 2 BGB (German Civil Code), a member of the Board of Management exercises his office free of charge. If the activity of a member of the Executive Board is to be remunerated, this must be permitted by the Articles of Association. Only then may the association conclude an employment contract with the board member in which remuneration is agreed. The General Meeting is responsible for concluding an employment contract with a member of the Board of Directors, unless the Articles of Association provide otherwise. The general meeting may appoint a committee to conclude the contract of employment or may commission other board

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members to conclude it, unless the association has a board consisting of only one person. Since the executive committee cannot conclude the contract with itself (cf. § 181 BGB), in this case the appointment of the executive committee member is not possible. As a rule, the employment contract with a member of the management board is a contract of service for which there are no formal requirements. For reasons of proof, however, it is advisable to draw up the employment contract in writing, with the persons commissioned by the general meeting signing on behalf of the association.

The appointment and employment contract are two separate legal transactions. The termination of the appointment does not generally lead to the termination of the employment contract. However, it can be agreed in the employment contract that it also ends with the termination of the appointment.

4. activities of the board and liability towards the association

The members of the board are obliged by their appointment to conduct the business assigned to the board and to represent the association. In conducting its business, the board of directors is bound by the instructions of the general meeting. It must **implement** the **effective resolutions** of the General Meeting. It has to provide the association, i.e. the

General Meeting to **provide information and accountability**. Most of the association's statutes stipulate that the executive committee must report at least annually to the general meeting on its management and submit a statement of costs (accounting obligation). The legal accounting obligation according to § 27 paragraph 3 in connection with § 666 BGB is fulfilled by the presentation of a statement of income and expenditure and of receipts. The articles of association may provide for extended accounting obligations.

If the board members culpably violate their duties and the association suffers damage as a result, they are generally obliged to **compensate** the association for the **damage in** accordance with § 280 paragraph 1 BGB. By "culpable" breach of duty is understood not only intentional, but also any form of negligent misconduct. There is no claim for damages against the executive committee if the executive committee has acted on the instructions of the general meeting.

In particular, liability was considered too strict for board members who work free of charge or for very low remuneration. For this reason, the Act on Limiting the Liability of Association Board Members Working in an Honorary capacity of 28 September 2009 (Federal Law Gazette Part I page 3161) and the Act on Strengthening the
of 21 March 2013 (Federal Law Gazette Part I page 556) **limits the liability of members of the Management Board and other executive bodies. Members of the Executive Board who are active without remuneration** and **members of the Executive Board** who only receive an **annual remuneration** for their work **which does not exceed 720 euros** are only liable to the Association pursuant to Section 31a (1) of the German Civil Code (BGB) for damage caused in the performance of the duties of the Executive Board in the event of intent or gross negligence.

Members of the board may also cause damage to members of the association or third parties when performing their duties.

Example: One of the tasks of the board member of a sports club is to clear snow from the club's premises in winter. One day he forgets to clear the snow. A club member and a guest who had visited the club restaurant fall on the uncleared club premises. Both are seriously injured in the fall.

For such damages, the members of the association and third parties are liable to the association to which the breach of duty of the board member is attributed according to § 31 BGB. However, if the board member himself is also liable, he may also be liable for damages to the members of the association and third parties. In the example case, a claim for damages by the association member and the third party against the board member can arise from § 823 Paragraph 1 BGB. Whoever wilfully or negligently violates the life, body, health, freedom, property or any other right of another unlawfully, is obliged to compensate the other for the resulting damage according to § 823 paragraph 1 BGB. In this case, the member of the Management Board has not fulfilled his obligation to clear the snow. The body and health of the club member and the visitor to the club restaurant were thereby injured. If the board member has violated his obligation to clear the snow intentionally or negligently and if the injured person has suffered damage as a result, e.g. the costs of treatment of the injury or loss of earnings, then the liability situation of § 823 paragraph 1 BGB is fulfilled. The injured party can demand compensation for the damage incurred from the member of the board.

If, however, a member of the board is active free of charge or only receives an annual remuneration for his activity which does not exceed 720 euros, he is only liable to members of the association for damages caused in the performance of his board duties in accordance with § 31a paragraph 1 sentence 2 BGB if there is intent or gross negligence. In our example case, the board member would therefore only be liable to the association member according to § 823 paragraph 1 BGB if he or she has violated his or her obligation to clear the snow intentionally or through gross negligence. If he has only acted with simple negligence, liability is excluded according to § 31a BGB. However, the legal limitation of liability according to § 31a paragraph 1 sentence 2 BGB can be excluded towards the members of the association by the statutes of the association, so that the executive committee must also be liable towards the members of the association according to the general regulations.

If it is disputed whether the board member has caused a damage intentionally or through gross negligence, the damaged association or the damaged association member bears the burden of proof according to § 31a paragraph 1 sentence 3 BGB.

The liability of members of the Management Board is not limited vis-à-vis third parties. However, board members who work free of charge or only receive an annual remuneration not exceeding 720 euros, may, if they are

obliged to compensate a third party for damage caused by them in the performance of their board duties, demand from the association, as a board member, in accordance with § 31a paragraph 2 BGB (German Civil Code) that the association releases them from their liability towards the third party. This claim for exemption exists if the damage was not caused by the board member intentionally or through gross negligence. Exemption from liability means that the board member can demand that the association fulfil the injured party's claim for damages or otherwise ensure that the claim can no longer be asserted against the board member. Here too, if it is disputed whether the board member has caused the damage through gross negligence or intentionally, the association bears the burden of proof for the existence of intention or gross negligence.

An effective limitation of the liability risks of the association's executive boards is also achieved by the legal institution of **discharge.** The associations can make regulations in the statutes on the discharge of the board members, in particular determine which association organ decides on the discharge.

Many club statutes therefore explicitly state that the general meeting is also responsible for the discharge of the board members. However, even without a corresponding provision in the statutes, the general meeting can also discharge the members of the board, for example at the end of the term of office or of each fiscal year or after fundamental management measures.

By ratifying the actions of a member of the board, the association approves the previous conduct of office or the management measures of a board member. In doing so, the association waives all claims for damages due to management in breach of duty, which were known to the general meeting upon careful examination of all documents and reports.

Note: The members of the Board of Management have no right to be discharged. The general meeting can also discharge only individual board members and refuse to discharge the others. The members of the board who are not exonerated are still liable to the association for damages resulting from a dutiful management according to the general regulations.

5. end of the office of the board

The term of office of members of the board of directors is not regulated by law. However, the statutes of most clubs provide for a fixed term of office. If the statutes do not stipulate otherwise, the office of a board member ends with the **expiry of the intended term of office**. However, the statutes may stipulate that the members of the board of directors continue to exercise their office until new board members are elected.

However, the office of a board member can also end before the end of the term of office - for example, it ends prematurely if a board member **dies or** becomes **legally incompetent.** The office may also end if the personal requirements or characteristics that are mandatory under the articles of association for someone to be eligible for a board position are no longer fulfilled (e.g. activity in a particular profession or age limit). If only members of the association can be appointed as members of the board, the office of a board member also ends if the board member loses his or her membership of the association.

A member of the Executive Board may also **resign from** his office **prematurely**. If there is no employment contract between the board member and the association, the resignation is possible at any time without giving reasons. However, the board member may only resign from office immediately if it is ensured that a functioning board continues to exist. This only applies if there is an important reason for the resignation, i.e. if the board member can no longer be expected to continue in office.

The resignation must be declared to the association. It can be declared to the general meeting, if this is the appointing body. If an association has more than one member of the board, the resignation is also possible vis-à-vis another member of the board, who is also authorised to represent the association at the reception in accordance with § 26 paragraph 2 sentence 2 BGB.

Note: If a member of the board resigns from office outside of the general meeting, it is recommended to declare the resignation in writing (§ 126 BGB). The letter should also state the date on which the resignation is to take effect. In this way, disputes about whether and when the office of board member ends can be avoided. A resignation can, however, become effective at the earliest when the letter is received by the association.

If there is an employment contract between the board member and the association, the board member is obliged to the association to continue the board office as long as the contract is effective. If the board member resigns from office nevertheless, this may constitute a breach of his or her obligations under the employment contract, which may result in a liability for damages to the association.

In the event of resignation of one or more members of the Executive Board, the remaining members of the Executive Board shall convene a General Meeting for the election of the necessary new Executive Board members. If all board members have resigned from their offices, it is still possible for one of the former board members to convene a general meeting in accordance with § 121 paragraph 2 sentence 2 of the German Stock Corporation Act (Aktiengesetz), as long as it is still listed in the register of associations as being entitled to represent the association. However, if this is also out of the question or if the convening of a general meeting cannot be awaited due to urgent matters, an emergency board can be appointed by the local court in accordance with § 29 BGB (see C.II.1 above for the appointment procedure).

The association can **revoke** the appointment as a member of the board according to § 27 paragraph 2 sentence 1 BGB at any time. The articles of association may provide that revocation shall only be permissible for good cause, for example in the event of a breach of duty or inability to manage the business properly. The appointing body, i.e. in most associations the general meeting, is responsible for revocation. It decides by resolution. However, the decided revocation only becomes effective when the revocation declaration is communicated to the board member concerned.

III. special representatives

The size of an association and the scope of its administrative activities may make it necessary to appoint further representatives for the association in addition to the board of directors. According to § 30 BGB, the articles of association can stipulate that special representatives can be appointed for certain business transactions, which must be described in more detail. In this case, for example, the management of a branch office of the association or the business of day-to-day administration can be considered as such transactions. Characteristic for the assigned business of the special representative is an independence and responsibility similar to that of the board. However, the special representatives differ from the board of directors in that they are only

responsible for a delimited business area, whereas the responsibility of the board of directors is comprehensive. The business delegated to the special representative and the power of representation granted to him/her should be clearly and unambiguously defined in the statutes in order to avoid legal uncertainty about the status of the special representative and conflicts of competence between special representative and board members.

The appointing body specified in the Articles of Association is responsible for the appointment. In the absence of a provision in the statutes, the general meeting is also responsible for the appointment of special representatives. A special representative and his or her power of representation must be entered in the register of associations.

For the liability of special representatives towards the association, the
The same regulations apply to members of the association and third parties as for the liability of board members. The Act on Strengthening Volunteer Work of 21 March 2013 (Federal Law Gazette Part I page 556) has also limited the liability of **special representatives working free of charge** and special representatives who only receive an **annual remuneration not exceeding 720 euros** for their work. Pursuant to Section 31a of the German Civil Code (BGB), the same limitations of liability apply to these special representatives, who essentially work free of charge, as to comparable members of the Management Board and they have the same claims for exemption from liability (see in this respect the comments under C.II.4 on the liability of Management Board members).

IV. Membership

1. rights

Members of the association have rights and duties due to their membership in the association. Membership cannot be transferred, inherited or pledged, unless otherwise provided for in the statutes. **Members' rights** are, for example, the right to use the association's facilities and to participate in association events, the right to demand and force the convening of the general meeting together with other members of the association (§ 37 BGB), the right to participate in the general meeting, the right to stand for election (i.e. the right to be elected as a member of the board of directors or other association body) and the right to resign from the association (§ 39 BGB).

2. duties

Among the most important **duties** of the members are the obligation to contribute and the duty of loyalty. Due to the obligation to contribute, members are obliged to pay the fixed contributions. The fiduciary duty requires members to promote the interests of the association and to refrain from any conduct that is detrimental to the association. The members are also expected to be willing to take over the offices of the association.

3. liability

In addition to members of association bodies, **association members** often also perform tasks of the association. The law to strengthen the honorary office of 21 March 2013, through § 31b BGB, puts these members of the association on an equal footing with the members of organs according to § 31a BGB in terms of liability, if they work for the association essentially free of charge. Their liability towards the association should be limited to the same extent as the liability of the board members. The limitation of liability and the claim for exemption cannot be excluded or limited by the statutes. However, the limitation of liability shall only apply to the association. In the event of damage to others, i.e. also to other members of the association or third parties, the members of the association who carry out tasks for the association in accordance with § 31b paragraph 2 BGB should have a claim for exemption from liability against the association to the same extent as a member of an organ.

The limitation of liability and the right to exemption from
Liability exists only if a member of the association has caused damage in the performance of statutory association tasks which have been **assigned to him/her.** These tasks are all tasks which are incumbent upon the association within the scope of its purpose. The association member must have been active free of charge or only for a remuneration not exceeding 720 Euro per year. If a member of the association is active for a small annual remuneration, these tasks will regularly be long-term recurring activities for the association, which are primarily carried out in the interest of the association. If a member of the Association performs Association tasks without the knowledge of the Association, it is not justified to limit the liability of the member towards the Association or to grant the member a claim for exemption from liability towards third parties.

If it is disputed whether the member of the association has caused a damage intentionally or through gross negligence, the burden of proof is borne by the injured association.

V. Subsequent changes in the association

In the course of the existence of an association, the circumstances of an association may change and new demands may be made on the association. This can lead to the fact that the statutes of the association must also be changed. Resolutions on amendments to the articles of association are subject to stricter requirements than resolutions on other matters according to the statutory rules.

1. amendments to the articles of association

In principle, the general meeting is responsible for amendments to the statutes. The general meeting passes a resolution on the amendment of the statutes with a **majority of three quarters of the votes cast** (§ 33 Paragraph 1 Sentence 1 BGB), unless otherwise stated in the statutes. Every amendment to the articles of association must be **entered in the register of associations** to be effective (§ 71 Paragraph 1 Sentence 1 BGB). Without this entry the amendment is not effective. Amendments to the statutes are all changes to provisions in the statutes, for example the change of the purpose of the association, the association name or the transfer of the registered office, but also changes to the provisions of the statutes on the internal order of the association.

Note: A **transfer of the registered office** can be effected within the Federal Republic of Germany without any problems. The application for entry in the register of associations must be submitted to the court of the previous seat. This hands the procedure over to the court of the new seat. The court of the new seat then examines the application and carries out the registration.

If the amendment to the statutes concerns the **amendment of the purpose of the association**, it can only be resolved with the consent of all members, unless the statutes provide otherwise (§ 33 paragraph 1 sentence 2 BGB).

Members who do not appear at the vote can also give their consent in writing outside the general meeting.

However, not every change to the provision in the articles of association regarding the purpose is a change of purpose according to § 33 (1) sentence 2 BGB. If the purpose of the statutes is only to be rewritten, supplemented or extended without fundamentally changing the previous purpose of the association, this does not normally constitute a change of purpose.

Note: A model for the registration of an amendment to the Articles of Association can be found on the website of the Federal Ministry of Justice and Consumer Protection: http://www.bmjv.de/SharedDocs/Downloads/DE/Formulare/Muster_Anmeldung_Aenderungen.pdf?__blob=publicationFile&v=2.

2. change of members

The membership structure of an association is also subject to change.

a) Acquisition of membership

Membership is acquired by participating in the foundation of the association or by joining the already founded association at a later date. For an entry into the association the applicant and the association conclude an admission contract. For this purpose the applicant sends an application for admission or a declaration of accession to the association. The admission contract is concluded when the association accepts the application and informs the applicant of its acceptance.

According to § 58 No. 1 BGB, provisions on the entry and withdrawal of members to and from the registered association are to be found in the statutes. The association is in principle free to decide on the application for admission and, if necessary, to refuse admission without giving reasons. However, an association, especially if it has a superior position of power in the economic or social sphere, may be obliged to accept a person willing to join.

For a person who is legally incapable, the legal representative can make the declaration of accession. A minor, who is at least seven but not yet 18 years old, requires the consent of the legal representative to join. For legal entities

and associations of persons with legal capacity, their competent representative bodies act upon accession.

b) Lapse of membership

Each membership ends with the termination of the association. The membership can also expire by resignation of the member, by death of the member or by exclusion of the member from the association. Thus, the statutes can determine that a member will be excluded from the association, for example in case of a serious violation of the member?s duties, or provide for an automatic expiration of the membership in these cases.

According to § 39 paragraph 1 BGB, members are entitled to withdraw from the association at any time. The statutory right of withdrawal cannot be excluded by the statutes. However, the statutes may stipulate a period for withdrawal. According to § 39 paragraph 2 BGB, however, this period may not exceed two years.

In order to resign from the association, the member must submit a declaration of resignation to the board of directors entitled to represent him. It is customary and advisable to send the resignation to the board in writing by registered letter or against a confirmation of receipt. With the coming into effect of the resignation or other termination of the membership, all membership rights and obligations expire.

D. End of the club

Just like the formation of the registered association as a legal entity with its own legal personality, its termination is also regulated by the law on associations. The termination of a registered association usually requires its **dissolution** and in most cases a subsequent **liquidation.** However, there are also cases in which the association ceases to exist in other ways, e.g. through a transformation.

The law on associations contains sufficient provisions for the termination of the association. These regulations are often of a mandatory nature, so that in this area the possibilities of structuring are limited by the statutes. The legal regulations allow an orderly termination of an association even without additional provisions in the statutes. Nevertheless, when the association is founded it is worthwhile to check to what extent the legal regulations on dissolution and liquidation should be changed, supplemented or filled in by provisions in the articles of association for the respective association. In particular in the case of associations that are only established for a certain period of time, so that it is already clear at the time of foundation that they will have to be dissolved again in the foreseeable future, it should be considered whether special provisions in the statutes should also be made for the termination of the association.

I. Dissolution of the association

An association can be dissolved for various reasons and in various ways. However, the legal consequences of dissolution are largely the same. An association can be terminated with the dissolution or become a liquidation association and end only after the liquidation.

1. grounds for dissolution

Every association can be dissolved by its members - even without this having to be regulated in the statutes. According to § 41 BGB a resolution of the general meeting is required for the dissolution. The resolution requires at least a majority of three quarters of the votes cast. However, the statutes may also stipulate other majority requirements for the dissolution resolution. The statutes may stipulate a lower, but also a higher majority requirement and thus facilitate or impede the dissolution.

Note: Due to the particular importance of the resolution on dissolution, any other majority requirement for the resolution on dissolution must always include a clause in the Articles of Association expressly referring to the dissolution. A provision in the articles of association which only generally regulates the passing of resolutions by the general meeting of members cannot modify the majority requirement for the dissolution resolution in § 41 sentence 2 BGB.

In addition, an association may also be dissolved by, for example

the opening of insolvency proceedings or if the insolvency court has rejected the petition to open insolvency proceedings for lack of assets with legal effect,
time lapse, if it was established for a specific period only,
the transfer of the association's headquarters
abroad, the loss of all members.

The withdrawal of legal capacity has the same effects as dissolution in the case of a registered association. A registered association must, for example, be deprived of legal capacity under § 73 BGB if the association has **fewer than three members.**

2. legal consequences of the dissolution

As a rule, the association does not end with the dissolution or withdrawal of legal capacity. According to § 46 BGB, dissolution or withdrawal of legal capacity only leads to the termination of the association if the association's assets in the case of dissolution or withdrawal of legal capacity fall to the tax authorities, i.e. to the Federal Republic of Germany or a federal state. This can be ordered by the statutes or on the basis of the statutes by resolution of the general meeting. However, the assets can also fall to the tax authorities in accordance with § 45 paragraph 3 BGB if no corresponding regulation has been made by the statutes or a resolution of the general meeting. On the basis of § 45 BGB it can always be determined, even without a corresponding regulation in the statutes, who is to receive the association's assets after the end of the association, i.e. who is **entitled to receive them.** Nevertheless, it makes sense to expressly determine the persons entitled to receive the assets in the articles of association.

Note: According to § 5 of the model statutes in the appendix to the German Tax Code, non-profit associations must stipulate that the association's assets are to be transferred to a legal entity under public law or another tax-privileged body, which in turn must use them for tax-privileged purposes.

3. obligations of the association after the dissolution

If an association has been dissolved by resolution of the general meeting, the **board of directors** of the association must **apply for dissolution for entry in the register of associations in** accordance with § 74 paragraph 2 BGB. The same applies if an association founded for a specific period of time has been dissolved due to the passage of time.

If an association is dissolved or its legal capacity is withdrawn and the association's assets do not fall to the tax authorities, its **liquidation** is additionally required to terminate the association in accordance with § 47 BGB. This is always the case if the statutes or a resolution of the general meeting effectively designates a person entitled to claim other than the tax authorities or if the association's assets fall to the members of the association according to § 45 paragraph 3 BGB. However, in the event of dissolution of the Association through the opening of insolvency proceedings, the insolvency proceedings take the place of liquidation in accordance with §§ 47 ff. BGB.

If a liquidation has to take place, then the **executive committee** has to **register the liquidators to the register of associations according to § 76 paragraph 2 BGB**.

Note: A model for the application for a resolution of a Association and the liquidators can be found on the website of the Federal Ministry of Justice of Germany: http://www.bmjv.de/SharedDocs/Downloads/DE/Formulare/Muster_Aufloesung_Verein.pdf?__blob=publicationFile&v=1.

II. liquidation of the association

If after the dissolution of an association its liquidation is still necessary, the association continues to exist according to § 49 paragraph 2 BGB until the end of the liquidation. **However,** upon entering the liquidation stage, **the advertising activities of the association end**. The previous purpose of the association is replaced by the **purpose of liquidation**, i.e. the activities of the association are then limited to the termination of the current business of the association, to convert the existing assets of the association into money, to satisfy the creditors and to pay out the surplus to the beneficiaries.

The liquidation association also still has its members and a general meeting, which can still be convened. Even during the liquidation, the general meeting can still change the statutes of the association. In particular, the general meeting can also appoint and dismiss liquidators. As long as the association is not yet terminated and the reason for dissolution does not oppose it, it can also **decide** to **continue the association so that** it becomes an advertising association again. As a rule, such a continuation resolution is always possible if the association has been dissolved by resolution of the general meeting or by expiry of a deadline.

1. competence for liquidation

For the liquidation of an association, the law on associations provides for a special association organ, the liquidators. They take the place of the board of directors as the statutory management and representative body. "Born liquidators" are the members of the board who, according to § 48 paragraph 1 sentence 1
BGB are also responsible for liquidation. With the entry of the association into the liquidation stage, the members of the board become the liquidators. If § 48 paragraph 1 sentence 1 BGB is applicable or if the task of liquidation is also expressly assigned to the board in the statutes, then there is continuity of office for the individual board members. No special appointment act is required to make the members of the board liquidators.

However, the associations may also appoint other persons as liquidators in the statutes or the general meeting may appoint other liquidators. If no special regulations for the appointment of these liquidators have been made in the statutes, they are to be appointed in accordance with the provisions existing for the appointment of the board of directors.

If a dissolved association has no liquidators and the general meeting cannot appoint any because without the liquidators there is no convening body, liquidators can be appointed by the local court by way of emergency appointment in accordance with § 48 Paragraph 2 BGB in conjunction with § 29 BGB.

2. legal status of the liquidators

The liquidators have the legal status of the executive committee according to § 48 paragraph 2 BGB. They are therefore the management and representative body of the association. Just like members of the board, the general meeting can also dismiss liquidators according to § 48 Paragraph 2 in connection with § 27 Paragraph 2 Sentence 1 BGB at any time. The liquidators can also in principle resign from office at any time without notice.

The scope of the management authority is determined by the purpose of the transaction. If an association has several liquidators, these can only pass resolutions on management in accordance with § 48 Paragraph 3 BGB unanimously and can only represent the association jointly.

Note: However, the statutes may provide for a different majority for the adoption of resolutions and other forms of representation, in particular majority or individual representation for the liquidators.

3. tasks of the liquidators

The liquidators must **wind up** the **association** according to § 49 paragraph 1 BGB, i.e. they must terminate the current business of the association, collect the claims of the association, convert the remaining assets into money, satisfy the creditors and pay out the surplus to the beneficiaries.

The liquidators of the **general meeting** have
to bill. As far as the statutes do not contain any special regulations, at least a final account is to be issued according to § 48 paragraph 2 in connection with § 27 paragraph 3 and § 666 BGB and, if necessary, a distribution plan is to be drawn up for the remaining assets of the association. If the liquidation lasts for a longer period of time, the liquidators must also **properly manage** the **existing assets of the association**, for example invest existing capital in an interest-bearing manner. The liquidators must also decide, if the statutes do

not contain any regulation in this respect, whether and **where books and writings of the association are** to be **kept** after the termination. However, they can also let the general meeting decide on this and then implement their decision.

They must publicly announce the dissolution of the association according to § 50 paragraph 1 BGB. In the announcement the creditors of the association are to be requested to file their claims against the association. This announcement must be published in the official journal designated by the association for its announcement. If the association has not designated an announcement sheet in its statutes or if the sheet designated there has ceased to appear, the announcement must be published in accordance with § 50a BGB in the announcement sheet of the local court in whose district the association has its registered office.

As far as the liquidators **know** the **creditors of the association**, they must request them **to register their claims** by **special notification** according to § 50 paragraph 2 BGB. Known creditors are all creditors who are known to at least one of the liquidators in person. The law does not provide for a special form of notification to known creditors.

Note: However, it is advisable to provide for a written communication and to send it to the creditor in such a way that its receipt can also be proved in the event of a dispute.

If the liquidators do not fulfil their duties of disclosure under § 50 of the German Civil Code and if a creditor suffers damage as a result, they are obliged to compensate this damage under § 53 of the German Civil Code if they have acted culpably.

The liquidators may disburse the assets of the association according to § 51 BGB at the earliest one year after the announcement of the dissolution **(blocking year)**.

If a creditor of a known claim does not respond, the amount owed must be deposited. The creditor shall be provided with security for claims which cannot yet be satisfied or which are still in dispute.

If the creditors are satisfied or secured, the remaining assets of the association can be paid out to the entitled persons after the end of the blocking year according to § 51 BGB. If the remaining assets of the association are paid out before the end of the blocking year and a creditor suffers a loss as a result, the liquidators are obliged to compensate this loss if they have acted culpably.

Note: It is therefore not advisable for liquidators to pay out association assets to the beneficiaries before the end of the blocking year.

4. completion of the liquidation

The liquidation will be concluded with the implementation of any necessary liquidation measures, such as the termination of legal proceedings with creditors of the Association and the distribution of the liquidation surplus to the beneficiaries entitled to receive it at the earliest after the end of the blocking year. The completion of the liquidation is a prerequisite for the termination of the association. With the termination of the association the Office of the liquidators. However, the liquidators are still obliged under § 76 Paragraph 2 Sentence 3 BGB to register the termination of the association in the register of associations. The termination of the association must be entered in the register of associations in accordance with § 76 Paragraph 1 Sentence 2 BGB, after which the register sheet of the association is closed in accordance with § 4 Paragraph 2 Number 2 of the Regulation on the Register of Associations. The register court can also close the register sheet of a dissolved association in accordance with § 4 paragraph 2 sentence 2 of the Association Register Regulation if no further entry has been made during one year after the registration of the dissolution and a written request from the register court to the association has remained unanswered.

Note: A model for the registration of the termination of an association can be found on the website of the Federal Ministry of Justice and Consumer Protection:
http://www.bmjv.de/SharedDocs/Downloads/DE/Formulare/sample_agreement_club.pdf?__blob=publicationFile&v=2.

E. General information on tax law

Special requirements for the formation of the association and the conduct of the association's business may arise from tax law if an association wishes to take advantage of tax concessions.

Tax concessions are granted in particular to non-profit associations. These are associations whose activities are aimed at this:

- to promote the general public selflessly in a charitable way in the material, spiritual or moral field (§ 52 AO),
- in a charitable way to selflessly support needy or low-income persons (§ 53 AO) or
- to want to promote the religious communities of public law selflessly with church activity (§ 54 AO).

In order for an association to be recognised by the tax authorities as a non-profit organisation, its articles of association and activities must meet special requirements which cannot be described in detail here. The requirements are regulated in §§ 51 ff. of the German Fiscal Code (AO). In the **appendix to the Fiscal Code there** are **model statutes** which also apply to associations.

Note: It is advisable to contact the relevant tax office before setting up a non-profit association to ensure that the association's articles of association meet the requirements of the non-profit law.

F. Further Information

The Ministries of Justice and Finance of the Länder offer numerous other brochures on the law of associations and on tax tips for associations. These can be found on the respective websites of the federal states.

The Federal Ministry of Labour and Social Affairs has also published a brochure on the subject of "Accident insurance in voluntary work".

The sample templates on the law governing associations - for example the founding protocol of an association or registration with the local court - can be found on the website of the Federal Ministry of Justice and Consumer Protection at http://www.bmjv.de/DE/Service/Formulare/ Formulare_node.html.

We hope that the guide will provide all interested parties with a first useful orientation in the most important questions of association law.
It cannot replace qualified legal counsel in individual cases.

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