

The Law on Associations and Foundations

Different laws apply to an association and a foundation. Below you can read the provision from the Dutch Civil Code for both legal forms.

These texts have been taken literally from the Civil Code, so no rights can be derived from them. The legal text has been updated as of 01-03-2018.

Note: CMTC-OVM is an association.

Title 2. Associations

Article 26

1. The association is a legal entity with members that is aimed at a specific goal, other than one that is described in article 53, paragraph 1 or paragraph 2.
2. An association is established by a multilateral legal act.
3. An association may not distribute profits among its members.

Article 27

1. If an association is established by notarial deed, the following provisions must be observed.
2. The deed will be executed in the Dutch language. A power of attorney to cooperate with the deed must be in writing. If the association has its registered office in the province of Fryslân, the deed can be executed in the Frisian language.
3. The deed contains the articles of association of the association.
4. The articles of association contain:
the name of the association and the municipality in the Netherlands where it has its registered office;
b. the purpose of the association;
c. the obligations that the members have towards the association, or the way in which such obligations can be imposed;
d. the manner of convening the general meeting;
e. the manner of appointment and dismissal of the directors;
f. the destination of the positive balance of the association in the event of dissolution, or the manner in which the destination will be determined.
5. The civil-law notary, before whom the deed is executed, ensures that the deed complies with the provisions of paragraphs 2-4. In the event of default, he is personally liable towards those who have suffered damage as a result.

Article 28

1. If an association has not been established in accordance with the first paragraph of the previous article, the general meeting may decide to have the articles of association recorded in a notarial deed.
2. Paragraphs 2-5 of the previous article apply mutatis mutandis.

Article 29

1. The directors of an association whose articles of association are included in a notarial deed, are obliged to have it registered in the trade register and an authentic copy of the deed, or an authentic extract of the deed containing the articles of association, at the office of that register.
2. As long as the statement at first registration and deposit has not been made, each director is jointly and severally liable for a legal act by which he binds the association, in addition to the association.

Article 30

1. An association whose articles of association are not included in a notarial deed cannot acquire registered property and cannot be an heir.
2. The directors are jointly and severally bound by the association for debts arising from a legal act that become due and payable during their administration. After their resignation, they are furthermore jointly and severally bound for debts arising from a legal act performed during their management, insofar as no one is bound for this in addition to the association pursuant to the previous sentence. Liability under one of the foregoing sentences does not rest on a person who has not previously been consulted about the legal act and who has refused to take it for his responsibility as a director when she became known to him. In the absence of persons who are connected by virtue of the first or second sentence next to the association, those who acted are jointly and severally bound.
3. The directors of such an association can register it in the trade register. If the articles of association have been drawn up in writing, they shall then deposit a copy thereof at the office of that register.
4. If the registration referred to in the previous paragraph has taken place, the person who is bound by virtue of paragraph 2 is only liable to the extent that the other party can demonstrate that the association will not comply with the obligation.

Article 31

[Expired on 01-01-1992]

Article 32

[Expired as of September 1, 1994]

Article 33

Unless the articles of association provide otherwise, the board decides on the admission of a member and, in the event of non-admission, the general meeting can still decide on admission.

Article 34

1. Membership of the association is personal, unless the statutes provide otherwise.
2. Unless the articles of association of the association provide otherwise, membership of a legal entity that ceases to exist as a result of a merger or division shall be transferred to the acquiring legal entity or to one of the acquiring legal entities in accordance with the description attached to the deed of division.

Article 34a

Commitments can only be attached to membership by or pursuant to the articles of association.

Article 35

1. Membership ends:
 - a. by the death of the member, unless the articles of association permit a transfer under inheritance law;
 - b. by cancellation by the member;
 - c. by cancellation by the association;
 - d. by dismay.
2. The association may terminate membership in the cases referred to in the articles of association, furthermore when a member has ceased to meet the membership requirements set by the articles of association, as well as when the association cannot reasonably be required to resign membership. continue. Unless the articles of association mandate this to another body, notice of termination is effected by the board.
3. Dismissal can only be pronounced if a member acts contrary to the statutes, regulations or decisions of the association, or if the association is unreasonably disadvantaged.

4. Unless the articles of association mandate this to another body, the removal shall be effected by the board. The member will be informed of the decision in writing as soon as possible, stating the reasons. Except where the resolution has been adopted by the general meeting pursuant to the articles of association, he can appeal to the general meeting or a body or third party designated for that purpose by the articles of association within one month of receipt of the notification of the resolution. The articles of association may contain a different regulation of the appeal, but the term cannot be set less than one month. The member is suspended during the appeal period and pending the appeal.
5. If membership ends in the course of a financial year, the annual contribution will nevertheless remain due in full, unless the articles of association provide otherwise.

Article 36

1. Unless the articles of association provide otherwise, termination of membership can only take place at the end of a financial year and with due observance of a notice period of four weeks; The General Terms and Conditions Act does not apply to this period. In any case, the membership can be terminated by cancellation by the end of the financial year following the one in which cancellation is made, or immediately, if it cannot reasonably be required to continue the membership.
2. A cancellation contrary to the provisions of the previous paragraph will terminate membership at the earliest permitted time following the date on which cancellation was made.
3. A member may also terminate his membership with immediate effect within one month after a decision restricting his rights or increasing his obligations has become known or communicated to him; the decision does not apply to him in that case. Members may be denied this power to terminate by the articles of association in the event of changes to the rights and obligations specified therein and also in general in the event of changes to pecuniary rights and obligations.
4. A member can also terminate his membership with immediate effect within one month after he has been notified of a decision to convert the association into another legal form, to merge or split up.

Article 37

1. The board is appointed from among the members. However, the articles of association may provide that board members can also be appointed outside the members.
2. The appointment is made by the general meeting. However, the articles of association may also regulate the manner of appointment differently, provided that each member can participate directly or indirectly in the vote on the appointment of directors.
3. The articles of association may provide that one or more of the board members, provided that less than half, is appointed by persons other than the members.
4. If the articles of association provide that a director must be appointed from a binding nomination at a meeting, the binding nature of that nomination may be removed by a resolution of that meeting adopted by at least two thirds of the votes cast. The articles of association may stipulate that at least a certain number of votes must be cast at this meeting; this number may not be set higher than two thirds of the number of votes that can be cast jointly by those entitled to vote.
5. If in accordance with the articles of association a board member is appointed by members or departments outside a meeting, the members must be given the opportunity to nominate candidates. The articles of association may provide that this right only accrues to a number of members jointly, provided their number is not set higher than one fifth of the number of members who can participate in the election. The articles of association may also provide that candidates thus appointed are only appointed if they have united at least a certain number of votes, provided that this number does not exceed two thirds of the number of votes cast.

6. A board member, even if he has been appointed for a specific period, may at any time be dismissed or suspended by the body that appointed him. A judgment to reinstate the employment contract between the association and the director cannot be pronounced.

7. Unless the articles of association provide otherwise, the board appoints a chairman, a secretary and a treasurer from among its members.

Article 38

1. Subject to the provisions of the following article, all members who are not suspended have access to the general meeting and each has one vote; a suspended member has access to the meeting in which the decision to suspend is discussed, and is authorized to speak about it. The articles of association may grant more than one vote to certain members.

2. Unless the articles of association provide otherwise, the chairman and the secretary of the board or their deputies also act as such at the general meeting.

3. The articles of association may provide that persons who are members of other bodies of the association and who are not members can exercise voting rights in the general meeting. However, the number of votes cast jointly by them may not exceed half the number of votes cast by the members.

4. Unless the articles of association provide otherwise, someone who is entitled to vote under paragraph 1 or paragraph 3 may grant another person entitled to vote in writing proxy to cast his vote.

5. The requirement of written power of attorney is met if the power of attorney has been recorded electronically.

6. The articles of association may provide that someone who is entitled to vote under paragraph 1 or paragraph 3 can exercise the voting right by means of an electronic means of communication.

7. For the purposes of paragraph 6, it is required that the person is entitled to vote can be identified via the electronic means of communication, can peruse directly the discussions at the meeting and exercise the voting right. The articles of association may provide that it is also required that the person entitled to vote can participate in the deliberation via the electronic means of communication.

8. The articles of association may provide that votes cast by electronic means of communication prior to the general meeting, but no earlier than on the thirtieth day before that of the meeting, are equated with votes cast at the time of the meeting.

9. By or pursuant to the Articles of Association, conditions may be set for the use of the electronic means of communication. If these conditions are set by virtue of the articles of association, they will be announced in the notice convening the meeting.

Article 39

1. The articles of association may provide that the general meeting shall consist of delegates elected by and from the members. The manner of election and the number of delegates are regulated by the statutes; each member must be able to participate directly or indirectly in the election. Paragraphs 4 and 5 of article 37 apply mutatis mutandis to the election. Article 38 paragraph 3 applies mutatis mutandis to persons who are members of other bodies of the association and who are not delegates.

2. The articles of association may provide that certain resolutions of the general meeting will be subject to a referendum. The statutes regulate the cases in which, the time within which and the manner in which the referendum will be held. Pending the outcome of the referendum, the implementation of the decision will be suspended.

Article 40

1. All powers in the association accrue to the general meeting, which are not assigned to other bodies by law or the articles of association.

2. A unanimous decision of all members or delegates, even if they are not together in a meeting, has the same force as a resolution of the general meeting, provided it is taken with foreknowledge of the board.

Article 41

1. The board convenes the general meeting as often as it deems desirable, or when it is required to do so by law or the articles of association. The articles of association may also grant this authority to others than the board.
2. At the written request of at least such a number of members or delegates as is authorized to cast one-tenth of the votes in the general meeting or of such a smaller number as stipulated in the articles of association, the board is obliged to convene the meeting. of a general meeting at a term of no longer than four weeks after submission of the request.
3. If the request is not acted upon within fourteen days, unless the articles of association provide otherwise for the manner of convening the general meeting, the petitioners themselves may proceed to convene such a meeting in the manner in which the board convenes the general meeting. convenes or in the event of an advertisement in at least one frequently read newspaper at the location where the association is located. The petitioners can then charge others than board members with the management of the meeting and drawing up the minutes.
4. Unless the articles of association provide otherwise, the requirement that the request be made in writing as referred to in paragraph 2 will be met if the request has been recorded electronically.
5. Unless the articles of association provide otherwise, if a member or delegate agrees to this, the convocation may be effected by means of a legible and reproducible message sent by electronic means to the address made known by him for this purpose.

Article 41a

Articles 37-41 apply mutatis mutandis to divisions of an association that are not legal persons and that have a general meeting and a board; that which is stipulated in those articles regarding the articles of association can be laid down in a department regulation.

Article 42

1. No change can be made to the articles of association of the association other than by a resolution of a general meeting, which is convened with the statement that an amendment to the articles of association will be proposed there. The term for convening such a meeting is at least seven days.
2. Those who have convened the general meeting for consideration of a proposal to amend the articles of association must, at least five days before the meeting, have a copy of that proposal, including the proposed amendment verbatim, in a suitable place for the members. make available for inspection until after the day on which the meeting is held. The proposal must be notified to the departments that make up the association and to delegates at least fourteen days before the meeting; the previous sentence does not apply in that case.
3. The provisions of the first two paragraphs do not apply if all members or delegates are present or represented at the general meeting and the resolution to amend the articles of association is taken unanimously.
4. The provisions of this article and the first two paragraphs of the following article apply mutatis mutandis to a resolution to dissolve.

Article 43

1. Unless the articles of association provide otherwise, a resolution to amend the articles of association requires at least two thirds of the votes cast.
2. Insofar as the power to amend the articles of association may be precluded, amendments are nevertheless possible by unanimous vote in a meeting in which all members or delegates are present or represented.
3. A provision in the articles of association, which limits the authority to amend one or more other provisions, can only be amended with due observance of the same restriction.

4. A provision in the articles of association, which excludes the power to amend one or more other provisions, can only be amended by unanimous vote in a meeting in which all members or delegates are present or represented.

5. If the association has full legal capacity, the amendment will not come into effect until a notarial deed has been drawn up. The directors are obliged to deposit an authentic copy of the amendment and the amended articles of association at the office of the trade register.

6. The directors of an association with limited legal capacity, whose articles of association have been deposited in a copy at the office of the trade register in accordance with article 30 paragraph 3 of this Book, are also obliged to deposit a copy of the amendment and of the amended articles of association there.

Article 44

1. Subject to restrictions according to the articles of association, the board is charged with the management of the association.

2. Only if this ensues from the articles of association, the board is authorized to decide to enter into agreements for the acquisition, alienation and encumbrance of registered property, and to enter into agreements whereby the association commits itself as a surety or joint and several debtor for a makes a third party strong or undertakes to provide security for a debt of another. The articles of association may bind this power to restrictions and conditions. The exclusion, limitations and conditions also apply to the authority to represent the association in respect of these acts, unless the articles of association provide otherwise.

Article 45

1. The board represents the association, insofar as the law does not dictate otherwise.

2. The articles of association may also grant the power to represent one or more directors. They can determine that a director may only represent the association with the cooperation of one or more others.

3. The power of representation that accrues to the board or a director is unlimited and unconditional, unless otherwise provided by law. A legally permitted or prescribed limitation or condition for the authority to represent can only be invoked by the association.

4. The articles of association may also grant powers of representation to persons other than directors.

Article 46

Insofar as the statutes do not provide the contrary, the association may stipulate rights for the benefit of the members and, insofar as this is expressly provided in the statutes, enter into obligations at their expense. It can demand fulfillment of stipulated rights and compensation from a member, unless this precludes this.

Article 47

In all cases in which the association has a conflict of interest with one or more directors or supervisory directors, the general meeting can appoint one or more persons to represent the association.

Article 48

1. The board shall issue an annual report at a general meeting within six months after the end of the financial year, unless this term is extended by the general meeting, on the course of affairs in the association and on the policy pursued. It submits the balance sheet and the statement of income and expenditure with an explanation to the meeting for approval. These documents are signed by the directors and supervisory directors; if the signature of one or more of them is missing, this shall be stated, stating the reasons. After the term has expired, any member of the joint directors can claim in court that they comply with these obligations.

2. If there is no supervisory board and if a statement from an accountant as referred to in Article 393 paragraph 1 is not submitted to the general meeting regarding the fairness of the documents, the general meeting shall annually appoint a committee of at least two members

who are not may be part of the board. The committee examines the documents referred to in the second sentence of paragraph 1, and reports its findings to the general meeting. The board is obliged to provide the committee with all the information it requests for its investigation, to show it the cash register and the assets if desired, and to make the books, documents and other data carriers of the association available for consultation.

3. An association that maintains one or more enterprises which, in accordance with the law, must be registered in the trade register, shall state the net turnover of these enterprises in the statement of income and expenditure.

Article 49

1. Annually within six months after the end of the financial year of an association as referred to in article 360 paragraph 3, unless this period is extended by a maximum of five months by the general meeting on the basis of special circumstances, the board prepares and prepares annual accounts. these are available for inspection by members at the offices of the association. Within this period, the board also makes the annual report available for inspection by the members, unless articles 396 paragraph 7 or 403 apply to the association.

2. The annual accounts are signed by the directors and the statutory auditors; if the signature of one or more of them is missing, this shall be stated with reasons.

3. The annual accounts are adopted by the general meeting that the board holds no later than one month after the end of the term. Adoption of the annual accounts does not discharge a director or supervisory board member.

4. Article 48 paragraph 1 does not apply to the association referred to in Article 360 paragraph 3. Article 48 paragraph 2 applies to this, on the understanding that documents are understood to mean the documents submitted pursuant to paragraph 1.

5. An association as referred to in article 360 paragraph 3 may only offset a deficit from the reserves prescribed by law to the extent permitted by law.

6. Our Minister of Economic Affairs may, if so requested, grant an exemption from the obligation to draw up, submit and adopt the annual accounts for serious reasons.

Article 50

The association referred to in article 360 paragraph 3 ensures that the annual accounts drawn up, the annual report and the information to be added pursuant to article 392 paragraph 1 are present at its offices from the time of the call for the general meeting intended to discuss the annual accounts. The members can inspect the documents there and obtain a copy free of charge.

Article 50a

Articles 131, 138, 139, 149 and 150 apply mutatis mutandis in the event of bankruptcy of an association whose articles of association are included in a notarial deed and which is subject to corporation tax.

Article 51

In the event of bankruptcy or suspension of payments of an association registered in the trade register, the notices that are included in the Dutch Government Gazette by virtue of the Bankruptcy Act shall also be registered in that register by the person charged with making such publication.

Article 52

Insofar as it is possible to deviate from the provisions of this title in the articles of association, this deviation can only take place by means of written articles of association.