

## Features of an association

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There are around 100,000 associations in Switzerland. There are different reasons for founding an association:

- You want to achieve a goal together with others and attract members.
- You do not want to be personally liable.
- A group wants to open a joint bank account for their project.
- Funders stipulate this particular legal entity.
- You expect donations and tax exemption.
- Someone wants a straightforward entity for a project and to pay themselves a salary from it.

However, an association is not the most suitable legal entity for every project and several important regulations must be complied with.

### 1. Non-profit purpose

*Associations with a political, religious, scientific, cultural, charitable, social or other **non-commercial purpose** acquire legal personality as soon as their intention to exist as a corporate body is apparent from their articles of association. Article 60, Swiss Civil Code*

An association is a legal entity which is only suitable for non-commercial, non-profit purposes. However, an association may be economically active with respect to the funds it requires for the fulfilment of its idealistic purpose.

### 2. Democratic organisational structure

The general meeting, also called members meeting, is the supreme governing body of an association and constitutes the legislative power. It issues the articles of association, elects the executive committee and can discharge them.

The executive committee is the executive body. It is a collegial body that assumes joint liability for the association. The chairperson cannot and does not have to issue commands alone.

We recommend appointing an independent auditor, even though it is not a legal obligation.

Important: it is not possible to benefit from all the advantages of the organisational structure of an association while also disabling the democratic structures and regulations.

### 3. The association as employer

Associations may employ staff (employees) or assign tasks to contractors (self-employed persons). When doing so, the association is responsible for compliance with the provisions of the labour law and the social insurance law. Generally speaking, it is not forbidden for a committee member to receive wages or remuneration from the association. However, if employees sign their employment agreement themselves, it can be viewed by the unemployment insurance as a "false employment relationship" and the affected person will not receive unemployment benefits (see work aid on Labour and Social Insurance Law). In addition, it will be difficult for the executive committee to pass resolutions due to the obligation to refrain from voting. (see point 4).

If the committee exclusively comprises paid employees, the association is seen to be pursuing a commercial purpose. The association will not be exempted from tax and the Commercial Register Office may refuse to register the association as such (see work aid on Tax Exemption – Associations).

We recommend a separation of powers within the association, i.e. the committee members should not receive remuneration from the association. Employees or persons with a mandate should only hold an advisory role within the committee (see work aid on Good Governance).

### 4. Exclusion from voting

In the event of a legal transaction or dispute, members must be excluded from voting, according to the following: *each member is by law excluded from voting on any resolution concerning a transaction or dispute between him or her, his or her spouse or a lineal relative on the one hand and the association on the other. (Article 68, Swiss Civil Code)*

Important: employment relationships and assignments, including the determination of compensation, are legal transactions.

### 5. Frequently asked questions

#### **How many people are required in order to establish an association?**

At least two people are required. To avoid stalemate situations when passing resolutions, we recommend appointing at least three committee members (see work aid on Founding an Association).

#### **Is it mandatory to assign offices within the executive committee?**

No. Association law does not stipulate certain offices or departments, including a chair. However, it can be useful to set up departments (see work aid on Departments).

#### **Can the executive committee vote its members in or dismiss them?**

As long as the articles of association do not stipulate otherwise, the committee members will be voted in or dismissed by the general meeting of the association. Some associations have a "co-optation" in their articles of association, meaning that if a member resigns during their term of office, the executive committee may elect a new member themselves, until re-election.

**Can the articles of association stipulate an unlimited term of office?**

This is not advisable and is not in line with democratic practices. Additionally, the right of dismissal exists by law whenever justified by good cause (Article 65, Swiss Civil Code).

**Can the general management be part of the executive committee?**

In principle, yes, but it is better to maintain a separation of powers. It is best to include the general management in the executive committee in an advisory role (see work aid on Good Governance).

**Is it mandatory for an association to have members?**

No, associations without any other members (apart from the executive committee) are permitted. In this case, the general meeting is identical to a meeting of the executive committee. Even in this type of association, stipulations of association law must be adhered to: calling a general meeting, carrying out elections, adhering to democratic processes, etc. It can be advantageous to have members to form a broad foundation for the association. Important note: an association must have an executive committee.

**Is an association obliged to charge membership fees?**

No, but if they would like to charge membership fees, this must be stipulated in the articles of association.

**Is an association obliged to have active and passive members?**

There are no legal regulations concerning membership categories. The terms “active and passive members” are not self-explanatory and must be described in the articles of association including rights and obligations.

**Can I carry out an autonomous project within the association without involving anyone else?**

No, the general meeting and the executive committee cannot simply be disregarded. It is also not advised to set up a “pro forma executive committee” as they will bear responsibility. However, project managers may be employed by the association and assume many operational responsibilities.

**Who owns the money and resources of the association?**

Assets and property belong to the association and not individuals.

**If I develop a project myself (such as a website), does it belong to me if I leave the association?**

No, anything carried out in the name of the association continues to belong to the association, unless agreements to the contrary have been drawn up.

**Are the members liable for the association's obligations?**

No, unlike an ordinary partnership or individual company, the members are not liable as long as no reverse liability is stipulated. *The association is liable for its obligations with its assets. Such liability is limited to the assets unless the articles of association provide otherwise. (Article 75 a, Swiss Civil Code).*

**Are associations obliged to pay taxes?**

Generally speaking, associations must pay tax on their assets (defined at cantonal level) and on their earnings, if these total more than CHF 5,000 per year (excluding membership fees and gifts). Reduced tax rates apply to associations. Depending on the purpose of the association, it may be exempted from tax due to its charitable status or its provision of public services (see work aid on Tax Exemption and B-DUR on Associations and Tax).

**6. Checklist**

If the following points apply, we would advise you to found an association:

- We pursue idealistic, non-economic purposes.
- We are a group of several people who want to act upon a particular issue.
- I know people who are prepared to take on responsibility as a volunteer (take office as a committee member).
- I am not aiming for paid employment within the association.
- We want to take on employees, but the executive committee will work on a voluntary basis.
- The organisation should continue to exist independently of the founding members.

If the following points apply, we would not advise you to found an association:

- I/we want to decide the goals and implementation alone and not be accountable to anyone.
- We only want passive members without voting rights.
- The members of the association are all employees of the association.
- The association should be founded on a pro forma basis.
- We want to run our business as an association, because we are already in the red.
- I have assets available which I would like to use for a particular purpose (a foundation would be a suitable legal entity for this).