

Rights and obligations of members

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In an association it is ultimately the members that have the final say. They can assist in decision-making and get involved. However, for member rights and obligations to be binding, those of key importance need to be anchored into the articles of association.

The general meeting is the supreme body of the association, responsible for all decisions that are not assigned to another body by law or under the articles of association. The general meeting establishes the actual legislation in a fundamentally democratic association.

If someone joins an association as member, they will also acquire rights and be subject to obligations. The most important rights (and obligations) must be laid down in the articles of association to make them binding. Associations may also set out other provisions, including in rules of procedure. Unless something else is specified in the articles of association or rules of procedure, association law comes into play.

Association law is laid down in Article 60 et seq. of the Swiss Civil Code. With the exception of mandatory provisions in association law,¹ associations have rather a lot of leeway when it comes to determining their members' rights and obligations. In addition to the rules they set out, there are general – sometimes unwritten – rights arising from the principles of general law and legislation.

It is important that every member is aware of their rights and obligations and receives copies of the corresponding documents. Of course, all members – including those in the executive committee – should also understand what the individual rules mean specifically.

The most important member rights and obligations are explained briefly in the following.

1. Participation rights

Participation rights give members the right to directly influence the decision-making processes, organisational structure and administration of the association. If those rights are breached during decisions or elections, they will be contestable or null.

Voting rights

An association member's most important right is the right to vote. This right is exclusive to members. By having the right to vote, members can influence association activities. By

¹ If "by operation of law" is used, the provision is of a mandatory nature.

operation of law, each member is excluded from voting on any resolution concerning a transaction or dispute between that member, the member's spouse or a lineal relative on the one hand and the association on the other (Article 68 of the Swiss Civil Code).

Right to cast a vote

Voting rights include the right to cast a vote. Members can elect (or unelect) members of the executive committee and auditors. Depending on the articles of association, the right to cast a vote may also cover other committees or senior executives (working groups, music committees, management, kit managers, etc.). Members can also vote in their own election.

Example formulation in the articles of association: The general meeting elects the chairperson, the other members of the executive committee, the auditors and the music committee.

Right to stand as a candidate

The eligibility of persons for election must not apply across the board for all members. The articles of association may set out substantive conditions, e.g. technical qualifications, age and profession.

Example formulation in the articles of association: Only persons who have been in the professional organisation for at least five years may be elected to the executive committee.

Right to be invited to the general meeting

The law requires agenda items to be announced "properly".² The articles of association may lay down rules on matters such as notice periods for convening meetings and procedural rules.

Example formulation in the articles of association: Members must be invited to general meetings in writing at least 14 days in advance, with notice given of the agenda items to be discussed.

Right to add an item to the agenda

Members themselves have the right to request that items be added to the agenda. This right also applies if the articles of association do not specify anything in this regard.

Example formulation in the articles of association: The general meeting decides on proposals by members for items to be added to the agenda.

Right to participate in the general meeting

All members that meet the requirements for membership set out by law and in the articles of association have the right to attend the meeting. It is therefore important that all members receive an invitation to the general meeting.

² See B-DUR No. 28 on the topic of agenda items and motions or the corresponding work aid: <https://www.vitaminb-e.ch/tools/work-aids/>

Right to submit proposals and express opinions at general meetings

All members may submit proposals for an agenda item at the general meeting. If a proposal concerns an item on the agenda, it must be addressed and brought to a vote at the member's request. Members may also put forward motions of order at the meeting, such as an interruption of the meeting, the termination of the discussion or the postponement of an item on the agenda.

2. Usage rights

Usage rights are not laid down by law; they are usually set out in the articles of association or in rules of procedure. Usage rights include the use of sports facilities, localities, materials, libraries, games libraries, etc. The association may determine who is entitled to such usage rights and under which conditions.

Example formulation in the articles of association: Members may rent the association localities for private purposes in exchange for a fee to cover costs.

Example formulation in the articles of association: Pupils and students are provided with the instruments free of charge.

3. Right to cash benefits

Actual cash benefits do not play any role in associations because associations pursue a non-material goal. It is, however, possible to grant members discounts on the association's services.

Example formulation in the articles of association: Members have the right to two free entries per year.

4. Protective rights

The association's purpose, the law and the articles of association are the main cornerstones determining membership relations in an association. Protective rights serve to protect members against infringements of these principles:

Written protective rights in law

Convening of a general meeting at the request of members

An extraordinary general meeting must be convened if one fifth of the members so request (Article 64(3) of the Swiss Civil Code). The right to convene a meeting is mandatory; the necessary quorum may be lowered but not increased (e.g. 1/10 is allowed, but 1/4 not).

Example formulation in the articles of association: A general meeting must be convened if the executive committee or 1/5 of members so request, specifying the agenda items to be discussed.

Resignation from the association

Members have the right to resign from the association subject to a maximum of six months' notice (Article 70(2) of the Swiss Civil Code).

Example formulation in the articles of association: Members may resign from the association at any time with effect from the end of a calendar year. Any membership subscriptions already paid will not be reimbursed.

Protection against unjustified exclusion

Unless the articles of association specify otherwise, a member may only be excluded by resolution by the members (e.g. the general meeting) and for good cause. (Article 72(3) of the Swiss Civil Code)

Protection of the objects of the association

The objects of the association may not be changed with a majority decision if one member is against the change (unless permitted explicitly by the articles of association). Members have the right to complain about the change in objects. If the objects of the association are transformed, very significantly changed or expanded, a member may not reasonably be expected to remain within the association, meaning they can leave immediately. (Article 74 of the Swiss Civil Code)

Challenging of decisions that infringe upon the law or upon the articles of association

Any member who has not consented to a resolution or was not present at the meeting is entitled to challenge such resolution in court within one month of learning thereof. This also applies if a resolution infringes the law or the articles of association. (Article 75 of the Swiss Civil Code)

Unwritten protective rights

Right to the equal treatment of all members

The right to equal treatment involves in particular equal voting rights for all members and the same duty to pay subscriptions. The right of each member to one vote only is laid down in law. Any deviations from the principle of equality must be laid down in the articles of association. The differences must be substantively justified: different contribution amounts and voting right regulations for different membership categories (active, passive, family or collective members, youth, senior citizens, etc.).

Example formulation in the articles of association: Family members are represented at the general meeting with a maximum of two votes. Collective members have three votes. Young people aged under 18 pay half of the membership subscriptions. Active members pay a higher membership fee than passive members.

Right to information

The right to information may be exercised in particular for the purposes of exercising membership rights, such as convening an extraordinary general meeting. The association is

not required to provide information in all cases, however; it is required to observe data protection guidelines and weigh them up against the member's interests in the information. ³

Right to a hearing before an intended exclusion

The personal freedoms of a member include the right to a fair hearing before exclusion. If this is not the case, the exclusion may be contested by the court due to procedural shortcomings.

Example formulation in the articles of association: A member must have a hearing before any exclusion takes place.

Annulment of resolutions that infringe upon the law or upon the articles of association

If a resolution significantly infringes upon the law or upon the articles of association, either in form or substance, members will be entitled to file an action for annulment; this entitlement will not expire.

5. Loyalty *(unwritten legal principle)*

The members have a general obligation of loyalty, meaning they are not permitted to do something that runs counter to the purpose or interests of the association. They should help to actively promote its purpose. The principle of loyalty is not explicitly anchored in law, but is recognised as an unwritten principle of association law in legal practice. The association must also operate on the basis of the principles of good faith and conduct itself loyally towards its members.

6. Obligation to cooperate

Where personal obligations to cooperate are not clear from the purpose laid down in the articles of association, they must be anchored in the articles of association, e.g. obligation to accept a term of office as an executive committee member, obligation to participate in certain events, obligation to work for free. The obligations must be reasonable for the individual and members may not be subject to any obligations that are unrelated to the association. When adopting such obligations, consideration must always be given to the consequences of failure to observe them and whether these will be enforceable. The articles of association may also give a body the competence and framework to establish such obligations of cooperation.

Example formulation in the articles of association: Active members may be obliged to accept a term of office as an executive committee member. The executive committee of the cantonal association may adopt rules of procedure governing the assistance of members in association events.

³⁾ See information sheet for dealing with association data by the Federal Data Protection and Information Commissioner: www.kdsb.ch/documents/MerkblattUmgangmitVereinsdaten.pdf

7. Duty to pay subscriptions

If the association wishes to receive subscriptions from its members or establish an obligation to make an additional contribution, the principles for this need to be set out in the articles of association. The articles of association should also specify the type of fees and subscriptions applicable to members: member subscriptions, entrance fees, additional contributions, subscription of share certificates. One-off financial contributions for special events or loans do not need to be specified. (Article 71 of the Swiss Civil Code)

The amount can either be laid down in the articles of association themselves or in rules of procedure, or established by association resolution. The articles of association may also lay down minimum and maximum amounts or a range. The general meeting decides on the amount. Different fee categories or exemptions must also be laid down in the articles of association. See "equal treatment of members".

Example formulation in the articles of association: Active members pay annual member subscriptions of at least CHF 120, and passive members subscriptions of at least CHF 30. Members of the executive committee that are holding office or honorary members are exempt from the duty to pay subscriptions.

8. Penalties and sanctions

The association may only issue penalties and fines for breaches of membership obligations if this is established in the articles of association. These do not have anything to do with penal power in the proper sense. Matters that are frequently laid down in the articles of association are exclusion from the association or suspension of association activities for actions that run counter to the purpose of the association and/or an infringement upon the articles of association or rules of procedure. Before any sanction is imposed, the member in question must be granted the right to a hearing. Penalties and fines must be applied fairly as a matter of principle, as well as be proportionate in nature.

Example formulation in the articles of association: Association members who are absent from a general meeting without valid excuse must pay an amount of CHF 20 into the association treasury.

Members who infringe upon the law or upon the articles of association or cause damage to the association may be excluded from the executive committee. The exclusion may be appealed against at the next general meeting.

Literature

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