

German Civil Code (BGB)

- Excepts -

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Chapter 1

General provisions

Section 21

Non-commercial association

An association whose object is not commercial business operations acquires legal personality by entry in the register of associations of the competent local court [Amtsgericht].

Section 22

Commercial association

An association whose object is commercial business operations acquires legal personality, for lack of special provisions under federal law, by state grant. The grant is in the power of the Land in whose territory the association has its seat.

Section 23

(repealed)

Section 24

Seat

The seat of an association, unless otherwise provided, is the place where the management is conducted.

Section 25

Constitution

The constitution of an association with legal personality is, to the extent that it is not based on the following provisions, determined by the articles of association.

Section 26

Board and representation

(1) An association must have a board. The board represents the association in court and out of court; it has the status of a legal representative. The extent of the power of agency may be restricted by the articles of association with effect against third parties.

(2) If the board consists of several persons, the association is represented by the majority of the board members. If a declaration of intent is to be submitted to an association, it is sufficient to submit it to one member of the board.

Section 27

Appointment of and management by the board

(1) The appointment of the board is by resolution of the general meeting.

(2) The appointment is revocable at any time, notwithstanding the claim to payment in conformity with contract. The revocability may be restricted by the articles of association to the case where there is a compelling reason for the revocation; such a reason includes without limitation a gross breach of duty or inability to effect proper management.

(3) The management by the board is governed by the provisions on mandate in sections 664 to 670 with the necessary modifications.

Section 28

Passing of resolutions by the board

In case of a board consisting of more than one person, resolutions are passed under the provisions of sections 32 and 34, which govern the resolutions of the members of the association.

Section 29

Emergency appointment by local court [Amtsgericht]

To the extent that the board is lacking the necessary members, they are to be appointed, in urgent cases, for the period until the defect is corrected, on the application of a person concerned, by the local court [Amtsgericht] that keeps the register of associations for the district in which the association has its seat.

Section 30

Special representatives

It may be provided by the articles of association that, in addition to the board, special representatives are to be appointed for particular transactions. In case of doubt, the power of agency of such a representative extends to all legal transactions that the sphere of business allocated to him normally entails.

Section 31

Liability of an association for organs

The association is liable for the damage to a third party that the board, a member of the board or another constitutionally appointed representative causes through an act committed by it or him in carrying out the business with which it or he is entrusted, where the act gives rise to a liability in damages.

Section 31a

Liability of board members

(1) A board member acting free of charge or who receives remuneration for his activity which does not exceed 500 Euro per year is liable towards the association for damage caused in performing his duties as a board member only in case of intent or gross negligence. Sentence 1 also applies to liability towards the members of the association.

(2) If a board member is obliged under subsection (1) sentence 1 to provide to another compensation for damage caused in performing his duties as a board member, he may demand from the association to be released from the obligation. Sentence 1 does not apply if the damage was caused with intent or gross negligence.

Section 32

General meeting; passing of resolutions

(1) The affairs of the association, to the extent that they are not to be attended to by the board or another organ of the association, are dealt with by resolution in a meeting of the members. In order for the resolution to be valid, it is necessary for the subject to be stated when the meeting is convened. The resolution is decided by the majority of the votes cast.

(2) Even without a meeting of the members, a resolution is valid if all members declare their approval of the resolution in writing.

Section 33

Amendment of articles of association

(1) A resolution containing an amendment of the articles of association must have a majority of three quarters of the votes cast. In order to alter the objects of the association, the approval of all members is necessary; the approval of the members not present must be declared in writing.

(2) If the legal personality of the association results from a grant, the consent of the competent authority is necessary for every amendment of the articles of association.

Section 34

Exclusion from voting

A member has no right to vote if the resolution concerns entering into a legal transaction with him or commencing or disposing of litigation between him and the association.

Section 35

Special rights

Special rights of a member may not be adversely affected by a resolution of the general meeting without his approval.

Section 36

Convening of the general meeting

(1) The general meeting is to be convened in the cases laid down in the articles of association and when the interests of the association require it.

Section 37

Convening a meeting at the request of a minority

(1) The general meeting is to be convened if the proportion of the membership laid down in the articles of association or, in the absence of a provision, one-tenth of the members call in writing for a meeting to be convened, stating the purpose and the reasons.

(2) If the request is not granted, the local court [Amtsgericht] may authorise the members who made the request to convene the meeting; it may make orders on the conduct of the chairmanship at the meeting. The court with jurisdiction is the local court [Amtsgericht] that keeps the register of associations for the district in which the association has its seat. The authorisation must be referred to in the notice convening the meeting.

Section 38

Membership

Membership is not transferable and not inheritable. The exercise of membership rights cannot be entrusted to another person.

Section 39

Leaving the association

- (1) The members have the right to leave the association.
- (2) The articles of association may specify that leaving is admissible only at the end of a business year or only after a notice period; the maximum notice period is two years.

Section 40

Flexible provisions

The provisions of section 26 (2) sentence 1, section 27 (1) and (3), sections 28 and 31a (1) sentence 2, as well as sections 32, 33 and 38, do not apply where otherwise provided by the articles of association. It is not possible to derogate from section 34 through the articles of association, even for the passing of resolutions by the board.

Section 41

Dissolution of the association

An association may be dissolved by resolution of the general meeting. The resolution must have a majority of three-quarters of the votes cast, unless otherwise provided in the articles of association

Section 42

Insolvency

- (1) An association is dissolved by the commencement of insolvency proceedings and on the order becoming legally final by means of which the commencement of the insolvency proceedings has been rejected for insufficiency of assets. If the proceedings are discontinued on the application of the debtor or terminated after the confirmation of an insolvency plan that provides for the association to continue in existence, the general meeting may pass a resolution that the association is to continue in existence. The articles of association may provide that, if insolvency proceedings are commenced, the

association is to continue as an association without legal personality; in this case too, if the requirements of sentence two above are satisfied, a resolution may be passed to continue the association as an association with legal personality.

(2) If an association is insolvent or is overindebted, the board must petition for the commencement of insolvency proceedings. If there is delay in petitioning, the members of the board who are at fault are responsible to the creditors for the damage resulting from this; they are liable as joint and several debtors.

Section 43

Deprivation of legal personality

An association whose legal personality is the result of a grant can be deprived of its legal personality if it pursues objects different from those in the articles of association.

Section 44

Jurisdiction and proceedings^{*}

Jurisdiction and the procedure for the deprivation of legal personality under section 43 are decided under the law of the Land in which the association has its seat.

^{*}Under Article 129 of the Basic Law [Grundgesetz], the Federal Minister of the Interior [Bundesminister des Innern] is now competent.

Section 45

Devolution of the assets of the association

(1) On the dissolution of the association or its deprivation of legal personality, the assets devolve on the persons specified in the articles of association.

(2) The articles of association may provide that the persons entitled to receive the assets are specified by a resolution of the general meeting or by another organ of the association. If the objects of the association are not commercial business operations, the general meeting may, even without such a provision, allocate the assets to a public foundation or institution.

(3) If no persons entitled are specified, then if according to its articles the association exclusively served the interests of its members, the assets pass in equal shares to the members at the date of the dissolution or the deprivation of legal personality, and failing this to the treasury of the Land in whose territory the association had its seat.

Section 46

Devolution on the treasury

If the assets of the association devolve on the treasury, the provisions on an inheritance that devolves on the treasury as the heir on intestacy apply with the necessary modifications. The treasury shall if possible use the assets in a manner corresponding to the objects of the association.

Section 47

Liquidation

If the assets of the association do not devolve on the treasury, there must be a liquidation, unless insolvency proceedings have commenced with regard to the assets of the association.

Section 48

Liquidators

(1) The liquidation is effected by the board. Other persons may also be appointed as liquidators; the appointment is governed by the provisions for the appointment of the board.

(2) The liquidators have the legal status of the board, unless the purpose of the liquidation leads to a different conclusion.

(3) If there are several liquidators, they are only empowered to represent jointly, and can only enact orders unanimously, unless provided otherwise.

Section 49

Duties of the liquidators

(1) The liquidators must complete the current business, collect the receivables, convert the rest of the assets into cash, satisfy the creditors and pay out the surplus to those entitled to receive it. In order to complete transactions that are in progress, the liquidators may also enter into new transactions. The collection of receivables and the conversion of the rest of the assets into cash may be omitted to the extent that these measures are not necessary to satisfy the creditors or to distribute the surplus among those entitled to receive it.

(2) The association is deemed to continue in existence until the end of the liquidation if the purpose of the liquidation requires this.

Section 50

Public notice of the association in liquidation

(1) The dissolution of the association or its deprivation of legal personality must be announced by the liquidators in a public notice. In the notice, the creditors must be requested to register their claims. The public notice is made through the newspaper specified in the articles of association for this purpose. Public notice is deemed to have been made at the end of the second day after the publication or first publication.

(2) Known creditors must be requested by special invitation to register their claims.

Section 50a

Newspaper for notices

If an association has not specified a newspaper in the articles of association, or if the newspaper specified for notices has ceased publication, notices of the association must be published in the newspaper that is specified for public notices of the local court [Amtsgericht] in whose district the association has its seat.

Section 51

One-year waiting period

The property may not be paid out to the persons entitled to receive it until a year has passed after the announcement by public notice of the dissolution of the association or the deprivation of legal personality.

Section 52

Security for creditors

- (1) If a known creditor does not register his claim, the amount owed, if the right to deposit exists, must be deposited for the creditor.
- (2) If the discharge of an obligation is not possible at the time, or if an obligation is disputed, the property may be distributed to the persons entitled to receive it only if security is provided to the creditor.

Section 53

Liability in damages of the liquidators

Liquidators who commit breaches of their duties under section 42 (2) and sections 50, 51 and 52 or who, before the satisfaction of the creditors, distribute assets to the persons entitled to receive are, if they are at fault, responsible to the creditors for the damage resulting from this; they are liable as joint and several debtors.

Section 54

Associations without legal personality

Associations without legal personality are governed by the provisions on partnership. When a transaction is entered into with a third party in the name of such an association, the person acting is personally liable; if more than one person acts, they are liable as joint and several debtors.

Chapter 2

Registered associations

Section 55

Jurisdiction over entry in the register

The entry of an association of the kind specified in section 21 above in the register of associations must be made at the local court [Amtsgericht] for the district in which the association has its seat.

Section 55a

Electronic register of associations

(1) The Land governments may provide by statutory order that and to what extent the register of associations is maintained in electronic form as a computerised data file. It must be guaranteed that

1. the principles of proper data processing are observed, in particular that precautions against a loss of data are taken, the necessary copies of the databases are kept current at least on a daily basis and the original databases and copies of them are kept in safe custody.
2. the entries to be made are immediately entered into a memory and it remains permanently possible to reproduce their contents unchanged in readable form.
3. the measures required by the schedule to section 126 (1) sentence 2 no. 3 of the Land Register Act [Grundbuchordnung] are taken.

The Land governments may by statutory order transfer the authorisation under sentence 1 to the Land justice administration authorities.

(2) The electronic register of associations takes the place of one page of the previous register as soon as the entries on this page have been entered in the memory intended for the entries in the register of associations and made available as the register of

associations. A note of closure must be added to the corresponding pages of the previous register of associations.

(3) An entry comes into effect as soon as it is entered in the memory intended for the register entries and its contents can be permanently reproduced unchanged and in readable form. There must be a verification, by a confirmation message or in another appropriate way, that these requirements are satisfied. Each entry should show the date on which it came into effect.

Section 57

Minimum requirements of the articles of association

(1) The articles of association must contain the objects, the name and the seat of the association and indicate that the association is to be registered.

(2) The name should differ appreciably from the names of the registered associations in existence in the same place or in the same municipality.

Section 58

Recommended contents of the articles of association

The articles of association should contain provisions:

1. on becoming a member of the association and leaving it,
2. on whether the members are to make contributions, and if so, in what amount,
3. on the composition of the board,
4. on the conditions under which the general meeting is to be convened, on the form of the convening and on the notarial recording of the resolutions.

Section 59

Application for registration

(1) The board must apply for the association to be registered.

(2) Copies of the articles of association and of the documents on the appointment of the board must be attached to the application.

(3) The articles of association should be signed by at least seven members and should state the date of their execution.

Section 60

Rejection of the application

If the requirements of sections 56 to 59 above have not been met, the application must be rejected by the local court [Amtsgericht], stating the reasons.

Sections 61 - 63

(repealed)

Section 64

Contents of the entry in the register of associations

On entry in the register, the name and seat of the association, the date of the execution of the articles, the members of the board and their powers of representation are to be stated.

Section 65

Addition to name

When the association is entered in the register, the name of the association is given the additional element “eingetragener Verein” [“registered association”].

Section 66

Public notice of the entry and safekeeping of documents

- (1) The local court [Amtsgericht] must publish the entry of the association in the register of associations by means of publication in the electronic information and communication system designated by the Land justice administration authority .
- (2) The documents submitted with the application are kept by the local court [Amtsgericht].

Section 67

Changes to the board

- (1) Every change to the board must be notified by the board for registration. A copy of the document about the change is to be attached to the notification.
- (2) Board members appointed by the court are entered in the register by the court at its own motion.

Section 68

Protection of public confidence by the register of associations

If a transaction is entered into between the previous members of the board and a third party, the change of the board can be used as a defence against the third party only if at the time when the legal transaction is entered into the change has been recorded in the register of associations or is known to the third party. If the change has been entered, the third party need not allow it to apply against him if he does not know of it and his lack of knowledge does not result from negligence.

Section 69

Evidence of composition of the board

Evidence that the board consists of the persons entered in the register is furnished to public authorities in the form of a local court [Amtsgericht] certificate confirming the entry.

Section 70

Protection of public confidence in case of entries on power of agency; passing resolutions

The provisions of section 68 above also apply to provisions that restrict the scope of the power of agency of the board or that lay down different arrangements for the power of agency of the board than the provision in section 26 (2) sentence 1 above.

Section 71

Amendments of the articles of association

(1) Amendments of the articles of association are effective only when entered in the register of associations. The board must make notification of the amendment for entry in the register. A copy of the order containing the amendment and of the wording of the articles of association is to be enclosed with the registration. In the wording of the articles of association, the amended provisions must agree with the order on the amendment of the articles of association, unchanged provisions must agree with the most recently submitted full wording of the articles of association and, if the articles of association have been amended without the full wording of the articles of association being submitted, must also agree with the previously-entered amendments.

(2) The provisions of sections 60, 64 and section 66 (2) apply with the necessary modifications.

Section 72

Certificate on number of members

At the request of the local court [Amtsgericht] at any time, the board shall file a written confirmation on the number of members of the association.

Section 73

Decrease in numbers of members

If the number of members of the association falls below three, the local court [Amtsgericht] shall, on an application by the board and, if the application is not made within three months, of its own motion, after hearing the board, deprive the association of legal personality.

Section 74

Dissolution

(1) The dissolution of the association and the deprivation of legal personality must be entered in the register of associations.

(2) If the association is dissolved by resolution of the general meeting or by the expiry of the time determined for the duration of the association, the board must notify the dissolution to be registered. In the former case, a copy of the resolution for dissolution must be attached to the notification.

(3) (repealed)

Section 75

Entries in the case of insolvency

The commencement of insolvency proceedings and the order finally rejecting the commencement of the insolvency proceedings for insufficiency of assets, as well as the dissolution of the association pursuant to section 42 (2) sentence 1, are to be registered by the court of its own motion. The following are also to be entered of its own motion

1. the reversal of the order commencing the insolvency proceedings,
2. the appointment of a provisional insolvency administrator, if in addition the debtor is generally enjoined from transferring assets or it is ordered that disposals by the debtor are effective only with the approval of the provisional administrator in insolvency proceedings, and the termination of such a protective measure,

3. an order of self-management by the debtor and the reversal of this order, and an order that specific legal transactions of the debtor require approval,
4. the discontinuance and termination of the proceedings and
5. the monitoring of compliance with an insolvency plan and the termination of the monitoring.

(2) If the association is continued by order of the general meeting pursuant to section 42

(1) sentence 2, the board must register the continuation for an entry. A copy of the order is to be enclosed with the registration.

Section 76

Entry in case of liquidation

(1) In case of the liquidation of the association, the liquidators and their power of agency must be entered in the register of associations. The same applies to the termination of the association subsequent to liquidation.

(2) The notification of the liquidators for registration must be made by the board. The notification for registration must state the extent of the power of agency of the liquidators. Changes to the liquidators or their power of agency, as well as the termination of the association, are to be registered by the liquidators. The notification for registration of the liquidators appointed by resolution of the general meeting must have attached to it a copy of the appointing order, and the notification for registration of the power of agency which was determined by way of derogation from section 48 (3), i on the passing of resolutions by the liquidators must have attached to it a copy of the document containing this provision.

(3) Liquidators appointed by the court are entered in the register by the court of its own motion.

Section 77

Parties obliged to notify and form of notification

The notifications for entry in the register of associations are to be submitted by members of the board and by the liquidators, who are entitled to represent the association in this regard by way of notarially certified statement. The submission may be submitted to the court in the original or in a publicly-certified copy.

Section 78

Assessment of coercive fines

(1) The local court [Amtsgericht] may enjoin the members of the board to comply with the provisions of section 67 (1), section 71 (1), section 72, section 74 (2), section 75 (2) and section 76 by imposing coercive fines.

(2) In the same way, the liquidators may be enjoined to comply with the provisions of section 76.

Section 79

Inspection of the register of associations

(1) Everyone is permitted to inspect the register of associations and the documents filed with the local court [Amtsgericht] by the association. A copy of the entries may be required; on request, the copy must be certified. If the register of associations is kept by computer, the copy is replaced by a print-out and the certified copy by an official print-out.

(2) The introduction of a computerised procedure enabling the data to be transmitted from electronic registers of associations by retrieval is admissible if it is guaranteed that

1. the retrieval of data does not exceed the inspection permitted under subsection (1) above and
2. the admissibility of the retrievals can be monitored on the basis of a log.

The Länder may specify a nationwide electronic information and communication system for the proceedings.

(3) The user must be informed that he can use the data transmitted only for information purposes. The competent agency must verify (e.g. by spot checks) whether there is evidence that the inspection permitted under sentence 1 above has been exceeded or transmitted data are being misused.

(4) The competent agency may exclude a user from taking part in the computerised retrieval procedure if he endangers the functional reliability of the retrieval equipment, exceeds the inspection permitted under subsection 3 sentence 1 above or abuses transmitted data; the same applies in the case of imminent exceeding of the permissible inspection or imminent abuse.

(5) The competent agency is the Land justice administration authority. The agency with local jurisdiction is the Land justice administration authority within whose portfolio the competent local court [Amtsgericht] falls. This provision on jurisdiction may be varied by statutory order of the Land government. The Land government may transfer this authorisation to the Land justice administration authority by statutory order. The Länder may also agree to the jurisdiction being transferred to the competent agency of another Land.