

Guide to founding an association



When people get together for joint activities or projects, legal issues arise. This concerns, for example, liability and the co-determination rights of those involved. This getting-together is regulated by law. But it can also be organised through contracts. This also applies to the founding of associations..



What if we do not regulate anything at all?



If the association does not have any special rules, it is usually treated as so called *GbR* (*Gesellschaft bürgerlichen Rechts*). A *GbR* can also be called a *BGB* (*German Civil Code*) company. In this case, all participants have the same rights and obligations. However, they are liable for the debts of the partnership. In addition, such a *GbR* is automatically dissolved if one of the participants leaves.

CONTRACTS ARE IMPORTANT!

Even if the parties involved do not regulate their cooperation through contracts, legal regulations apply. However, these are often not optimal. Above all, one should bear in mind: contracts (including the statute of an association) are made for the event of a dispute! As long as everyone agrees, agreements can be changed at any time. If there is a dispute, it can jeopardise the project because money is often at stake.

A registered association is a suitable organisation if a larger number of people want to run a project that is not predominantly about economic activities.

That is why it makes sense to give such projects a firm legal framework. Here, a registered association (e. V.) is a good choice if

- ✓ a larger number of people join together for a non-economic purpose and
- ✓ the joining and leaving of members should be uncomplicated.

Why found an e. V.?

Advantages of the e. V. are:

- ✓ The participants are not liable for contractual obligations of the association. Above all, the members are well protected.
- ✓ The e. V. may bear its own name, it can conclude contracts (through its board).
- ✓ The e. V. can be a non-profit organisation (a *GbR*, for example, cannot be).
- ✓ The members have equal rights and duties, this applies above all to co-determination.
- ✓ The costs for the foundation are not high.

Disadvantages of the e. V. are:

- ✗ It cannot be predominantly economically active (e.g. run a restaurant or a shop).
- ✗ It needs at least 7 members.
- ✗ A statute must be drawn up and the association must be registered with the 'register of associations'.

WHAT IS THE 'REGISTER OF ASSOCIATIONS'?

The register of associations (*Vereinsregister*) is a public register kept at the local court of the city or district. In particular, the name of the association and the names of the board of directors are entered. Registered associations receive an extract from the register as proof, which they need, for example, to open a bank account.



Founding a registered association is worthwhile especially if the association wants to receive funding.



What does it cost to found an e. V.?



Registering an association with the local court currently costs 75 euros in Berlin. The costs for certification and the registration procedure by a notary are about 70 euros.

There are no further costs unless you hire a lawyer to draw up or change the statute.

If changes are made after the foundation, e.g. change of the board, amendments to the statute, fees will be charged again.

The unincorporated association

The unregistered (non-legal) association is quite common. It can also – like the *GbR* – come into being “automatically”, if the following characteristics are fulfilled:

- ✓ It has a management, i.e. someone who takes care of the organisation.
- ✓ At least three people are involved.
- ✓ The association does not dissolve when members change.
- ✓ It has its own name.

Legally, the unregistered association is largely treated in the same way as the registered one, as long as it does not engage in economic activity.



Disadvantages of the unregistered association are above all:

- ✗ The members are personally liable if the association is economically active.
- ✗ It does not have an account in its own name with most banks.
- ✗ It often does not receive funding.

Therefore, it is often more favourable to found a registered association.

An unregistered association is particularly suitable if the association only moves a small amount of money and does not organise events or carry out economic activities.



The steps in founding a registered association

The registration of the association and the non-profit status can fail due to minor formalities. That is why you should seek professional help here.

At least three members are needed to found a registered association, and seven to register it with the register of associations. Once the association is registered, the number of members may not fall below three, otherwise the association will be deleted from the register.



Incorporation proceeds as follows:

- 1 The participants must draw up a constitution. It contains the most important regulations for their cooperation in the association. Certain clauses are required by the register court in order for the association to be registered.
- 2 If the association is to become a non-profit organisation, the statute should be sent to the tax office for examination before applying to the register of associations. The tax office checks free of charge whether the association can become a non-profit organisation with this statute.
- 3 The participants hold a first meeting (formation meeting). There
 - ✓ it is decided that the association will be founded,
 - ✓ the statute is adopted,
 - ✓ the board of directors is elected.
- 4 The statute must be signed by at least 7 members.
- 5 Minutes shall be taken of the formation meeting.
- 6 The elected board members must appear with the statute and the formation minutes at a notary public, who certifies the formation and registers the association with the 'register of associations'.
- 7 If the registry court finds no errors in the statute of the association and the minutes, the association is registered and the association receives an extract from the register as confirmation.



The statute of the association

The drafting of the statute of the association does not necessarily require the assistance of a lawyer. The widely available model statutes are usually a good guide. The statutes of an association with similar activities are also helpful. Many associations publish their statutes on the internet. Incidentally, you will not be able to inspect the statutes of registered associations at the 'register of associations' unless you can give an important reason.

The statutes must contain the following information and regulations:

- ✓ Name of association
- ✓ Registered office of the association (indicate only the town, not the street)
- ✓ Regulation on the registration of the association in the register of associations
- ✓ Purpose of the association
- ✓ Expulsion and admission of members
- ✓ Membership fees
- ✓ Certification of resolutions (recording of minutes)
- ✓ Formation of the board of directors
- ✓ Convening the general assembly (when and how)

If any of these components are missing, the registry court will refuse registration. In addition, the statutes should contain a section explaining to which other non-profit organisation the association's funds will go in the event of dissolution.



Vereinssatzung

- § Vereinsname

- § Vereinssitz

- § Eintragung Vereinsregister

- § Vereinszweck

- § Aus- und Eintritt

- § Mitgliedsbeiträge

- § Protokollierung

- § Vorstand

- § Mitgliederversammlung



The name of the association

The name of the association must be clearly distinguishable from other associations in the registration district. It must also not be misleading (e.g. misleading as to the nature and size of the association).



Note that registration does not lead to protection of the name. Violations of name and trademark law may not only make it necessary to change the name at a later date, but may also lead to considerable claims for damages. Therefore, research thoroughly whether the name is not already in use.

The board of directors

The board of directors manages the association and concludes all legal transactions on its behalf. It must consist of at least one person and is elected by the general assembly.

The composition of the board of directors must be set out in the statute. In most cases the board will consist of one to five persons.

The statute must stipulate whether the board members are authorised to represent the association individually or jointly, i.e. whether they may conclude transactions on behalf of the association. For example, it can be stipulated that two out of three board members jointly represent the association. Only two board members can then conclude contracts for the association.

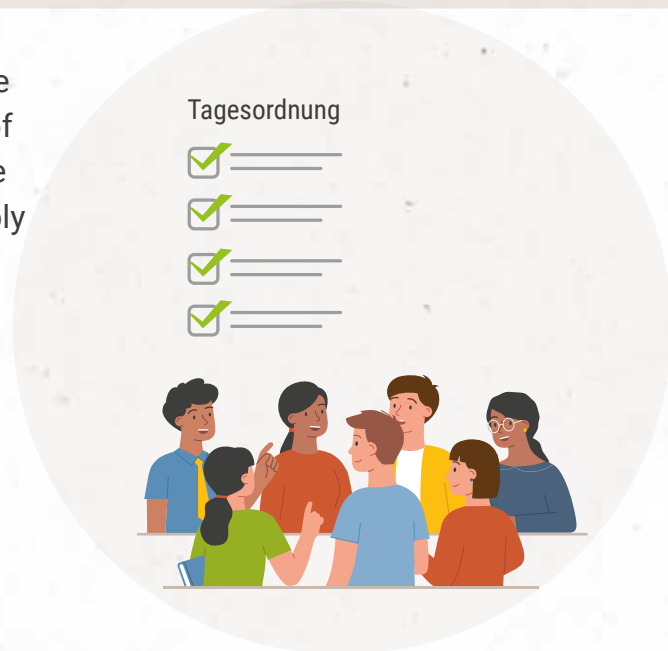
The statute should not provide for too many board members, because often there are not enough people to fill all the positions. Usually two board members are sufficient.



The General Assembly

The general assembly makes all major decisions in the association. These include, for example, the election of the board, amendments to the statute or the discharge of the board. When and how often the general assembly takes place can be regulated in the statute. Otherwise, the board of directors decides. It invites members to the meeting and draws up an agenda.

The agenda is important in the invitation. Effective resolutions can only be passed on items on the agenda specified in the invitation (unless the statute provide otherwise).

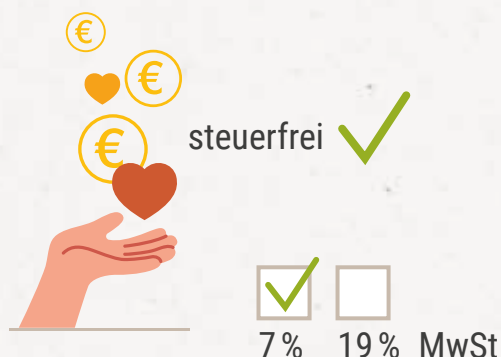


Non-profit status

Associations are not already non-profit-making by virtue of their registration in the 'register of associations'. It also has nothing to do with the registration of the association. Non-profit status (more precisely: tax relief) is a tax matter. It is granted and certified by the tax office upon application.

Non-profit status has mainly tax advantages. The most important are:

- ✓ Some of the association's income remains tax-exempt.
- ✓ The reduced VAT rate (7% instead of 19%) applies to certain services.
- ✓ The association can issue donation receipts. The donations can then be deducted by the donor for tax purposes. This donation deduction increases the motivation to donate and thus the donation volume of the association.



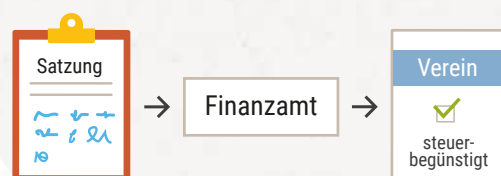
Many grants are only awarded to non-profit organisations.

However, there are a number of conditions attached to non-profit status. This concerns above all:

- ✓ restrictions on the use of funds
- ✓ restrictions on economic activity
- ✓ strict limitations on payments to members
- ✓ extended accounting obligations

For this reason, it should be carefully examined in advance whether non-profit status is really worthwhile for the association. It does not make sense for every association.

An application for non-profit status must be submitted to the relevant tax office. To do this, the association must submit its statute. If the requirements are met, the tax office will first grant provisional exemption (for a maximum of 18 months). As proof, the association receives a notice of exemption. After the first tax return has been submitted, the exemption is granted for three years in advance.



Non-profit status is indispensable if the association wants to issue donation receipts. Many funding subsidies are also only available to non-profit organisations.

Associations and taxes



If an association is seeking non-profit status, it will have to deal with the tax office as soon as it is founded.

An association – like any business – becomes liable to pay taxes when it generates corresponding income or profits. Membership fees, donations and subsidies are tax-exempt.

However, most other income (e.g. from the sale of food and drinks, admission fees, advertising revenue, etc.) is generally taxable.

The coexistence of income treated differently for tax purposes makes the taxation (and thus also the accounting) of non-profit associations quite complicated – at least if the association has different sources of income.



IMPORTANT:

Associations must pay close attention to their tax obligations. The tax office can hold the board personally liable if the association does not fulfil its obligations.

Donations

Non-profit status is often applied for primarily so that the association can issue donation receipts. However, it may only do so once it has received a notice of exemption from the tax office.

The official sample text formulations must be used for donation receipts. A distinction is made between donations in cash and donations in kind.

The association is liable for incorrectly issued donation receipts and for the incorrect use of donations. For this reason, the board should work particularly carefully in this area.



What else you need to be aware of

In Germany, there are many legal regulations and reporting requirements when an organisation engages in economic activities.

If income and surpluses are generated from economic activities, a business registration is usually required. A restaurant licence is required for the sale of food and drinks, especially alcohol. If music is performed or played, notifications and payments to GEMA are due.

If 50 % (or more) of the board members of the association are not EU citizens, the association must be reported to the police as a foreigners' association* within 2 weeks after registration according to § 14 of the Associations Act.

Anyone founding an association should also inform themselves about these issues, because violations can result in fines.

An association should also have association liability insurance (*Vereinshaftpflicht*). It is advisable to seek advice on this subject.

* The term "foreigners' association" is used in the "Law on Associations" and is therefore also used here. However, the House of Resources takes a critical view of the term "foreigner" in this aspect because it basically locates people abroad and does not sound as if someone's centre of life is in Germany. However, there are many people who have been living here for years or even decades without a German or European passport.



 → Gewerbeschein

 → Gaststättenerlaubnis

 → GEMA



Ausländerverein anmelden

Many regulations for businesses also apply to associations. For example, they must have a licence if they regularly sell food and drink or hold events. Often, above all, a business registration is required.

Checklist for founding an association

- ✓ **Determine 7 founding members**
- ✓ **Determine the name of the association**
- ✓ **Write the statute of the association**
- ✓ **Send statute to the tax office for (non-binding) preliminary examination**
(processing time approx. 4–6 weeks)

Once the statute has been pre-examined by the tax office:

- ✓ **Hold founding meeting**
Although no formal invitation is required for the formation meeting, this meeting should be prepared in exactly the same way as future (obligatory) annual general assemblies: Adhere to the invitation form and deadline, draw up the minutes of the formation meeting, appoint a secretary, elect the board, possibly elect other organs (all those specified in the statute), adopt and sign the statute, draw up an attendance list of the founding members, draw up a list of addresses of the board.
- ✓ **Notarisation of the signatures of the board by a notary**
- ✓ **Apply to the Charlottenburg Local Court for registration of the association (can be done by the notary)**
Send following documents to the court: application for registration of the association, statute of the association, minutes of formation meeting

After receiving the extract from the 'register of associations' from the Local Court:

- ✓ **Application to the tax office for recognition as a non-profit organisation**
with the following documents: application for exemption from corporation tax, statute of association, minutes of formation meeting, extract from the register, list of addresses of the board of directors, form for questionnaire on tax registration (processing time approx. 2–3 weeks)
- ✓ **after receipt of the exemption notice from the tax office**
a free bank account can be opened, donations and subsidies may be accepted
- ✓ **Done 😊**

Helpful links

- ✓ **Sample formation meeting minutes**
https://www.bmjv.de/SharedDocs/Downloads/DE/Formulare/Muster_eines_Gruendungsprotokolls.pdf?__blob=publicationFile&v=2

- ✓ **Sample statute of association**
https://www.bmjv.de/SharedDocs/Downloads/DE/Service/Formulare/Mustersatzung_eines_Vereins.html

- ✓ **Guide to association law**
https://www.bmjv.de/SharedDocs/Publikationen/DE/Leitfaden_Vereinsrecht.pdf?__blob=publicationFile&v=14

- ✓ **Info on registration at the local court**
<https://service.berlin.de/dienstleistung/326808/>

- ✓ **Vereinsknowhow Verlags- und Service UG**
www.vereinsknowhow.de

- ✓ **Questions and answers on taxes in associations**
<https://www.berlin.de/sen/finanzen/steuern/informationen-fuer-steuerzahler-/faq-steuern/artikel.9064.php>

- ✓ **Information on working in an association**
<https://www.buergergesellschaft.de/praxishilfen/arbeit-im-verein>

GLOSSARY

e. V. and 'register of associations' (*Vereinsregister*)

e. V. means registered association. An association becomes a legal entity when it is entered in the register of associations at the competent local court. The association is then given the suffix e. V. and receives a so-called extract from the 'register of association's and its own association register number.

Corporate body and legal person (*Körperschaft und juristische Person*)

An association belongs to the legal form of a corporation. This is an association of persons for a common purpose, which as a legal person has its own legal capacity and is represented by association bodies. Association members are referred to as natural persons, the association as an organisation as a legal person.

Non-profit status (*Gemeinnützigkeit*)

Associations whose activities serve the common good are designated as non-profit-making. The aims of the non-profit activity may include the promotion of education and upbringing, art and culture, environmental protection, animal welfare and nature conservation, the promotion of international attitudes, tolerance in all areas of culture and the idea of international understanding, or the promotion of youth and assistance for the elderly. The requirements (purposes) for non-profit status are set out in §§ 51–68 of the German Fiscal Code (AO). The non-profit

status must be applied for at the tax office. If this is granted, the association receives the so-called notice of exemption. Non-profit status has some advantages for associations such as tax concessions and the possibility of collecting donations and applying for subsidies.

Fiscal Code (AO) (*Abgabenordnung*)

The German Fiscal Code (AO) contains important paragraphs on the subject of taxation of associations and non-profit status for associations. Here, the law lists which purposes may be considered non-profit.

Notice of exemption (*Freistellungsbescheid*)

This states that the association is exempt from corporation tax and is therefore a non-profit organisation. It certifies the exact purpose (= which section(s) of the tax code) for which the association is granted charitable status. In the case of a new foundation, the certificate is valid (provisionally) for 3 years from the date of issue. During this period, the first tax audit must be carried out, which may take 1 or 2 years. Thereafter, the review period can be extended to 3 years if the association does not operate a commercial business. A notice of exemption, if issued, is valid for 5 years from the date of issue. In order to receive this notice, the association must then submit a corporation tax return together with a surplus calculation as well as an activity report and a statement of assets and liabilities to the tax office.

General Assembly (*Mitgliederversammlung*)

The general assembly is the second compulsory body, alongside the board of directors, necessary for the existence and functioning of an association. The general assembly is the structure of the association in which the members make the fundamental decisions for the association. The formalities for the work of the general assembly, the conditions for inviting members to the general assembly, the regulations for the agenda and voting on it must be precisely regulated in the statute.

Statute (*Satzung*)

An association that wants to be entered in the 'register of associations' in order to become a "e. V." needs a written statute. The statute is therefore often referred to as the "basic law" of the association. It is the task of the association to draft the statute and their content and to give itself a statute that is suitable for the association. There, basic provisions as well as the way in which the association is to operate are laid down.

An association can formulate its own legal basis for the rights and duties of its members and for its organisational structure to a large extent. The statute is the central legal document.

Board of Directors (*Vorstand*)

The board is elected at the formation meeting and then confirmed or re-elected annually by the general assembly. Like the general assembly, the board is one of the mandatory organs of an association. Without a board, the association cannot act and thus cannot exist. It represents the association in and out of court and conducts the association's business; the *BGB* (German Civil Code) sees it in the position of a legal representative. In view of the importance of the board for the association, this area should be comprehensively regulated in the statute, as the corresponding basic provisions of the *BGB* are usually not sufficient. This concerns both the election and the composition as well as the powers of representation of the board.



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