

Disbanding an association

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Reasons for disbanding an association

There can be various reasons for disbanding an association. Sometimes, an association is disbanded because it has achieved its purpose or there is no more need for it, or the association is not socially relevant anymore.

Pursuant to Article 77 of the Swiss Civil Code, an association is disbanded "by operation of law" (without further ado) in the following cases:

Insolvency

Inability to pay does not mean over-indebtedness. In an indebted association, the executive committee must do everything it can to redress its finances. An association is considered unable to pay if it becomes permanently unable to meet its obligations and there is no potential for restoring its finances. For associations entered in the commercial register, only the opening of bankruptcy proceedings constitutes a reason for disbandment.

Lack of executive committee members

The Swiss Civil code states: "...if the committee may no longer be appointed in accordance with the articles of association." If this is only a temporary situation, there is no reason for disbandment, however. This situation may be addressed by amending the articles of association, for example. (The law does not prescribe a minimum number of executive committee members.) If it is not possible to find any executive committee members in the long run, a formal decision on disbandment must be taken by the general meeting or the civil court.

Organisational deficiencies

If the association lacks a prescribed governing body, a member or a creditor may apply to the court for an order that the necessary measures be taken, pursuant to Article 69 c of the Swiss Civil Code. The court may set the association a time limit in which to restore the situation required by law and may, if necessary, appoint an administrator. The association bears the cost of such measures.

Immoral or unlawful objects

If an association has pursued such an object since its foundation, it shall be deemed not established and cannot obtain the form of an association. If an association infringes the law despite lawfully formulated objects in practice, the court may disband the association following a complaint by the authorities responsible or by people involved in the association.

Jurisdiction

An association generally disbands itself by taking a corresponding **resolution**. The general meeting always has the powers to disband the association. Any association can be disbanded. It is not possible to include a provision in the articles of association preventing the disbandment of the association.

Pursuant to Article 63⁽³⁾ of the Swiss Civil Code, the disbandment of the association may be requested by the executive committee or individual members thereof (right to submit motions) or, if an extraordinary general meeting is required for this pursuant to the articles of association, one-fifth of the members present. If provided for by the articles of association, the auditors or another governing body may also have the right to apply for disbandment. If the disbandment is required by the courts, the **civil courts** will always be responsible.

Procedure

Assessing the situation

If the services of the association are no longer used or if the association no longer has any members or executive committee members, the services are likely no longer relevant. Structural changes may help to find new executive committee members, or changes to the services offered may bring in new members. It may also be worth considering merging with another association. Members should also be included in these considerations. The possibility of disbanding the association (not the resolution for disbandment) may be added to the agenda of a prior general meeting. An advisory vote may be held on this matter. If the members are really keen to see the continued existence of the association, it is usually possible to find successors.

Observing the articles of association

If the executive committee or members would like to apply to disband the association, the provisions of the articles of association must first and foremost be observed. Is an ordinary general meeting required, or should an extraordinary meeting be convened especially for that purpose? Is a qualified majority required for the resolution? Or even a quorum? What happens with the liquidation surplus or proceeds? Of course, the deadlines and other provisions related to convening a meeting to discuss the disbandment and adding items to the agenda must be observed. If the articles of association do not specify anything in this regard, the general provisions for general meetings set out in the articles of association and in law shall apply.

If the articles of association provide for the possibility that a decision not to disband the association at all may be taken (e.g. with a quorum), we advise to first carry out a corresponding amendment to the articles of association. A quorum sets out the minimum number of members who must be present in order for a resolution on disbandment to be taken – often (but not always) coupled with the option for a second meeting on the disbandment in which only the votes of those present are required.

If there is any urgency or if expenses/time should be kept to a minimum, the articles of association may be amended at a general meeting taking place directly before the meeting on the disbandment. The important thing is that two meetings must be held (with a break in between). The amended articles of association will then be applicable in the actual meeting on the disbandment.

Use of association assets

The association's own articles of association set out to whom assets will go should the association be disbanded. For associations organised as sub-associations, the association's federation often comes into play. For associations exempt from paying tax, the liquidation proceeds must go to another such non-profit association located in Switzerland. Associations that are not exempt from paying tax often appoint specific organisations pursuing the same or a similar purpose. If the association is not exempt from paying tax, it may also consider its members. Such a regulation is controversial, however, especially if former members have also contributed to the association's assets.

If a resolution is not taken, the assets will go to the community (depending on the association's area of activities), which must use the means in a way that come as close as possible to the association's original purpose. If the association is disbanded due to pursuing immoral or unlawful purposes, the assets will go to the community, even if the articles of association provide otherwise.

Meeting on the disbandment

To comply with the legal requirement of "due notice", the motion to disband the association must be clearly added to the agenda as such, with time factored in for discussions. If, despite the withdrawal of the executive committee, there is a possibility that new people can be elected, the item "Election of executive committee members" may also be added to the agenda and prioritised before the item on the disbandment. The motion to disband the association will then only be addressed and designated as such if no executive committee members are elected. E.g. Agenda: "If no members are elected: Motion to disband the association".

If ordinary items are also to be discussed at the meeting (annual financial statements for the previous year), these must be put on at the start of the agenda. The members must be informed about the financial situation in a timely manner. Where relevant, it may make sense to present revised accounts.

The resolution on the disbandment includes setting a deadline by which the association is to be disbanded. Further agenda items are the election of liquidators and the use of liquidation proceeds. The executive committee must prepare thoroughly for these items, meaning that people involved in the liquidation must be contacted in advance, possibilities for distributing the means clarified beforehand and specific motions presented to the members. It is not necessary to convene another general meeting after the liquidation.

The meeting minutes, the final accounts and the final report will be stored in the association's files.

Liquidation

Term

After the resolution on the disbandment, the association will enter into the liquidation phase. The final disbandment of the legal personality will only take place once the liquidation has taken place. An association entered in the commercial register is obliged to report the resolution on the disbandment to HR without delay; the addition of "in liquidation" must be included with the entry.

Implementation

The meeting on the disbandment determines who will carry out the liquidation. Generally, these are the executive committee members, but a fiduciary office may also be appointed, or there may be corresponding statutory provisions. The persons appointed must be given the necessary signatory powers.

The liquidation must be carefully conducted in accordance with the provisions of cooperative legislation, Article 913(1) of the Swiss Code of Obligations, i.e. any ongoing business must be terminated:

- Recovering money owed by third parties, including membership fees
- Utilising remaining assets
- Settling any outstanding invoices
- Archiving, deleting or deactivating the website
- Asking creditors to assert their claims with a registered letter or through notice in the trade journal
- Settling any debts
- Drawing up the final accounts and a final report

Communication and farewells

The disbandment of the association must be communicated to the members and corresponding bodies (community association list, organisations, publications, sponsors, etc.). This information is mandatory for associations entered in the commercial register.

Often, the disbandment of the association is viewed as a failure which might be accompanied by feelings of loss and shame. This doesn't have to be the case! A disbandment doesn't take away from the important services the association has provided or the doors it has opened. Perhaps it has courageously tried something out but it was not the right time. With this in mind, consideration must be given to how best to say goodbye, in a dignified way, e.g. by holding a last event for the target audience and/or organising a nice, entertaining reception in order to look back at past achievements.