

## Work aid: merger of associations

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Mergers of associations are subject to the **Merger Act (MergA)**. There are two ways to conduct a merger: a **combination merger** is when two or more associations merge into a newly founded association. The other variant is **merger by absorption**, whereby one association takes over one or more other associations. The procedure is identical for both variants.

### Preparation

The associations and/or management boards involved must decide on a suitable declaration of intent. The declaration of intent must adequately inform the association members and involve them in the process. The decision to initiate a merger is normally taken at the general meetings of the involved associations, for example by means of a mandate to the management boards or by forming a working group where the members of the associations can adopt a position.

### Merger contract

The management boards (or working group) have to formulate a merger contract, Art. 13 of the Merger Act regulates what must be included in the contract, in particular:

- the name and headquarters of the new association and participating associations.
- Details on the role of the members of the associations merging into a new entity (e.g. honorary members, special member categories, etc.)
- the exact time when the activities of the associations being merged are taken over by the new association
- every special advantage granted to members of a management or administrative body or executive members (e.g. being on the management board in the new association)
- the conversion ratio for shares and possibly the amount of the settlement (if one is scheduled).
- any special points - e.g. obligations transferred to the new association
- if applicable draft of articles of association for the new entity or changes to the articles of association of the acquiring entity

A merger contract must be in writing. It must be approved by the management boards of the associations involved (decision regarding approval must be recorded; Article 12, para. 1 MergA). The merger contract is signed by the responsible representatives of the associations (joint or sole signature depending on the applicable articles of association). The actual decision on the merger is then taken by the general meetings of the associations involved.

## **Merger report**

A merger report is not mandatory for association mergers under Art. 14 MergA, but may be worthwhile depending on how well informed the members are. The merger report outlines the purpose and consequences of the merger, particular features, any changes to the rights and obligations of association members plus any consequences for employees. The draft of the articles of association for the new entity must be enclosed with the merger report for combination mergers.

Depending on the timetable, the interim balance sheet of the associations must be provided to ensure compliance with any obligations. Otherwise, the balance sheet from the last closing is part of the contract (issued within the past 6 months, otherwise an interim balance sheet must be created (Art. 11 MergA)).

An audit conducted by a recognised auditor of the merger contract, merger report and balance sheet is not required for mergers of associations under Art. 15 MergA.

## **Formulating or amending regulations, budget, etc.**

The regulations, job descriptions, organisational charts, etc., must be amended depending on the situation. A budget should also be drawn up for the new or acquiring association.

## **Consultation**

The merger contract incl. associated documents (e.g. new articles of association, regulations, etc.) must be disclosed to the members at least 30 days before the vote (this deadline may be shortened subject to agreement by all the members).

Employees of all associations involved must be consulted before approving the merger contract, the provisions of Article 333a CO apply (transferring contracts of employment).

## **Vote**

All associations involved must each hold a (an ordinary or extraordinary) general meeting to approve the merger contract. For the merger to pass, all the associations involved must approve the motion by a majority of three quarters of those members present (provided the articles of association of the associations in question do not stipulate a higher quorum). No resolution on dissolution needs to be taken for associations being taken over or being incorporated into a new association via combination merger.

Once all the associations involved have given their approval, the first general meeting of the new association must be held and include the following agenda items:

- Approval of the new/revised articles of association and regulations
- Election of management board members as per the new articles of association
- other resolutions in line with the new articles of association

### **Entry into force**

The merger resolution enters into force once all the associations involved in the merger have given their approval. The last resolution marks the entry into force. A retroactive merger is not possible, i.e. the coming into force of the merger must be after the votes have been held. If one of the associations involved is listed in the commercial register, the merger only comes into force when it is entered in the commercial register. If the time of the merger differs from the day when the merger is entered in the commercial register, the difference is only binding in-house. As far as third parties are concerned, the merger enters into force when it is included in the commercial register.

### **Resignation of association members**

Association members may resign within two months of the merger resolution at their own discretion and without having to provide any reason for doing so. The resignation applies retrospectively from the date of the merger resolution (Art. 19 MergA). The members must be informed accordingly.