

Overview of German Law on Associations

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I. Main sources of the national law on associations

1. Private and public association law

The law on associations is regulated in the 1st Book of the German Civil Code in secs. 21 to 79a BGB. Secs. 21 to 54 BGB contain general provisions that apply to

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all associations. In contrast, secs. 55 - 79a BGB contain special regulations that apply only to a registered association (*eingetragener Verein*, e.V.).

Special regulations exist for a specific form of association, the mutual insurance association (*Versicherungsverein auf Gegenseitigkeit*, VVaG) in secs. 171 et seq. of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*, VAG).¹

Finally, there is the Public Law on Associations (*Vereinsgesetz*, VerG), which regulates the conditions under which associations may exceptionally be prohibited and dissolved. On the basis of the VerG, a ban on associations (*Vereinsverbot*) is possible only if the purposes of the association are contrary to criminal law or the constitution (sec. 3 para 1 VerG). However, the VerG applies not only to associations falling within the scope of secs. 21 et seq. BGB, but to all organisations regardless of their legal form. 2

2. Secs. 51 et seq. of the German Fiscal Code (Abgabenordnung)

Secs. 51 et seq. of the German Fiscal Code (*Abgabenordnung*, AO) contain regulations according to which tax benefits are granted to certain entities. Tax-privileged status is a concept not of civil or corporate law, but of tax law. As tax-privileged status does not require a special legal form, it is applicable to both registered associations within the scope of sec. 21 BGB (e.V.) and non-registered associations within the scope of sec. 54 BGB (*nicht eingetragener Verein*, n.e.V.; for more information on the classification, see below paragraphs 6 et seq.). Foundations, limited liability companies and even stock corporations and cooperatives can obtain tax-privileged status, too (for details, see paragraph 5). 3

II. Characteristics and variations of an association

1. Definition of an association

German law does not provide a definition of the term “association” itself. However, the definition used by courts and scholars describes associations as "voluntary 4

¹ From a systematic point of view, the association regulated by the German Civil Code (*bürgerlich-rechtlicher Verein*) is the basic form of all corporations. Consequently, stock corporations, limited liability companies and cooperatives, in particular, are to be regarded as associations in a broader sense; in other words, they are variations of a civil-law association. The corresponding codifications (Stock Corporation Act, Limited Liability Company Act, Cooperative Society Act) could therefore also be qualified as special codifications under the Law on Associations. However, the following explanations are limited to civil law associations within the meaning of secs 21 et seq. BGB.

coalitions for the pursuit of common purposes having both statutes and a common name and which are designed for a longer period of time while having a large and fluctuating membership.”

1. Comparison with other legal forms

Associations are to be distinguished from partnerships (*Personengesellschaften*). The latter are based on the personal trust of the partners in each other and therefore are not meant to have a high fluctuation in the membership. In contrast to an association, a foundation (*Stiftung*), regulated in secs. 80 - 88 BGB, has no members. Stock corporations (*Aktiengesellschaften*), regulated in the German Stock Corporation Act (*Aktiengesetz, AktG*), and limited liability companies (*Gesellschaften mit beschränkter Haftung*), regulated in the Limited Liability Company Act (*Gesetz über die Gesellschaft mit beschränkter Haftung, GmbHG*), can be seen as variations of the association. Unlike associations, these legal forms can be used to pursue all kinds of purposes, thus also economic purposes. The provisions of the AktG and the GmbHG (especially those on the distribution of profits) show that the legislature designed stock corporations and limited liability companies primarily for use as for-profit organisations. Finally, cooperatives (*Genossenschaften*), regulated by the Cooperative Law (*Genossenschaftsgesetz, GenG*), and mutual insurance associations (*Versicherungsvereine auf Gegenseitigkeit*), regulated in secs. 171 et seq. of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz, VAG*), are variations of the association as well. They differ from the associations regulated in secs. 21 et seq. BGB in the limitation of their purposes to those explicitly named by law.

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3. Variations of associations

a) Variations under secs. 21 et seq. BGB

An association under secs. 21 et seq. BGB exists in three variations:

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- Most important is the registered association (*eingetragener Verein, e.V.*) as defined in sec. 21 BGB. The district courts (*Amtsgerichte*) that administer the registers of associations (*Vereinsregister*) are responsible for their registration. As a basic requirement of registration, the association must be qualified as a “non-economic” association (*nicht wirtschaftlicher Verein*). Based on the

most recent case law of the Federal Court of Justice (*Bundesgerichtshof*), an association meets this requirement if its purpose does not imply any distribution of the profits to its members (for further details, see below, paragraphs 48 et seq.).

- The second relevant variation is the non-registered association as addressed in sec. 54 BGB (*nicht eingetragener Verein, n.e.V.*).² Also for a non-registered association, the classification as “non-economic” is required since it is only then that secs. 21 to 54 BGB apply.³ The criteria for differentiating between economic and non-economic associations are the same as for registered associations (see below, paragraphs 48 et seq.). 7

- Finally, there is the economic association (*wirtschaftlicher Verein*), regulated in sec. 22 BGB. According to sec. 22 BGB. This form of association is granted legal capacity by the administrative authorities. An economic association is by its nature a for-profit organisation, and it is therefore similar to a typical stock corporation or a typical limited liability company. However, its practical significance is very limited because of its subsidiary nature as foreseen by law: The granting of legal capacity by the administrative authorities may take place only if, exceptionally, the association cannot reasonably be expected to pursue its economic purpose in the legal form of a stock corporation, a limited liability company or a cooperative. 8

Due to the minor importance of economic associations, the following explanations are limited to registered associations and non-registered associations. 9

b) Tax-privileged associations (gemeinnützige Vereine)

Most (registered and unregistered) associations (88%) have the status of a “public benefit association” (*gemeinnützige Vereine*). However, from a civil law perspective, this is not another type of association but merely a tax-privileged status 10

² Sec. 54 BGB itself defines such an association as an “association without legal capacity” (*nicht rechtsfähiger Verein*); this is, however, outdated insofar as, contrary to the understanding of the lawmakers who first formulated this provision, the legal capacity of this type of association has long been recognised.

³ The applicability of secs. 21 - 54 BGB to non-registered, non-economic associations conflicts with the wording of sec. 54 sentence 1 BGB, but it has long been recognised and has been confirmed in the new version of the provision, which comes into force on 1 January 2024.

pursuant to public benefit law under secs. 51 et seq. AO (Gemeinnützigkeitsrecht). On the requirements for and consequences of tax-privileged status, see paragraphs 16 et seq. below.

4. Advantages of the status of a registered association

The fact that the vast majority of associations are entered in the registers of associations indicate that registration is seen as carrying significant benefits. However, this is not a matter of granting legal capacity or tax-privileged status, since a non-registered association also has legal capacity (for details, see paragraph 44) and can acquire tax-privileged status (see paragraph 3). In fact, there are three other reasons that favour registration: **11**

- Despite its legal capacity, a non-registered association encounters practical difficulties in legal transactions as it cannot provide proof of its identity, its name or the power of representation of its board members. As a result, non-registered associations may encounter major difficulties, for example, in opening a bank account or obtaining insurance coverage as well as in the acquisition of real estate (for details, see paragraph 44). **12**
- Secondly, sec. 54 sentence 2 BGB provides that the person who concludes legal transactions on behalf of a non-registered association is personally liable to the contracting party in addition to the association. **13**
- Third, there is a risk that a court will qualify the non-registered association as an economic association and, as a result, impose personal liability on its members (see below, paragraph 50). In the case of a registered association, this risk does not exist: even if a court were to come to the conclusion that it qualifies as an economic association and was therefore wrongly registered, personal liability of the members is out of the question. The sanction resulting from such a determination is instead limited to the association being deleted *ex officio* from the register of associations (see below, paragraphs 89 et seq).⁴ **14**

⁴ BGH [Bundesgerichtshof = Federal Court of Justice] II ZR 239/05 – *Kolpingentscheidung*, <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=42697&pos=0&anz=1>

- Finally, registration can be achieved without much financial or other effort (see paragraphs 34 et seq.). **15**

III. Public benefit law (Gemeinnützigkeitsrecht) and tax-privileged status

1. Tax-privileged purposes

As mentioned above, Secs. 51 et seq. of the German Fiscal Code (*Abgabenordnung*, AO) contain regulations according to which tax benefits are granted to certain entities. A prerequisite for obtaining this status is that the entity exclusively and directly pursues public benefit (*gemeinnützige*), charitable (*mildtätige*) or religious (*religiöse*) purposes. The concept of "public benefit" is further described in sec. 52 para. 1 sentence 1 AO. According to this provision, an incorporated entity pursues charitable purposes if its activities serve the selfless promotion of the general public in material, spiritual or moral terms. In addition to this definition, sec. 52 para. 2 AO contains a list of 26 purposes recognised as public benefit purposes, including, for example, the advancement of science and research (no. 1), the advancement of consumer counselling and consumer protection (no. 16) and the advancement of sport (no. 21). Although this list is open-ended rather than enumerative, it is of great importance in practice. **16**

2. Most important effects of tax-privileged status

Associations are not subject to a special tax regime simply because of their legal status. Rather, they are subject to the general tax regime applicable to all other organisations (e.g., corporate income tax according to the Corporate Income Tax Act, *Körperschaftsteuergesetz*, KStG). However, special taxation rules apply for associations with tax-privileged status. These include both direct tax benefits for the association itself (a) and tax benefits for donors and members regarding their membership fees (b). **17**

a) Tax benefits for tax-privileged associations

Benefits for tax-privileged associations are available in the areas of corporate income tax (*Körperschaftsteuer*), trade tax (*Gewerbesteuer*), turnover tax (*Umsatzsteuer*) and inheritance and gift tax (*Erbschafts- und Schenkungssteuer*). **18**

First, there are advantages to taxation under the corporate income tax law (Körperschaftsteuergesetz, KStG). For the purpose of the corporate income tax, the income sources of a tax-privileged association are divided into four different domains: **19**

(i) The idealistic domain (*ideeller Bereich*) includes all activities provided free of charge to its members or the public. Income in this area is generated through membership fees, donations and subsidies. **20**

(ii) Asset management (*Vermögensverwaltung*) includes, for example, the leasing of real estate or the management of funds (and interests derived therefrom) or investments (and their dividends).

(iii) Purpose-specific business operations (*Zweckbetriebe*) directly serve the purpose of the association, e.g., where the provision of health services in a hospital operated by a health association is available only for a fee or where a concert held by a music association is accessible only upon payment of an entrance fee.

(iv) (Further) Economic business operations (*wirtschaftliche Geschäftsbetriebe*), i.e., operations that are not to be classified as purpose-specific business operations but which are used to generate the financial resources that allow pursuit of the purpose of the association.

Income from the idealistic domain (i), asset management (ii) and purpose-specific business operations (iii) are generally tax-exempt. The income from economic business operations (iv) is subject to corporate income tax only if certain *de minimis* thresholds are met: **21**

- the income from the economic business operation exceeds € 45,000 (sec. 64 para. 3 AO) and
- the profit exceed € 5,000 (sec. 24 KStG)

Secondly, tax-privileged associations are privileged with regard to the trade tax (*Gewerbsteuer*), which is levied by local municipalities. According to sec. 3 no. 6 sentence 1 of the Trade Tax Act (*Gewerbsteuergesetz, GewStG*), trade tax is – similar to corporate income tax – payable only on income from commercial business operations that are not part of the special-purpose operations. Furthermore, tax-privileged associations benefit from a special tax allowance of 5,000 EUR (*Freibetrag*) pursuant to sec. 11 subsec. 1 number 2 GewStG. **22**

Thirdly, there is a reduced VAT rate of 7% pursuant to sec. 12 para. 2 number 8a UStG, which applies to goods or services provided by tax-privileged associations. Again, only services in the economic business operation are excluded from the reduction as far as they are not part of the special purpose operation. **23**

Fourthly, tax-privileged associations are exempt from inheritance and gift tax as well as real estate tax (*Grundsteuer*). **24**

b) Tax benefits for donors and payed membership fees

The tax benefits for donors and members relate to the payment of donations and membership fees. Donations and membership fees to associations with tax-privileged status are deductible from the personal income tax to a maximum of 20% of the annual income pursuant to sec. 10b EStG. For single donations of up to 300 EUR, the bank transfer receipt constitutes sufficient proof for the tax authority. **25**

3. Statute-related and actual management compliance

The fundamental precondition for acquiring tax-privileged status is that the association pursues a tax-privileged purpose within the scope of secs. 52 - 54 AO. Moreover, both the association statutes (statute-related compliance) and the actual management (actual management compliance) must comply with secs. 51 et seq. AO. Statute-related compliance requires, in particular, that certain criteria prescribed by an Annex to sec. 60 AO are included in the statutes (e.g., the statutes must stipulate that no person may benefit from disproportionately high remuneration). Actual management compliance requires the association's management to be directed towards the exclusive and direct pursuit of the tax-privileged purposes and to conform the provisions on the requirements for tax privileges prescribed by the statutes (sec. 63 AO). **26**

4. No specific recognition procedure for tax-privileged status

A specific recognition procedure for tax-privileged status does not exist. Instead, the determination of tax-privileged status is made by the locally responsible tax authority as part of the corporate income tax assessment. Provided that the association meets the legal requirements for the relevant period, the tax authority issues a notice of exemption (*Freistellungsbescheid*) with which the tax-privileged status can be proven for other purposes. Newly established associations may **27**

request that their statute-related compliance be verified by the responsible tax authority in a separate procedure (sec. 60a AO).

5. Associations with cross-border-operations and foreign associations

An association focused on cross-border activities generally also qualifies for tax relief. The vast majority of the purposes listed in Sec 52 para. 2 sentence 1 AO are formulated without a territorial limitation (e.g., no. 1: “the advancement of science and research”). Only two purposes are explicitly limited to activities on German territory (no. 8 “the advancement [...] of landscape management” and no. 24 “the general advancement of democratic government”). By contrast, two of the purposes explicitly refer to cross-border activities (no. 15 “development cooperation” and no. 13 “the advancement of internationalism, of tolerance in all areas of culture and of the concept of international understanding”).

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However, some purposes that are not explicitly limited to German territory are narrowly handed by the tax authorities and therefore cover only activities on German soil, e.g., “the protection and preservation of historical monuments” (no. 6). Moreover, Sec 51 para. 2 AO stipulates that “where the tax-privileged purposes are achieved abroad, the tax privilege must [either] benefit natural persons who have their residence or their habitual abode within the territory of the application of this Code, or the activity of the corporation, alongside achieving the tax-privileged purposes, must be capable of contributing to the reputation of the Federal Republic of Germany abroad”. However, the courts interpret the latter criterion very generously and consider the requirement to be met if there is no indication of harm to the reputation of the Federal Republic of Germany.

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Regarding foreign associations, two aspects have to be distinguished:

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- Direct taxation of foreign associations: According to sec. 5 (2) no. 2 Corporate Income Tax Act (*Körperschaftsteuergesetz*, KStG), foreign associations (and other foreign incorporated entities) can claim the direct tax-privilege for their corporate income generated in Germany on the condition that they were incorporated under the laws of a member state of the European Union or under the laws of a state to which the Agreement on the European Economic Area applies. In addition, they need to be entities within the meaning of art. 54 of

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the Treaty on the Functioning of the European Union (TFEU) or art. 34 of the Agreement on the European Economic Area (EEA Agreement). Finally, sec. 5 para. 2 number 2 KStG requires the existence of an administrative assistance agreement (*Amtshilfeabkommen*) with the respective state.

- The Double Taxation Agreement (DTA) with the United States of America (USA) includes a special provision (art. 27) for the mutual recognition of the tax-privileged status of incorporated entities (including associations) of the contracting state. Other associations (incorporated outside the EU, EEA and USA) cannot claim a tax-privileged status in Germany. **32**

The deductibility of outbound donations by Germans: Germans can claim a special expense deduction for direct donations to associations that fulfil or would fulfil the conditions mentioned above under sec. 5 para. 2 number 2 KStG pursuant to sec. 10b Individual Income Tax Act (*Einkommensteuergesetz*, EStG). Until now, the local tax authority had to decide on a case-by-case basis whether it considered the requirements met by the foreign association. Those requirements are the same as for domestic associations. According to a letter of the Federal Ministry of Finances of 2011,⁵ a domestic donor must submit appropriate documents to the responsible tax office establishing that the foreign recipient complies with these requirements (e.g., statutes of the association, activity reports, statements of income and expenditure, cash reports, statements of assets and liabilities with evidence of the formation and development of reserves, records of the receipt of donations and their use for the intended purpose, minutes of the board of directors, see sec. 90 para. 2 AO). Beginning in 2024, foreign associations will be listed centrally in the *Beneficiary Register (Zuwendungsempfängerregister)*, if they fulfil the same requirements as domestic associations. Foreign associations will not have to apply for registration in the *Beneficiary Register* themselves. Rather, on the first instance when a German donor seeks to deduct a donation made to a foreign association, the local tax authority in charge will register the association in the *Beneficiary Register* if it qualifies. **33**

⁵ Bundesministerium der Finanzen (BMF) [Federal Ministry of Finances] 16 May 2011, BStBl. I 2011, 559.

IV. Requirements for the establishment of an association

1. General requirements for the establishment of an association

The establishment of an association requires the founders to agree on the content of the statutes and to declare that they wish to become members of the association. The minimum number of founders is two. Both natural and legal persons are eligible to function as founders. No special form is required by law for establishment; the incorporation act and the statutes do not even need to be written. The contribution of a minimum capital is required neither for the establishment of a registered association nor for the establishment of a non-registered association.

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2. Special requirements for a registered association

However, if the association intends to be entered in the register of associations (*Vereinsregister*) in order to obtain the status of a registered association (e.V.) within the scope of sec. 21 BGB, additional requirements must be met. First of all, a registration is possible only if the association has at least seven members (sec. 56 BGB). Since a copy of the statutes must be filed with the register of associations, they need to be written (sec. 59 Abs. 2 BGB) and according to sec. 59 para. 3 BGB signed by at least seven members. A certificate showing the appointment of the members of the board of directors has to be enclosed (sec. 59 para. 2 BGB). The statutes have to meet further minimum requirements, such as listing the purpose, the name and the registered office of the association (sec. 57 para. 1 BGB). The application for registration needs to be signed by at least as many members of the board of directors as are necessary to legally represent the association (sec. 59 para. 1 BGB). Their signatures need to be publicly certified by a competent authority (notary or administrative authority) that confirms the identity of the signatories on the basis of appropriate identification documents. The application letter must show the names, dates of birth and addresses of all members of the board.

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The register of associations (*Vereinsregister*) is administered at the district court (*Amtsgericht*) in whose district the registered office is located (sec. 55 BGB). The court examines the correctness of the data provided in the application (sec. 56 BGB). In addition to the formal requirements, it primarily assesses whether the association is a "non-economic" association (for details see paragraphs 48 et

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seq.). As mentioned above, this is the case if the purpose does not imply any distribution of profits to its members. Beyond that assessment, no further review takes place regarding either the reasonableness of the association or its purpose.

A notary public charges 50 euros for the public certification (*öffentliche Beglaubigung*) of the signature of the board members. According to sec. 91 para. 2 of the Court and Notary Fees Act (*Gerichts- und Notarkostengesetz*), the notary fees for charitable (sec. 53 AO) and religious entities (sec. 54 AO) are reduced, however, not for public benefit entities (sec. 52). The administrative authorities usually charge lower fees or even no fees at all for the official certification of signatures if the association is (presumably) qualified for tax-privileged status. **37**

A registration fee of 74 euro needs to be paid to the register of associations (*Vereinsregister*), which is administrated by the local courts (*Amtsgericht*) within the jurisdiction of each federal state. The law of many federal states stipulates that associations with tax-privileged status are exempt from the registration fee. The details, however, differ. No exemptions are made by the federal states of Saxony, Bremen and Mecklenburg Western Pomerania. **38**

Digital registration by the association its board of directors is still not possible in Germany. The filing of the registration can be done digitally only if it is submitted by a notary. **39**

3. Establishment of “foreign associations”

The civil law registration procedure outlined above applies without any regard to the nationality of the applicants. However, if the majority of members or “leaders” (usually the members of board) of an association hold a foreign nationality other than an EU nationality (what is termed an “association of foreigners”, *Ausländerverein*), there is, according to the Public Law of Associations (VereinsG), an additional obligation to register the association with the competent state police authorities. Where an association established under a foreign law (*ausländischer Verein*) establishes a branch in Germany, the same registration requirement applies. **40**

However, this obligation represents neither a prerequisite for the recognition of the legal capacity of an association in civil law nor a prerequisite to carry out activities within Germany. Nevertheless, a failure to comply will result in a fine.

Germany is not a signatory of the Council of Europe Convention number 124 on the Recognition of the Legal Personality of International Non-Governmental Organisations.⁶ Therefore, there is no special registration process for foreign international non-governmental-organisation (NGOs), some of which operate in the form of associations. **41**

4. Specifics of tax-privileged associations

As already mentioned, tax-privileged associations do not form another variation of an association in terms of civil law. Consequently, they do not have to fulfil any special establishment requirements. On the recognition of tax-privileged status, see above paragraph 27. **42**

V. Legal capacity

1. Registered association

Upon registration in the register of associations at the local court, the association acquires the status of a legal person (*juristische Person*). Legal persons are equal to natural persons in terms of their legal capacity. They can be a holder of any right, enter into contracts and participate in court proceedings. **43**

2. Non-registered association

In contrast to the understanding of the provision's original drafters, who explicitly referred to a non-registered association as an "association without legal capacity" (*nicht rechtsfähige Vereine*), a non-registered association is nowadays seen as having legal capacity, although not as being a legal person. Therefore, the non-registered association can, in general, acquire all kinds of rights, enter into contracts and participate in court proceedings (for the latter, see sec. 50 para. 2 of the Code of Civil Procedure, *Zivilprozessordnung*). Doubts exist only with regard to **44**

⁶ European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124), <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=124>.

the question of whether an association is able to acquire real estate.⁷ Difficulties arise from the fact that the acquisition requires entry of the acquirer into the land register (*Grundbuch*). However, in the opinion of the Federal Court of Justice (*Bundesgerichtshof*), a non-registered association cannot be entered in the land register under its common name; instead, the registration of all the names of the association's members is required. In practice, this severely restricts the ability of non-registered associations to acquire real estate, and in many cases it forces them to rely on trustees.

3. Applicability of the Transformation Act (Umwandlungsgesetz)

Other differences between registered and non-registered associations exist with regard to the possibility of being involved in a transformation process within the meaning of the Transformation Act (*Umwandlungsgesetz*, UmwG). Only a registered association is eligible to participate in mergers, divisions and changes of legal form (sec. 3 para. 1 number 4, sec. 124 para. 1, sec. 191 para. 1 number 4 UmwG). However, a change of legal form is limited to a registered association being changed to another legal form; a corresponding transformation in the other direction is not possible (sec. 191 para. 2 UmwG).

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VI. Permitted purposes and activities

1. General

According to general principles, the purpose and activities of an association may not violate the constitution nor the law or good morals. Secs. 21 et seq. BGB provide neither a list of purposes that associations are to pursue nor any restrictions regarding the activities of an association. From sec. 45 para 3 BGB it follows that the purpose of the association may be focused on the benefit of its members (e.g., sports associations) as well as on the benefit of third parties (e.g., hunger relief associations).

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⁷ A reassessment of the question may become necessary when the new version of sec. 54 BGB comes into force on 1 January 2024. At present, however, it is not yet foreseeable whether the new version will make it easier or more difficult for non-registered associations to acquire real estate.

2. “Non-economic” status

a) Relevance for registered associations

However, as already mentioned above (see above, paragraph 6), in order to be able to obtain the status of a registered association (e.V.) within the scope of secs. 21 et seq. BGB, the association needs to be classified as a “non-economic association” (*nicht-wirtschaftlicher Verein*, sec. 21 BGB). According to the wording of sec. 21 BGB, this is the case if the purpose of the association “is not focused on business operations” (“*nicht auf einen wirtschaftlichen Geschäftsbetrieb gerichtet*”).

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In the past, the courts and academic commentary concluded from sec. 21 BGB that an association’s scope of permissible economic activity is limited by law. In particular, registered associations had to be concerned that they would be qualified as economic associations in the event of excessive economic activities and therefore be subsequently deleted from the register of associations. According to the concept of “economic sub-purposes-privilege” (*Nebenzweckprivileg*), economic activities were permitted only insofar as they constituted a subordinate activity serving the non-economic main purposes of the association. In addition, it was assumed that economic activities of the association should not dominate its non-economic activities in quantitative terms.

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However, this concept has been outdated since the so-called “Kita”-ruling of the Federal Court of Justice (*Bundesgerichtshof*) in 2017.⁸ In this decision, the judges clarified that the economic activities of associations are not subject to quantitative limits. Rather, it is decisive that economic activities serve the pursuit of a non-economic purpose. According to the court, a non-economic purpose will be assumed if the purpose of the association is not aimed at distributing profits to its members. Under that condition, an association is not to be qualified as an economic association even if it engages exclusively in economic activities. In the specific case decided by the Federal Court of Justice (*Bundesgerichtshof*), an

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⁸ BGH May 16, 2017, II ZB 7/16, <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=d7056087056bd8020833ca5c158cf8d&nr=78318&pos=0&anz=1>.

association whose main activity was to offer childcare in exchange for payment was qualified as a non-economic association. Accordingly, the fact that an association provides advantages to its members and grants certain benefits of a commercial value to them (e.g., use of tennis courts) does not preclude classification as a non-economic association.

b) Relevance for non-registered associations

With regard to a non-registered association, the distinction between an economic and a non-economic purpose is relevant to the question of which law is applicable to it. Only if the non-registered association qualifies as “non-economic” will secs. 21 to 54 BGB apply to it.⁹ If, on the other hand, the non-registered association qualifies as an economic association, the law of partnership applies, which implies in particular the personal liability of members. The criteria for classification as economic or non-economic are the same as in the case of a registered association.

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3. Specifics of tax-privileged associations

a) General

As mentioned above (see above, paragraph 16), tax-privileged status requires that the association pursues public benefit (*gemeinnützige*), charitable (*mildtätige*) or religious (*religiöse*) purposes (secs. 51 et. seq. AO). However, sec. 56 AO clarifies that a tax-privileged incorporated entity may only pursue the public-benefit purposes specified in their statutes. In consequence, only activities that serve the pursuit of the public-benefit purpose are allowed.

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b) Compatibility of economic activities with secs. 51 et. seq. AO.

Provided that the above conditions are met, economic activities are also compatible with the provisions of secs. 51 et. seq. AO. Beyond the activity of asset management, tax-privileged associations may engage in economic activities in the form of so-called “purpose-specific business operations” (*Zweckbetriebe*). Purpose-specific business operations are activities that directly serve the pursuit of the public-benefit purpose (sec. 65 AO), such as offering childcare in exchange

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⁹ The applicability of secs. 21 et seq. BGB to a non-registered non-economic association conflicts with the wording of sec. 54 sentence 1 BGB, but it has long been recognised and has been confirmed in the new version of the provision, which comes into force on 1 January 2024.

for payment so as to promote youth welfare. In addition, economic business operations are permissible which indirectly – rather than directly – serve the pursuit of the public-benefit purpose by generating financial resources (e.g., the sale of coffee and cake to finance the construction of a new kindergarten).

With regard to the scope of economic activity, secs. 51 et. seq. AO do not contain any restrictions. Consequently, it is possible that a tax-privileged association operates an exclusively purpose-specific business. **53**

c) Limited permissibility of political activities

According to established case law, the political activity of tax-privileged associations is subject to certain restrictions.¹⁰ This is due to the need to protect against a circumvention of regulations on the financing of political parties, which are much more restrictive than the regulations on the financing of tax-privileged associations. Consequently, tax-privileged associations are not allowed to engage in extensive political activity or to constantly comment on current political issues. However, political statements and activities that relate to the specific purpose of the tax-privileged association (e.g., a climate protection association may publicly speak out against laws or projects that contribute to CO2 emissions) or statements that relate to fundamental values of the German constitution (e.g., sports clubs that speak out against racism) are allowed. **54**

VII. “Asset-lock” requirement

1. Profit non-distribution constraint

Secs. 21 et seq. BGB do not include an explicit provision prohibiting the distribution of profit or surplus to the members, directors, founders, etc. of the association (a profit non-distribution constraint). However, based on recent case law of the Federal Court of Justice (*Bundesgerichtshof*), qualification as a non-economic association requires such a constraint (for the relevance of non-economic status, see above, paragraphs 48 et seq.). **55**

¹⁰ BFH Jan. 10, 2019, V R 60/17, <https://www.bundesfinanzhof.de/de/entscheidung/entscheidungen-online/detail/STRE201910035/>.

Since the requirement of a profit non-distribution constraint is not explicitly regulated, there is some doubt as to its scope. It can be assumed that it includes not only open distributions but also hidden, in kind profit distributions. As mentioned before, an association does not violate the constraint on the distribution of profits by granting its members certain benefits of commercial value (e.g., the use of tennis courts). This can be concluded from the fact that almost every benefit has an economic value. Nevertheless, sec. 45 para. 3 BGB presupposes the existence of member-beneficial associations. However, it has not yet been clarified where the line is to be drawn between an illegal distribution on the one hand and the legal granting of advantages to the members on the other hand.

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2. Distribution of liquidation proceeds and severance payments

Although it seems consistent to extend the profit non-distribution constraint to the distribution of liquidation proceeds, sec. 55 indicates the opposite. According to sec. 55 para. 1 BGB, in the event of dissolution of the association, the liquidation proceeds are to be distributed to the persons named in the statutes. The members of the association can also explicitly be designated as beneficiaries in the statutes. This can be deduced from sec. 55 para. 3 BGB, which stipulates that the proceeds of liquidation have to be distributed equally to the members at the date of the dissolution where (i) no person is entitled to the proceeds under the statutes and (ii) the association can be characterised as exclusively serving the interests of its members. As a result, a distribution of the liquidation proceeds to its members should be considered permissible.

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By law, members who have withdrawn from the membership of the association are not entitled to receive any assets from liquidation proceeds. However, it can be concluded from sec. 55 para. 3 BGB that the statutes can grant severance payments or similar instruments in those cases.

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3. No further requirements regarding the use of assets

Secs. 21 et seq. BGB do not provide for rules on how the association must use its assets or profits. The only relevant guideline in this respect is therefore the purpose of the association.

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4. Specifics of tax-privileged associations

For tax-privileged associations, sec. 55 AO stipulates a number of restrictions regarding the use of assets, some of which go beyond the restrictions derived from the “non-economic-requirement” outlined above. **60**

First of all, there is a detailed regulation of the non-distribution constraint. According to sec. 55 para. 1 number 1 sentence 2 AO, members may receive neither shares of profit nor any other allocations from the funds of the association in their capacity as members. Sec. 55 para. 1 number 3 AO stipulates that tax-privileged associations may not provide a benefit to any person by means of expenditure unrelated to the purpose of the corporation nor may they pay disproportionately high remuneration. **61**

Secondly, the non-distribution constraint is explicitly extended to cases relating to either withdrawal from association membership or dissolution and liquidation of the association. Sec. 55 para. 1 number 2 AO stipulates that on termination of their membership or on dissolution or liquidation of the association, members may not receive more than their “paid-up capital shares” (*eingezahlte Kapitalanteile*) and the fair market value of their contributions in kind. Also, in case of dissolution or liquidation, profits may be used exclusively for tax-privileged purposes (sec. 55 para. 1 number 4 AO). **62**

VIII. Membership

1. No restriction on access to membership

There are no regulations limiting the membership in an association to certain legal entities. Both natural and legal persons can become a member of an association. Membership in an association does not require a certain nationality either. **63**

2. Freedom of admission and right to admission

In principle, an association is free to decide whom it accepts as a member. However, exceptions are recognised in case law for associations that have a position similar to a monopoly or a dominant position of power in the economic and social sphere (e.g., unions). In these cases, prospective members have a right to admission, which can also be enforced in court. **64**

3. Membership fee and other membership obligations

The law does not stipulate whether an association has to charge a membership fee (see sec. 58 no. 2 BGB). Both the obligation to pay money and the obligation to provide other services (e.g., work) are permitted by law. Furthermore, associations are free to make the admission of new members dependent on an admission fee. Likewise, it is possible to make remaining in the association dependent on the payment of a membership fee or other contributions. However, the ex post introduction of new financial charges is subject to various restrictions (in particular the requirement of a qualified majority and the principle of equal treatment).

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5. Specifics of tax-privileged associations

The above also applies to tax-privileged associations. They are free to decide whom they accept as members and what contributions they require. There are no regulations that precludes certain legal entities from acquiring membership in tax-privileged associations. Nor do regulations exist that prohibit certain legal entities from gaining influence over tax-privileged associations. However, public benefit associations must adhere to sec. 52 para. 1 sentence 2 AO, according to which a promotion of the general public is not established if the circle of persons benefiting from the association's activities is too limited. An infringement of this regulation is assumed if, for example, the admission fee is too high or if an association accepts only men as members without justification.

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4. Exclusion of members

The exclusion of members requires a basis in the association's statutes. Without such a prescription in the statutes, exclusion of a member is possible only for good cause, which is established if the continuation of the membership relationship with the concerned member is unreasonable for the association. The concerned member may request that a court verify the validity of the exclusion. According to the prevailing opinion, judicial review is possible only to a limited extent. The only issue to be examined is whether the decision on exclusion is based on accurate facts, whether a fair procedure took place and whether exclusion is not obviously unreasonable.

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IX. Organisational structure

1. Mandatory components

The statutes of an association must provide for an annual general meeting (*Mitgliederversammlung*, sec. 32 BGB) and the board of directors (*Vorstand*, secs. 26, 27 BGB). The members of the board of directors do not have to be members of the association. The statutes may provide for the formation of further bodies, such as a supervisory board. **68**

2. Allocation of responsibilities

The board of directors is responsible for the representation and management of the association. The general meeting is responsible for everything else, such as the amendment of the statutes or the dissolution of the association. By law, the general meeting is also responsible for management matters and can therefore issue instructions to the board of directors. In order for the general meeting to exercise its right to issue instructions, the board of directors must submit extraordinary management measures to the general meeting for a decision. **69**

However, only allocation of the power of representation to the board of directors is mandatory. Apart from that, the statutes may deviate from the distribution of responsibilities described above. It is common practice that statutes will stipulate that the board of directors is responsible for the legal representation of the association and the guidelines on the association's policies, whereas the day-to-day business is delegated to a separate management body. It is also common practice that the statutes will limit or exclude the right of the general meeting to issue instructions in management matters. **70**

3. Voting power

As a matter of default, each member has one vote at the general meeting. Deviating regulations in the statutes are possible. For example, it is common practice, especially in associations whose members are themselves associations, for the number of votes to depend on how many members the member associations have. Furthermore, it is possible to create categories of membership without voting rights (such as honorary members). **71**

4. Quorums and majority requirements

As a matter of law, there is no minimum quorum for the general meeting. However, the statutes may provide for a minimum quorum. **72**

In principle, resolutions of the general meeting are passed with a simple majority (sec. 32 para. 1 sentence 3 BGB). Important decisions such as amendments to the statutes or dissolution require a majority of three-quarters of the votes cast, unless the statutes provide otherwise (sec. 33 para 1 sentence 1, sec. 41 sentence 2 BGB). The three-quarters requirement also applies to measures under the Transformation Act (*Umwandlungsgesetz*, UmwG). Since the provisions of the UmwG are mandatory (sec. 1 para. 3 sentence 1 UmwG), deviations in the statutes are not possible in this respect. **73**

5. Possibility of a virtual general meeting

Under current law, a general meeting requires a physical meeting, unless the statutes allow otherwise. A resolution of the general meeting made without a physical meeting is possible only on the condition that all members declare their consent to the resolution in writing (sec. 32 para 2 BGB). **74**

A legislative proposal currently being discussed in the German parliament (*Bundestag*) provides that the board of directors may convene a virtual general meeting even without a corresponding authorisation in the statutes.¹¹ However, since the proposal provides that members are entitled to physical attendance even in this case, it would enable only a hybrid meeting. **75**

6. Fundamental rules on the functioning and powers of the board of directors

The statutes and, in particular, the purpose of the association as set forth therein are the main guidelines for the actions of the board of directors. **76**

If the board of directors consists of more than one member, resolutions shall be adopted by majority vote, unless otherwise provided. Managing the association is

¹¹ Draft of the Federal Council (*Bundesrat*), Deutscher Bundestag BT-Drucks. 20/2532, <https://dserver.bundestag.de/btd/20/025/2002532.pdf>, and CDU/CSU-Fraktion Draft [CDU/CSU-Draft], Deutscher Bundestag BT-Drucks. 20/4318, <https://dserver.bundestag.de/btd/20/043/2004318.pdf>.

a collective duty; the directors bear responsibility for the tasks and functioning of the board as a collective entity. However, it is possible that certain fields of management are divided between the members of the board.

The meetings of the board of directors are subject to the same rules as those applicable to a general meeting (sec. 28 BGB), i.e., under current law, their meetings must take place physically, unless the statutes provide otherwise. However, it is possible to pass resolutions without a meeting if all board members agree in writing (sec. 32 para 2 BGB). **77**

7. Board of directors' remuneration

Board members may only be remunerated if this is provided for in the statutes (sec. 27 para. 3 sentence 2 BGB). Without a corresponding provision in the statutes, board members may be reimbursed only for expenses. Compensation for labour expended or lost profit must not be the subject of reimbursement. **78**

8. Liability of the members of the board of directors

The members of the board of directors are liable to the association for damage in cases of negligent or intentional breach of duty. In this respect, there exists no difference from the liability for the management of a stock corporation or a limited liability company. In particular, the business judgement rule applies also for the members of the board of directors of an association, although this is codified only for stock corporations (sec. 93 para 1 sentence 2 AktG). **79**

However, a feature of association law is the limitation of liability to intentional conduct and gross negligence if board members receive no remuneration at all or a maximum remuneration of € 840 per year (sec. 31a BGB). **80**

9. Mandatory internal control body

There is no obligation to establish an internal control body such as a supervisory board under the German law on associations. **81**

10. Specifics of tax-privileged associations

The regulations applicable to tax-privileged associations in secs. 51 ff. AO do not contain any requirements regarding the organisational structure of the association. Reference should be made to the already mentioned sec. 55 para. 1 number 3 **82**

AO, according to which tax-privileged associations may not grant disproportionately high remunerations.

X. Transparency and reporting requirements

1. No publicity obligation and no audit obligation regarding annual financial reports

In Germany, associations are not required to publish annual financial reports. Furthermore, there is no requirement to submit other reports regarding the impact of their activities, such as a “social report” or a “community interest report”. Neither are they required to appoint an external auditor. **83**

Associations are required to submit annual financial reports to the tax authorities either to verify their tax-privileged status (see paragraphs 60 et seq.) or to determine the amount of taxes due. These reports are not published. **84**

2. Transparency Register (Transparenzregister)

Associations are obliged to report certain information to the Transparency Register (*Transparenzregister*), such as changes in their board of directors. The Transparency Register was introduced in Germany on 27 June 2017 to implement the Fourth EU Money Laundering Directive (EU Directive 2015/849 of 20 May 2015). The domestic legal basis is Secs. 18 et seq. of the Money Laundering Act (*Geldwäschegesetz*, GwG). The objective of the Transparency Register is to prevent money laundering and the funding of terrorism. **85**

3. Specifics of tax-privileged associations

Under secs. 51 et seq. AO, tax-privileged associations are also required to submit to the tax authority an annual statement of accounts on their income and expenditure as well as on their reserves. However, there is no obligation to publish this information. The reports serve to verify retrospectively whether the association can enjoy its tax-privileged status or whether it has become liable for taxes. Typically, such a review of the tax-privilege is carried out every three years. **86**

Starting in 2024, a so-called Beneficiary Register (*Zuwendungsempfängerregister*) will be introduced, which will be publicly accessible. All entities such as associations and foundations that are tax-privileged under the Corporate Income Tax **87**

Act will be listed there. It will allow the general public and, in particular, potential donors to verify the tax-privileged status of associations. The register will be maintained by the Federal Central Tax Office (*Bundeszentrale für Steuern*). Furthermore, there are plans in the future to process all donation receipts by organisations for donors digitally via the Beneficiary Register.

XI. Public supervision of associations

There is no general supervisory authority that is charged with monitoring all associations. **88**

1. Ex officio cancellation proceedings (Amtslöschung) by district court

In the case of registered associations, the district courts (*Amtsgerichte*) that administer the registers of associations (*Vereinsregister*) are obliged to continuously check whether the essential requirements for registration are still met and, if necessary, to initiate cancellation proceedings *ex officio*. **89**

According to sec. 73 BGB, *ex officio* cancellation should take place if the number of members falls below three. Cancellation is to be initiated no earlier than three months after the decrease of members and requires a hearing of the board of directors. **90**

According to sec. 395 Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*, FamFG), *ex officio* cancellation is to be carried out if the entry in the register is inadmissible due to the absence of an essential requirement. This is particularly the case if the association must be qualified as a “economic association” (*wirtschaftlicher Verein*) due to its actual activity. If the court considers cancellation to be justified, it must notify the association of the intended cancellation and set a reasonable deadline for the filing of an objection. The cancellation may be effected only if no objection has been filed or if the decision rejecting the objection has become final. If the cancellation has already been carried out, the association can file an appeal against it, which will be decided by the competent Higher Regional Court (*Oberlandesgericht*). **91**

Members may suggest the initiation of *ex officio* official cancellation proceedings to the competent registry court pursuant to secs. 395, 24 FamFG. However, there **92**

is no legal remedy in the event the registry court does not act in accordance with the suggestion.

If the cancellation becomes final, the association loses its status as a registered association. As a result, the association does not cease to exist but continues to exist as a non-registered association. **93**

2. Prohibition of an association (*Vereinsverbot*) pursuant to the Public Law of Associations (*Vereinsgesetz*)

Associations can be prohibited according to sec. 3 VerG by the competent state authority or the Federal Ministry of the Interior if their aims or activities contravene criminal laws or are directed against the constitutional order or the concept of international understanding according to art. 9 para. 2 Basic Law. The legal threshold for prohibiting an association of foreigners or a foreign association is lower. **94**

3. Specifics of tax-privileged associations

There is no special supervision authority that monitors tax-privileged associations. Compliance with the regulations of sec. 51 et. seq. AO is checked incidentally by the competent tax authority in the context of the assessment of the association in respect of corporate income tax. As part of the examination of the actual management of the association, it will also be examined whether the association is complying with the restrictions outlined above. **95**

XII. Taxation

1. General

Associations are not subject to a special tax regime simply because of their legal status. Rather, they are subject to the general tax regime applicable to all other organisations (e.g., corporate income tax in accord with the Corporate Income Tax Act, *Körperschaftsteuergesetz*, KStG). **96**

2. Specifics of tax-privileged associations

For the consequences of tax-privileged status, see above, paragraphs 17 et seq. **97**