

Entry in the commercial register

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According to Article 61(2) of the Swiss Civil Code [ZGB], an association must be registered in the commercial register if it:

- conducts a commercial operation in pursuit of its objects^{*1}; **or**
- is subject to an audit requirement^{*2}; **or**
- primarily collects or distributes assets abroad^{*3}, directly or indirectly, that are intended for charitable, religious, cultural, educational or social purposes, and no exception pursuant to Article 9(2) of the Commercial Register Ordinance [HRegV] applies.

Explanation of the criteria for mandatory registration:

^{*1} **“commercial operation”**: This criterion is not defined in the law and is assessed differently in practice. However, case law provides possible characteristics that indicate a commercial operation:

- Financial indicators: turnover, balance sheet total, capital intensity, payroll, etc. (in practice, it is assumed that a turnover of 100,000 Swiss francs or more means that registration is mandatory).
- Business relationships with a larger group of suppliers and/or customers (not just members).
- Range of services and products as well as number of operating sites, points of sale, branches, locations, etc. Services also include, for example, consultations and courses.
- Professionalism of management, degree of organisation and structures, number of employees, etc.

^{*2} **audit**: an association is subject to an audit requirement if two of the following figures are exceeded in two consecutive financial years:

1. balance sheet total of 10 million Swiss francs,
2. sales revenue of 20 million Swiss francs;
3. 50 full-time positions on an annual average.

^{*3} **Anti-Money Laundering Act**: as of 1.1.2023, associations with cash flows from or to foreign countries are subject to the Anti-Money Laundering Act. This means that the associations must be registered in the commercial register: Art. 90(1c) Commercial Register Ordinance

Associations are exempt from **mandatory registration** if

- a. in the last two financial years, neither the value of the assets collected nor the assets distributed exceed 100,000 Swiss francs; **and**
- b. the distribution of the assets is carried out through a financial intermediary (in particular banks) in accordance with the Anti-Money Laundering Act of 10 October 1997; **and**

- c. at least one of the authorised representatives of the association is resident in Switzerland.

FINMA's basic due diligence and notification obligations must be followed; in particular, the contracting partners must be identified and the beneficial owners of the assets contributed must be identified. For associations, this means that lists of members and donors must be kept.

Voluntary entry in the commercial register

An association that is not subject to mandatory registration in the commercial register can register itself in the commercial register voluntarily. Reasons for this can be reputation, claims from creditors (e.g. landlords) or banking transactions with foreign countries. Upon entry in the commercial register, the association can be subjected to bankruptcy proceedings (Art. 39 Debt Enforcement and Bankruptcy Act [SchKG]). If an association is not entered in the commercial register, debt enforcement proceedings for seizure would be initiated in the event of insolvency.

Responsibility

The entry must be made at the commercial register office of the canton in which the association has its registered office. The necessary procedure and the documents to be submitted are explained on the websites of the commercial register offices.

Depending on the articles of association, the decision to register must be made by the general meeting or by the board of directors.

Documents required for registration

- Association registration, new registration (form on the websites of the commercial register offices)
- Minutes of the inaugural meeting
- Articles of association
- Declaration of acceptance of election by the board of directors
- Minutes of the decision to register
- Explanation of the nature of the association
- (Possibly) declaration of waiver of auditors
- Declaration of acceptance of domicile (for a c/o address)
- Proof of identity (copy of ID, passport or foreigner's identity card of the persons to be registered)
- (Possibly) list of members (in case of obligation to make additional contributions or personal liability)
- Specimen signature (certified by notary's office, municipality or the counter of the commercial register office)

Entry in the commercial register is subject to a fee, the costs vary depending on the canton.

Persons to be registered

Associations that are subject to mandatory registration must have each individual member of the board of directors and each individual person authorised to represent the association registered. These representations must be regulated in the articles of association or in signature regulations.

Associations that register voluntarily or distribute or collect assets abroad benefit from simplifications. They only have to register the following:

1. a single member of the board of directors;
2. a single authorised representative or several authorised representatives, provided they can only represent the association jointly (collective signatory authority). If the authorised representatives are also members of the board of directors, no additional members of the board of directors need to be registered.

Amendments

Any change in the authorised representative(s) (personnel, authorised signatories) and any amendment to the Articles of Association must be reported to the commercial register office. This also applies to associations that register voluntarily. The amendments are subject to a charge.

Removal from the register

An association that is **not** obliged to register can request to be removed from the register at any time without great effort.

The application for removal must include:

1. declaration that the association is not subject to mandatory registration; and
2. the minutes of the competent body of the association for the decision to have the association removed from the commercial register.

An association subject to mandatory registration can only be removed from the commercial register if the association is dissolved or merged. Following the resolution of the general meeting on the dissolution and the election of the liquidators, the dissolution must be reported to the commercial register office and the name of the association must be supplemented with "in liquidation". After the debt has been called in and the liquidation has been carried out, the liquidators are notified of the removal. Removal from the register as a result of a merger is effected by means of a corresponding declaration stating the acquiring association.