

ภาคผนวก

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Übersetzung des Bürgerlichen Gesetzbuches durch ein Übersetzer-Team des Langenscheidt  
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## **German Civil Code**

### **BGB**

Civil Code in the version promulgated on 2 January 2002 (Federal Law Gazette  
[Bundesgesetzblatt] I page 42, 2909; 2003 I page 738), last amended by Article 4 para. 5 of the Act  
of 1 October 2013 (Federal Law Gazette I page 3719)

This statute serves to transpose into national law the following directives:

1. Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 39 of 14 February 1976, p. 40),
2. Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ L 61 of 5 March 1977, p. 26),
3. Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ L 372 of 31 December 1985, p. 31),
4. Council Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ L 42 of 12 February 1987, p. 48, last amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of

the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ L 101 of 1 April 1998, p. 17),

5. Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158 of 23 June 1990, p. 59),

6. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95 of 21 April 1993, p. 29),

7. Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis (OJ L 280 of 29 October 1994, p. 82),

8. Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers (OJ L 43 of 14 February 1997, p. 25),

9. Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144 of 4 June 1997, p. 19),

10. Articles 3 to 5 of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166 of 11 June 1998, p. 45),

11. Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171 of 7 July 1999, p. 12),

12. Articles 10, 11 and 18 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce" OJ L 178 of 17 July 2000, p. 1),

13. Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions (OJ L 200 of 8 August 2000, p. 35).

**Sections 15 - 20****(repealed)****Title 2****Legal persons****Subtitle 1****Associations****Chapter 1****General provisions****Section 21****Non-commercial association**

An association whose object is not commercial business operations acquires legal personality by entry in the register of associations of the competent local court [Amtsgericht].

**Section 22****Commercial association**

An association whose object is commercial business operations acquires legal personality, for lack of special provisions under federal law, by state grant. The grant is in the power of the Land in whose territory the association has its seat.

**Section 23****(repealed)****Section 24****Seat**

The seat of an association, unless otherwise provided, is the place where the management is conducted.

**Section 25****Constitution**

The constitution of an association with legal personality is, to the extent that it is not based on the following provisions, determined by the articles of association. Section 26 Board and representation

(1) An association must have a board. The board represents the association in court and out of court; it has the status of a legal representative. The extent of the power of agency may be restricted by the articles of association with effect against third parties.

(2) If the board consists of several persons, the association is represented by the majority of the board members. If a declaration of intent is to be submitted to an association, it is sufficient to submit it to one member of the board.

### **Section 27**

#### **Appointment of and management by the board**

(1) The appointment of the board is by resolution of the general meeting.

(2) The appointment is revocable at any time, notwithstanding the claim to payment in conformity with contract. The revocability may be restricted by the articles of association to the case where there is a compelling reason for the revocation; such a reason includes without limitation a gross breach of duty or inability to effect proper management.

(3) The management by the board is governed by the provisions on mandate in sections 664 to 670 with the necessary modifications.

### **Section 28**

#### **Passing of resolutions by the board**

In case of a board consisting of more than one person, resolutions are passed under the provisions of sections 32 and 34, which govern the resolutions of the members of the association.

### **Section 29**

#### **Emergency appointment by local court [Amtsgericht]**

To the extent that the board is lacking the necessary members, they are to be appointed, in urgent cases, for the period until the defect is corrected, on the application of a person concerned, by the local court [Amtsgericht] that keeps the register of associations for the district in which the association has its seat.

### **Section 30**

#### **Special representatives**

It may be provided by the articles of association that, in addition to the board, special representatives are to be appointed for particular transactions. In case of doubt, the power of

agency of such a representative extends to all legal transactions that the sphere of business allocated to him normally entails.

### **Section 31**

#### **Liability of an association for organs**

The association is liable for the damage to a third party that the board, a member of the board or another constitutionally appointed representative causes through an act committed by it or him in carrying out the business with which it or he is entrusted, where the act gives rise to a liability in damages.

### **Section 31a**

#### **Liability of members of executive bodies and special representatives**

(1) If members of executive bodies or special representatives act free of charge, or if they receive remuneration for their activity which does not exceed 720 euros per year, they are liable towards the association for damage caused in performing their duties only in case of intent or gross negligence. Sentence 1 also applies to liability towards the members of the association. If there is a dispute as to whether a member of an executive body or a special representative has caused damage with intent or gross negligence, the burden of proof is incumbent on the association or on the member of the association.

(2) If members of executive bodies or special representatives are obliged under subsection (1) sentence 1 to provide to another party compensation for damage which they caused in performing their duties, they may demand from the association to be released from the obligation. Sentence 1 does not apply if the damage was caused with intent or gross negligence.

### **Section 31b**

#### **Liability of members of the association**

(1) If members of the association act for the association free of charge, or if they receive remuneration for their activity which does not exceed 720 euros per year, they are liable to provide to the association compensation for damage caused in performing the duties of the association, in accordance with the articles of association, that have been assigned to them, only in case of intent or gross negligence. Section 31a (1) sentence 3 applies with the necessary modifications.

(2) If members of the association are obliged under subsection (1) sentence 1 to provide to another party compensation for damage which they caused in performing the duties of the association, in accordance with the articles of association, that have been assigned to them, they may require the association to release them from the obligation. Sentence 1 does not apply if the members of the association have caused the damage with intent or gross negligence.

### **Section 32**

#### **General meeting; passing of resolutions**

(1) The affairs of the association, to the extent that they are not to be attended to by the board or another organ of the association, are dealt with by resolution in a meeting of the members. In order for the resolution to be valid, it is necessary for the subject to be stated when the meeting is convened. The resolution is decided by the majority of the votes cast.

(2) Even without a meeting of the members, a resolution is valid if all members declare their approval of the resolution in writing.

### **Section 33**

#### **Amendment of articles of association**

(1) A resolution containing an amendment of the articles of association must have a majority of three quarters of the votes cast. In order to alter the objects of the association, the approval of all members is necessary; the approval of the members not present must be declared in writing.

(2) If the legal personality of the association results from a grant, the consent of the competent authority is necessary for every amendment of the articles of association.

### **Section 34**

#### **Exclusion from voting**

A member has no right to vote if the resolution concerns entering into a legal transaction with him or commencing or disposing of litigation between him and the association.

### **Section 35**

#### **Special rights**

Special rights of a member may not be adversely affected by a resolution of the general meeting without his approval.

### **Section 36**

#### **Convening of the general meeting**

(1) The general meeting is to be convened in the cases laid down in the articles of association and when the interests of the association require it.

### **Section 37**

#### **Convening a meeting at the request of a minority**

(1) The general meeting is to be convened if the proportion of the membership laid down in the articles of association or, in the absence of a provision, one-tenth of the members call in writing for a meeting to be convened, stating the purpose and the reasons.

(2) If the request is not granted, the local court [Amtsgericht] may authorise the members who made the request to convene the meeting; it may make orders on the conduct of the chairmanship at the meeting. The court with jurisdiction is the local court [Amtsgericht] that keeps the register of associations for the district in which the association has its seat. The authorisation must be referred to in the notice convening the meeting.

### **Section 38**

#### **Membership**

Membership is not transferable and not inheritable. The exercise of membership rights cannot be entrusted to another person.

### **Section 39**

#### **Leaving the association**

(1) The members have the right to leave the association.

(2) The articles of association may specify that leaving is admissible only at the end of a business year or only after a notice period; the maximum notice period is two years.

### **Section 40**

#### **Flexible provisions**

The provisions of section 26 (2) sentence 1, section 27 (1) and (3), sections 28 and 31a (1) sentence 2, as well as sections 32, 33 and 38, do not apply where otherwise provided by the articles of association. It is not possible to derogate from section 34 through the articles of association, even for the passing of resolutions by the board.



## **Section 41**

### **Dissolution of the association**

An association may be dissolved by resolution of the general meeting. The resolution must have a majority of three-quarters of the votes cast, unless otherwise provided in the articles of association.

## **Section 42**

### **Insolvency**

(1) An association is dissolved by the commencement of insolvency proceedings and on the order becoming legally final by means of which the commencement of the insolvency proceedings has been rejected for insufficiency of assets. If the proceedings are discontinued on the application of the debtor or terminated after the confirmation of an insolvency plan that provides for the association to continue in existence, the general meeting may pass a resolution that the association is to continue in existence. The articles of association may provide that, if insolvency proceedings are commenced, the association is to continue as an association without legal personality; in this case too, if the requirements of sentence two above are satisfied, a resolution may be passed to continue the association as an association with legal personality.

(2) If an association is insolvent or is overindebted, the board must petition for the commencement of insolvency proceedings. If there is delay in petitioning, the members of the board who are at fault are responsible to the creditors for the damage resulting from this; they are liable as joint and several debtors.

## **Section 43**

### **Deprivation of legal personality**

An association whose legal personality is the result of a grant can be deprived of its legal personality if it pursues objects different from those in the articles of association.

## **Section 44**

### **Jurisdiction and proceedings**

Jurisdiction and the procedure for the deprivation of legal personality under section 43 are decided under the law of the Land in which the association has its seat.

\*) Under Article 129 of the Basic Law [Grundgesetz], the Federal Minister of the Interior [Bundesminister des Innern] is now competent.

## **Section 45**

### **Devolution of the assets of the association**

(1) On the dissolution of the association or its deprivation of legal personality, the assets devolve on the persons specified in the articles of association.

(2) The articles of association may provide that the persons entitled to receive the assets are specified by a resolution of the general meeting or by another organ of the association. If the objects of the association are not commercial business operations, the general meeting may, even without such a provision, allocate the assets to a public foundation or institution.

(3) If no persons entitled are specified, then if according to its articles the association exclusively served the interests of its members, the assets pass in equal shares to the members at the date of the dissolution or the deprivation of legal personality, and failing this to the treasury of the Land in whose territory the association had its seat.

## **Section 46**

### **Devolution on the treasury**

If the assets of the association devolve on the treasury, the provisions on an inheritance that devolves on the treasury as the heir on intestacy apply with the necessary modifications. The treasury shall if possible use the assets in a manner corresponding to the objects of the association.

## **Section 47**

### **Liquidation**

If the assets of the association do not devolve on the treasury, there must be a liquidation, unless insolvency proceedings have commenced with regard to the assets of the association.

## **Section 48**

### **Liquidators**

(1) The liquidation is effected by the board. Other persons may also be appointed as liquidators; the appointment is governed by the provisions for the appointment of the board.

(2) The liquidators have the legal status of the board, unless the purpose of the liquidation leads to a different conclusion.

(3) If there are several liquidators, they are only empowered to represent jointly, and can only enact orders unanimously, unless provided otherwise.

## **Section 49**

### **Duties of the liquidators**

(1) The liquidators must complete the current business, collect the receivables, convert the rest of the assets into cash, satisfy the creditors and pay out the surplus to those entitled to receive it. In order to complete transactions that are in progress, the liquidators may also enter into new transactions. The collection of receivables and the conversion of the rest of the assets into cash may be omitted to the extent that these measures are not necessary to satisfy the creditors or to distribute the surplus among those entitled to receive it.

(2) The association is deemed to continue in existence until the end of the liquidation if the purpose of the liquidation requires this.

## **Section 50**

### **Public notice of the association in liquidation**

(1) The dissolution of the association or its deprivation of legal personality must be announced by the liquidators in a public notice. In the notice, the creditors must be requested to register their claims. The public notice is made through the newspaper specified in the articles of association for this purpose. Public notice is deemed to have been made at the end of the second day after the publication or first publication.

(2) Known creditors must be requested by special invitation to register their claims.

## **Section 50a**

### **Newspaper for notices**

If an association has not specified a newspaper in the articles of association, or if the newspaper specified for notices has ceased publication, notices of the association must be published in the newspaper that is specified for public notices of the local court [Amtsgericht] in whose district the association has its seat.

## **Section 51**

### **One-year waiting period**

The property may not be paid out to the persons entitled to receive it until a year has passed after the announcement by public notice of the dissolution of the association or the deprivation of legal personality.

## **Section 52**

### **Security for creditors**

(1) If a known creditor does not register his claim, the amount owed, if the right to deposit exists, must be deposited for the creditor.

(2) If the discharge of an obligation is not possible at the time, or if an obligation is disputed, the property may be distributed to the persons entitled to receive it only if security is provided to the creditor.

## **Section 53**

### **Liability in damages of the liquidators**

Liquidators who commit breaches of their duties under section 42 (2) and sections 50, 51 and 52 or who, before the satisfaction of the creditors, distribute assets to the persons entitled to receive are, if they are at fault, responsible to the creditors for the damage resulting from this; they are liable as joint and several debtors.

## **Section 54**

### **Associations without legal personality**

Associations without legal personality are governed by the provisions on partnership. When a transaction is entered into with a third party in the name of such an association, the person acting is personally liable; if more than one person acts, they are liable as joint and several debtors.

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## **The Fiscal Code of Germany**

Fiscal Code of Germany in the version promulgated on 1 October 2002 (Federal Law Gazette [Bundesgesetzblatt] I p. 3866; 2003 I p. 61), last amended by Article 5 of the Ordinance of 3 December 2015 (Federal Law Gazette I p. 2178)

### **First Part**

#### **Introductory regulations**

#### **First Chapter**

#### **Scope of application**

#### **Section 1**

#### **Scope**

(1) This Code shall apply to all taxes, including the tax rebates governed by German federal law or the law of the European Union insofar as these are administered by the revenue authorities of the Federation or of the Länder. It may only be applied subject to the law of the European Union.

(2) The following provisions of this Code shall apply accordingly to impersonal taxes to the extent that their administration has been assigned to the municipalities:

1. the provisions of the First, Second and Fourth Chapter of the First Part (Scope of application, Tax definitions, Tax secrecy),
2. the provisions of the Second Part (Legal provisions on tax liability),
3. the provisions of the Third Part except sections 82 to 84 (General rules of procedure),
4. the provisions of the Fourth Part (Executing the taxation procedure),

5. the provisions of the Fifth Part (Levy procedure),
6. sections 351, 361(1), second sentence, and 361(3),
7. the provisions of the Eighth Part (Provisions on criminal penalties and administrative fines, criminal and administrative fine proceedings).

(3) Subject to the law of the European Communities, the provisions of this Code shall apply *mutatis mutandis* to ancillary tax payments. However, the third to sixth chapters of the Fourth Part shall only apply to the extent that this is specifically provided for.

## **Section 2**

### **Primacy of international agreements**

(1) Agreements on taxation concluded with other countries within the meaning of Article 59(2), first sentence, shall take precedence over tax legislation insofar as they have become directly applicable domestic law.

(2) To ensure the equality of tax treatment and to avoid double taxation or double non- taxation, the Federal Ministry of Finance shall be authorised with the consent of the Bundesrat to issue ordinances on the implementation of arrangements reached by way of consultation. Arrangements reached by way of consultation under the first sentence above shall mean mutual agreements between the competent authorities of the contracting states to a double taxation agreement with the aim of determining the details of the implementation of such an agreement, and especially to resolve difficulties or doubts as to the interpretation or application of the respective agreement.

Second Chapter Tax definitions

## **Section 3**

### **Taxes, ancillary tax payments**

(1) Taxes shall mean payments of money, other than payments made in consideration of the performance of a particular activity, which are collected by a public body for the purpose of raising revenue and imposed by the body on all persons to whom the characteristics on which the law bases liability for payment apply; the raising of revenue may be a secondary objective.

(2) Impersonal taxes shall mean real property tax and trade tax.

(3) Import and export duties pursuant to Article 5 numbers 20 and 21 of the Union Customs Code shall be taxes within the meaning of this Code. The Union Customs Code is Regulation (EU)

952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1, OJ L 287, p. 90), as amended.

(4) Ancillary tax payments shall mean fees for delay (section 146(2b)), late-filing penalties (section 152), surcharges pursuant to section 162(4), interest (sections 233 to 237), late-payment penalties (section 240), coercive fines (section 329) and costs (sections 89, 178, 178a and sections 337 to 345) as well as interest within the meaning of the Union Customs Code and late-filing fees under section 22a(5) of the Income Tax Act.

(5) Revenue from interest on import and export duties pursuant to Article 5 numbers 20 and 21 of the Union Customs Code shall accrue to the Federation. Revenue from all other interest shall accrue to the political subdivision authorised to levy the corresponding tax. Revenue from costs within the meaning of section 89 shall accrue to the political subdivision whose authority is responsible for issuing the advance ruling. One half of the revenue from costs within the meaning of section 178a shall accrue to the Federation, the other half to the administering political subdivisions. All other ancillary tax payments shall accrue to the administering political subdivisions.

#### **Section 4**

##### **Law**

Law shall mean every legal norm.

#### **Section 5**

##### **Discretion**

Where the revenue authority is authorised to use its discretion it shall do so in compliance with the purpose of the authorisation and shall respect the statutory restrictions on such discretion.

#### **Section 6**

##### **Authorities, revenue authorities**

(1) Authority shall mean every body performing tasks of public administration.

(2) For the purposes of this Code, revenue authorities shall mean the following federal revenue authorities and Länder revenue authorities referred to in the Fiscal Administration Act:

1. as highest authorities, the Federal Ministry of Finance and the highest authorities of the Länder responsible for revenue administration,

2. as higher federal authorities, the Federal Spirits Monopoly Administration, the Federal Central Tax Office and the Central Customs Authority,

3. as higher authorities of the Länder, data processing centres as well as Länder revenue authorities that have been given jurisdiction, throughout a given Land, over cash transactions and collection procedures, including enforcement, on the basis of an ordinance pursuant to section 17(2), third sentence, number 3 of the Fiscal Administration Act,

4. as intermediate authorities, regional finance offices, 4a. the Länder revenue authorities established in lieu of a regional finance office in accordance with the Fiscal Administration Act or with the legislation of the Länder,

5. as local authorities, the main customs offices including their agencies, the customs investigation offices, the tax offices and the special revenue authorities of the Länder,

6. child benefit disbursement offices,

7. the central agency within the meaning of section 81 of the Income Tax Act, and

8. the German Pension Insurance Institute for Miners, Railway and Maritime Workers (section 40a(6) of the Income Tax Act).

## **Section 7**

### **Public officials**

Public official shall mean any person who, under German law,

1. is a civil servant or judge (section 11(1) number 3 of the Criminal Code),

2. holds any other office under public law, or

3. has otherwise been appointed to exercise functions of the public administration at an authority or other office or on their behalf.

## **Section 8**

### **Residence**

Persons shall be resident at the place at which they maintain a dwelling under circumstances from which it may be inferred that they will maintain and use such dwelling.