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DCVMN

EC Onboarding | Governance, Conflict of Interest,  
Competition law

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# Agenda

- I. Introduction
- II. Members rights
- III. Association's Governance
- IV. Conflict of interest
- V. Competition law

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# I. Introduction

An **association** is generally understood as an **ideological** and **non-economic corporation**. It has **legal personality**.

The **purpose** of an association is therefore often **ideological** (e.g. scientific, artistic, charitable, recreational, religious, political) as opposed to an economic purpose.

An association may also have an **economic purpose** aimed at serving the economic interests of its members, provided that **it does not participate directly in economic activities**.

In any event, **an association must not provide its members with pecuniary benefits** directly related to an industrial or commercial activity that would be undertaken by the association.

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# I. Introduction

A non-governmental organization ("NGO") is generally understood as a non-profit, public-interest organization that is neither under the authority of States nor of international institutions. In principle, NGOs do not have the status of subjects of international law.

An NGO is therefore defined by reference to its mission, purposes and the way it is controlled. It is not a specific type of legal entity (at least not in Switzerland).

In Switzerland, NGOs are typically established either as an **association** (e.g. **International Committee of the Red Cross, MSF**) or as a **foundation** (e.g. **GAVI Alliance** or **Foundation for Appropriate Technologies in Health (PATH)**).

The essential difference between the two lies in the fact that:

- › an association is an autonomous separate legal entity formed by members (individuals or corporate).
- › a foundation is an autonomous legal entity consisting of a pool of assets irrevocably committed to one or more defined purpose(s).

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## II. Members rights – *Right of participation*

The right of participation is a **strictly personal right** that is **inalienable and non-transferable**. It includes:

- › right to take part in the general assembly
- › right to vote at the general assembly (subject to certain limitations)\*
- › right to elect and to be elected
- › right of motion
- › **right to be informed**

*\*In the DCVMN Statutes, each member is entitled to one (1) vote on each question arising at any meeting of the Members. In case of a deadlock, the President shall have the casting vote.*

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## II. Members rights – *Other rights*

- › the benefit from any goods and services offered by the association
- › right to oppose the transformation of the purpose(s) of the association
- › right to take legal action against decision to which a member has not adhered and which breach legal or statutory provisions, including unjustified exclusions of voting
- › **right of members to be treated equally** (e.g. in connection with the right to be informed)

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### III. Association's Governance – *Legal bodies*

› **The general assembly:** the supreme body of the association

› **The executive committee:** the executive body of the association

› **The statutory auditors** (when it is mandatory)\*

\*The association must submit its account to a **full audit** by external auditors if two of the following figures are exceeded in two successive business years: (1) total assets of CHF 10 million, (2) turnover of CHF 20 million, (3) average annual total of 50 full-time staff.

The association must submit its accounts to a **limited audit** by external auditors if a member (with personal liability or an obligation to provide further capital) so requests.

In all other cases, the articles of association and the general assembly are free to make such auditing arrangements as they deem fit.

**In the case of DCVM, Art. 11 of its By-laws provide the appointment of an auditor.**

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### III. Association's Governance – *The general assembly*

#### **i. In general:**

As the supreme body, the general assembly regulates all matters that do not fall within the remit of other corporate bodies.

In accordance with DCVMN's Statutes, the general assembly shall meet once annually, or whenever required or requested by 1/5 of members, shall be presided by the president, and be valid regardless of the number of members present.

#### **ii. Decision-making** (as provided for in DCVMN's Statutes):

Decisions of the General Assembly shall be taken by a majority vote of the members present.

In case of deadlock, the President shall have the casting vote.

Decisions concerning the amendment of the Statutes and the dissolution of the Association must be approved by a two-third majority of the members present.



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### III. Association's Governance – *The general assembly*

#### **iii. Assignments according to Swiss law\* and Art. 7 of DCVMN's Statutes:**

The general assembly:

- › **approves the admission and expulsion of members**
- › **appoints the members of the Executive Committee**
- › notes the contents of the reports and financial statements for the year and **approves them**
- › **approves the annual budget**
- › **supervises the activity of other corporate bodies, which it may dismiss**
- › appoints an auditor for the Organization's accounts, as needed
- › **decides on any modification of statutes**
- › **decides on the dissolution of the association**
- › sets the annual membership fees
- › **takes decisions on all matters that are not reserved to other bodies of the association**

\* Items in bold are provided for by Swiss law

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### III. Association's Governance – *The executive committee*

**i. In general:**

This body is **necessary** for the association.

Therefore, and in accordance with Art. 77 of the Civil code ("CC"), the association shall be dissolved by operation of law if the committee may no longer be appointed in accordance with the articles of association and no measure in the sense of Art. 69c al. 1 CC appears appropriate.

**ii. Decision-making** (as provided for in DCVMN's By-laws):

The quorum necessary for the executive committee to conduct business shall be **at least four (4) members**.

The executive committee decisions are taken under a **majority system**.

In case of an equality of votes, the Chairman, in addition to his or her original vote, shall have a second casting vote.

The association shall be **legally bound by the joint signatures of four (4) Executive Members** of the association or **by the joint signatures of the President and two (2) Executive members**.

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## III. Association's Governance – *The executive committee*

### iii. Assignments:

The executive committee has the **right and duty (1)** to manage the current affairs of the association and **(2)** to represent the association in accordance with the statutes.

#### 1) Examples of current affairs:

- › manage the association's assets
- › hire staff
- › directing institutions and services
- › convene, prepare and conduct the general assembly
- › implement the decisions of the association

2) Representation: as mentioned in the previous slide, art. 6.2 of DCVMN's By-laws provides that the association shall be legally bound by the joint signatures of four (4) Executive Members of the association or by the joint signatures of the President and two (2) Executive members.

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### III. Association's Governance – *Role of the President*

As a member of the executive committee, the President ensures above all the smooth running of the general assembly and executive committee meetings **by chairing them.**

The President has in particular, in accordance with DCVMN's Statutes, the following functions:

- › Chair any meeting of members and of the executive committee
- › He/she shall have the powers and functions assigned to him/her by the executive committee in addition to the Statutes
- › He/she, subject to the authority of the executive committee, shall have general supervision of the affairs of the association; and he/she shall have such other powers and duties as the executive committee may specify.

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### III. Association's Governance – *Delegation of Assignments*

The executive committee is entitled to assign powers and/or duties to members or other association's bodies (e.g. a Secretariat).

Particular case of the **executive secretary** in accordance with DCVMN's By-laws:

- › Keep custody of all records relating to the Association
- › Responsible for minutes of all Executive Committee and Executive Members meetings
- › Provide all notices to Members and Executive Members
- › Other responsibilities delegated by the Executive Committee

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## IV. Conflict of interest – *Definition*

*"A conflict of interest arises from a situation in which a person employed by a public or private body has a personal interest that could affect or appear to affect the manner in which he or she carries out his or her duties and responsibilities."*

DCVMN's Conflict of Interest Policy provide that:

- › **Members of the executive committee and of the Secretariat ("Members")** serve the purposes to which the Association is dedicated and accordingly have a **duty to take all decisions solely in its best interests.**
- › This duty requires that a Member does not disclose or use any information received as a Member for purposes other than in the interests of the Association, and that the Association is informed of all transactions and arrangements in which Members may have an interest.

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## IV. Conflict of interest – *Practical examples*

A conflict of interest may arise when a **member** (including his/her family members and associates):

- › is party to a transaction, arrangement or collaboration with the association, or benefits from the association's support
- › is a party or collaborator in any proposal for support submitted to the association
- › has a compensation, ownership or other financial interest in an entity with which the association has entered or is entering into a transaction or arrangement, or from which the association has received a proposal
- › has a compensation, ownership or other financial interest in an entity that has the possibility for gain or loss as a direct result of the association action on a particular matter
- › may receive a **financial or other material benefit from knowledge or confidential information acquired as a result of his role as a member or**
- › acts as official of, or as advisor to, any governmental agency which has regulatory or supervisory power over the association

*See DCVMN's Conflict of Interest Policy for further details.*

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## V. Competition law – *Limits of information sharing*

The exchange between competitors of certain information may infringe competition law.

In particular, **competition law forbids the sharing of confidential and strategic information.**

Strategic information can be related to:

- > prices (for example, actual prices, discounts, increases, reductions or rebates)
- > customer lists
- > production costs
- > quantities
- > turnovers
- > sales
- > capacities
- > qualities
- > **marketing plans**
- > risks
- > investments
- > technologies and R&D programs and their results

Generally, information related to prices and quantities is the most strategic, followed by information about costs and demand. However, if companies compete with regard to R&D it is the technology data that may be the most strategic for competition.

**Therefore, the members should not exchange such information.**



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