



Asianajotoimisto
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MEMORANDUM 30 April 2025

ADVICE ON MERGERS OF ASSOCIATIONS IN RELATION TO A POTENTIAL MERGER OF ORGANISATIONS IN THE VISUAL ARTS INDUSTRY

1. INTRODUCTION

The Roadmap for the Potential Merger of Organisations in the Visual Arts Industry provides information and tools for organisations in visual arts fields on potential mergers. This memorandum describes general legal issues to be considered when merging organisations and general implementation models for mergers from a legal perspective.

When merging operations, as standard, the following implementation options are available:

- the association model
- the federation model
- the hybrid federation model (with regard to member structure)

All of these models will be referred to as association mergers below, although the Finnish Associations Act does not recognise mergers of associations. The question of how a merger is actually implemented is briefly discussed at the end of this document.

2. THE ASSOCIATION MODEL

In the association model, there are two options for existing associations:

- a) To merge with an existing association, which becomes the receiving association. The rules of the receiving association will be amended so that they can be applied after the merger. Members of the merging association apply for membership of the receiving association. Merging associations are dissolved after the transfer of operations, staff, assets and members.
- b) To form an entirely new association into which all associations merge. They transfer their operations, staff and assets to the new association but do not apply for membership in the new association; members of the new member association apply for membership. All existing associations are dissolved after the transfer of operations, staff, assets and members.

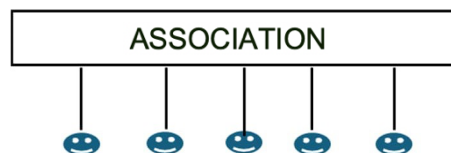
In the hybrid model, some or all of the existing associations continue to exist after the transfer of operations, staff, assets and members, but their operations are amended so as to not compete with those of the new association.

In practice, forming a new association to merge with or merging with an existing association, including the decision-making processes and the transfer of operations, staff, assets and members, takes a similar amount of time. In both cases, the parties must agree on the rules for the new association. It currently takes 0-1 weeks to register a completely new association if there is no need to amend the rules during the registration process. It currently takes 1-2 weeks to process amendments to rules. Processing times may vary over the course of the year, and processing typically takes longer during and after the summer holidays.

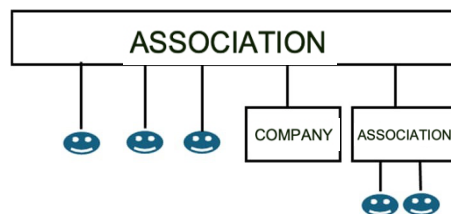
In practice, it is easier to form an entirely new association, because in this case the provision of Section 33 of the Associations Act regarding amendments to the rules of an existing association do not apply. In the case that the rules of a receiving association are amended in such a way as to diminish a special benefit enjoyed by current members of the association under the existing rules, or the procedure by which the amendment is adopted essentially violates the equality of a member, the decision on the amendment is void. Only provisions on election processes, member votes, the composition of bodies and membership fees can be amended without the threat of a decision being voided. As a rule, entirely new associations can be formed without any of the restrictions mentioned above.

With regard to the association model, the following issues should be considered as a minimum:

Members – Are the members of the merging associations private individuals or do any of the merging associations have their own member associations or other legal persons as members? The existing membership structure of the merging associations affects the type of membership structure the new association has and how the voting rights are structured and allocated in the new association.



In the chart above, only individual members from the merging associations join the new association.



In the chart above, corporate and foundation members from the merging associations join the new association in addition to private individuals, and the members may have their own members.

Delegates – Does the new association have delegates or do members directly exercise their decision-making power at the meetings of the association?

Assets – Are the assets transferred from the merging associations equal in proportion to the number of members transferred, or does any of the associations transfer proportionally more assets?

2.1. Distribution of decision-making power in relation to the current number of members

It is assumed below that all ordinary members joining the new association are individual members.

Unless otherwise provided in the rules, each individual member has one vote at meetings of the association or in the election of delegates, if members' decision-making power has been transferred to delegates.

Membership groups in the new association can be set up to meet the criteria for ordinary membership in each merging association such that the ordinary members in each member association form one membership group. Rules for the formation of membership groups and the membership criteria for membership groups are laid down in the association's registered rules. It may be provided, if desired, that the number of votes per member differs between membership groups.

Membership groups can be divided into electoral districts, which elect delegates in accordance with the association's rules. If necessary, the allocation of delegates' seats can be adjusted relative to the number of members in a membership group/electoral district, adjusting decision-making power according to changes in the number of members in each field. Electoral districts may also be implemented in other ways as provided for in the rules.

The rules may also provide for membership groups other than those consisting of individual members of the merging associations. The new association may, for example, have a membership group consisting of supporting members, to which all supporting members of the merging associations are admitted as members.

Each membership group's right to attend meetings of the association, right to vote, number of votes and obligation to pay membership fees, as well as other rights, can be provided for in the association's rules.

2.2. Allocation of association funds (association-specific membership fees, sales income, property, bequests, etc.) to benefit the members of the former associations

The starting point for an association is the equal treatment of members, unless otherwise provided for in the rules. Under Section 33 (2) of the Associations Act, a resolution of an association is void if its contents or the procedure by which it is adopted essentially violates the equality of a member.

If the assets of a merging association are transferred to a new association, as standard the assets are no longer exclusively available for the use of the merging association or its membership group but rather should benefit all members equally and the activities of the new association as a whole.

The surest way to allocate the assets of each existing membership group to an existing membership group is to either establish a foundation with the assets for the purpose of promoting the activities of the membership group or to retain the assets in the current organisation for the use of its members. Establishing a foundation with the assets can also be done such that merging associations transfer their assets to the same foundation, with the assets transferred by each association transferred to a fund that promotes the cause of the association in question.

The principle of equality does not apply in a foundation's activities, which means that the various causes of a foundation can be financed on a differential basis if desired, unless otherwise provided for in the rules. The rules pertaining to funds may specify in detail the extent and nature of the activities carried out with each fund's resources. If several associations transfer assets to the same foundation, the administrative burden is less than if they each set up separate foundations.

If existing associations are to be dissolved, one option is to set up funds in the new association to which transferable assets, and any proceeds from sales made by an association that will potentially merge with the new association, are transferred, so that each membership group has a dedicated fund to be used for its benefit. There must be clear and unambiguous rules on transferring any assets to funds with regard to different membership groups to ensure that the use of the funds cannot be considered to violate the equality of members. If subsidies/grants are awarded from the funds only to the members of the membership group of the fund in question and the funds are not used to carry out/support/finance non-profit activities, it may put the tax liability status of the new association as a non-profit organisation at risk – at least if the new association's own non-profit activities are insignificant in relation to the activities of the funds or if the membership groups to which the subsidies/grants are awarded are small and closed.

The new association may also have departments/divisions or similar internal groups that operate by membership group (below referred to as a 'division'), which may have their own operations, annual budget, fundraising activities and a separate bank account, which can be used in a relatively independent manner. However, the divisions' operations and their use of funds are part of the activities of the new association, and the board of the new association is responsible for monitoring the legality of the operations and ensuring their conformity to the association's rules. Divisions are not independent legal persons and cannot enter into contracts or own property. Contracts are signed in the name of the new association, and the division funds belong to the new association. Divisions may be given power to spend assets, for example through internal regulations, however the board of the new association is responsible for monitoring compliance. Divisions may be required to carry out tasks such as drawing up annual action plans and budgets, reporting on their operations and finances, and providing regular reviews at board meetings. It is recommended that basic provisions on divisions' activities are covered in the registered rules and more detailed provisions in the association's internal regulations.

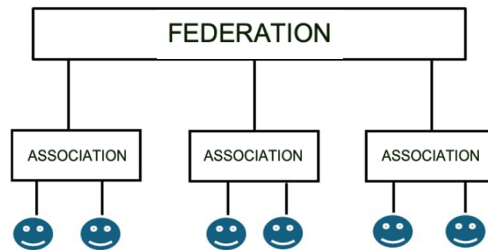
If any existing associations continue to operate, they can collect membership fees from their members in accordance with their rules. The new association collects membership fees from its own members in accordance with the rules. Membership fees are considered assets of the new association and are used to finance the activities of the new association. It can be provided that different membership fees are charged for different membership groups.

If the existing member associations are dissolved by virtue of a merger, any bequests to them that have not been executed prior to the merger will lapse. A beneficiary cannot agree to name the new association as the beneficiary of a bequest to be executed after the dissolution of the association through a merger agreement. Only the testator can change the beneficiary. If an association is dissolved, it no longer exists from the point of view of probate law, even if its members have been transferred to a new association. If the beneficiary does not exist, the assets are returned to the estate for distribution in accordance with the provisions of the Finnish Code of Inheritance. If there are no heirs under the Code of Inheritance, the estate passes to the state. The only way to ensure receipt of any bequests left in a will but not paid out is to let the merging association continue to exist as a legal person. If the number of members in a merged association decreases due to performance issues, there is always a risk that bequests will eventually be directed to an ever smaller and entirely different circle of members.

3. FEDERATION MODEL

In the federation model, a federation is built on one existing association, with all the other merging associations joining as its members. Individual members are members of the merging associations. A

federation may also be a new registered association, which all member organisations join as members.



An existing association is transformed into a federation, or a new federation is established, with merging associations joining it as its members. Individual members are members of the federation's member associations.

3.1. Distribution of decision-making power in relation to the current number of members

In the federation model, decision-making power can easily be allocated in relation to the current number of members even without delegates. The rules may provide that the voting rights of the member associations at the association's meetings are tied to the number of members of the member associations, in which case voting rights are adjusted according to developments in membership of each member association. In this situation, it is unlikely that it would be difficult to organise a meeting if, for example, the association only has a small number of member organisations. If each member has one representative at the federation's meeting, and the number of votes each representative has depends on the number of members in the association they represent, the meeting can be convened and organised at reasonable cost. The rules for electing a representative for the federation's meeting may be stipulated either in the rules of the federation or the rules of the member association. Depending on the provisions in the federation's rules, member organisations may also have more representatives at the meetings in accordance with, for example, the number of members in the member associations.

If the federation wants to have an intermediate-level administrative body consisting of delegates, under the federation model – like the association model – member organisations can be divided into electoral districts, each of which elects the number of delegates, possibly tied to the number of members, provided for in the rules. Electoral districts can also be larger entities. Depending on the rules, each electoral district is assigned either a fixed number of seats, or, for example, a number of delegates tied to the number of its members.

3.2. Allocation of association funds (association-specific membership fees, sales income, property, bequests, etc.) to benefit the members of the former associations

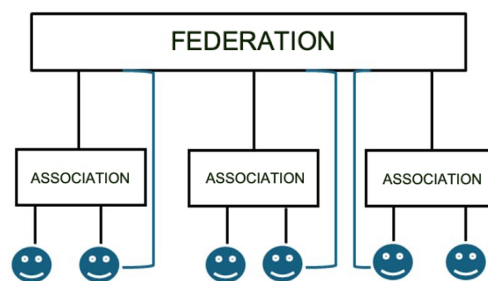
In the federation model, the assets and sales of existing member associations do not need to be transferred to the federation, which means that the assets can remain available to the current members of the associations. In this model, it must be noted that for member associations to maintain their tax liability status as non-profit organisation they must have their own, independent non-profit activities; managing and distributing assets to members is not, in principle, considered as such.

In the federation model, the federation may collect membership fees from both its own association members and from the associations' individual members, if its rules allow. If the federation collects membership fees from both its own members (federation fees) and from the members of its member organisations (organisation fees), the federation returns the organisation fees to the member organisations in accordance with the agreed principles and schedules. Organisation fees may differ between member organisations, according to the fees they have set for their own members. The rules may also provide that membership fees from association members (federation fees) are collected directly from the individual members of the federation's association members as a federation collection. The federation fee can be set at a level that a refund can be paid to the member organisations, allowing member organisations to arrange their operations without the need to collect membership fees from their members. The principle of equal treatment of members applies when membership fees are refunded, unless another basis for the allocation of fees is prescribed by the rules.

If it is preferred that member associations do not manage assets, the same options are available as in the association model: establishment of a foundation with the member association's assets, use of the assets for the benefit of all members of the association or use of the fund or division model provided for in the rules.

4. HYBRID FEDERATION MODEL FOR MEMBER STRUCTURE

If necessary, the federation model can also be set up such that some or all individual members of the federation's member associations are also direct members of the federation. In such a case, the federation's rules will determine whether individual members exercise their voting rights in their capacity as direct members or whether they are represented within the vote(s) (usually no more than one) of the member association.



Individual members are members of both the federation and the federation's member associations.

If individual members are direct members of the federation; the rules may stipulate whether they have the right to attend the federation's meetings. In such a case, the number of attendees may be relatively large, making meetings difficult to arrange.

Allowing direct membership is sometimes seen to encourage individuals to join the federation/the federation's member association. In some cases, there has been willingness to have individual

members participate in the selection of delegates to promote direct democracy in the federation model. This can also be achieved without direct membership if the federation's rules allow for a federation vote.

The federation can offer member services to individual members of the member organisations regardless of whether they are direct members of the federation.

5. SOME GENERAL CONSIDERATIONS CONCERNING THE MERGER OPTIONS

It has already been pointed out above that, unlike the Limited Liability Companies Act, the Cooperatives Act and the Foundations Act, the Associations Act does not cover mergers. In associations, a 'merger' takes place by agreement between the parties, which provides for the transfer of activities, staff and assets to the receiving association, as well as the right of members to apply for and become members of the new association. *Merger agreements* often also initially provide for the establishment of a joint administration .

Establishing a foundation. Each of the aforementioned models can be combined with the establishment of a foundation between one or more associations to fund organisation-specific causes. Foundations are typically set up in the case of mergers in which the value of the merging associations' assets is not the same. The merging associations retain assets of equal value in their own association to be transferred to the merged association and set up, as a legal person, a foundation to which to transfer the remaining assets to be registered with the register of foundations. In practice, the administration of an independent foundation requires more resources than an association or company of the same size due to the regulatory controls and legislative provisions concerning foundations. Establishing a foundation is only recommended if the value of the assets to be transferred to the foundation is not insignificant.

Transfer of debts. When associations merge, debts are not transferred to the receiving association as a single sum. The debt must either be paid before the transfer of the assets or an agreement must be made with the creditor on the transfer of the debt to the new association. When liabilities have been transferred in addition to assets, the Tax Administration considers, for the purposes of asset transfer tax, the amount of debt to be the transfer price of shares and property.

Preliminary rulings from the Tax Administration. Since the Associations Act, and consequently tax legislation, does not recognise mergers of associations, it is advisable to obtain a preliminary ruling from the Tax Administration on tax exemption for the transfer of assets before a merger is implemented. This is relevant if the value of the assets transferred to the receiving association in the merger is not insignificant. If the receiving association is not considered a non-profit organisation for tax purposes at the time of the transfer, it has to pay capital transfer tax on the transfer. In some cases, the difference between the fair value and the purchase price may also be recognised as income in the transferring association's taxation. If the transferred assets include property or shares, it is also necessary in most cases to ensure that the transfer is exempt from asset transfer tax.

Disclosure of member data. When associations merge, there is always a need to assess whether there are grounds for disclosing member data under the General Data Protection Regulation and whether there is an obligation to notify individual members of the disclosure. When the federation model is adopted, there is also a need to assess whether a register of individual members is kept centrally and on what grounds under GDPR the maintenance of the member register can be centralised.

Appointment of the board. It should be noted that board members cannot be appointed in the same way as delegates. There may be specific qualifications required for board members, but all members must be able to nominate candidates for the board and participate in the selection. Mutual agreements that outline how seats on the board are allocated may be binding to the member organisations, but claims of a mutual agreement will not succeed in court in the framework of association law if one of the member organisations breaches the agreement.