

Ficha Asociación

Asociación: Una asociación es un grupo de personas que se unen, se asocian para conseguir un fin. Este fin puede ser con o sin ánimo de lucro.

Constitución :

- Documento privado o publico
- Entre res o más personas físicas o jurídicas (socios fundadores), que se comprometen a poner en común conocimientos, medios y actividades para conseguir unas finalidades lícitas, comunes, de interés general o particular
- Pueden constituir asociaciones, y formar parte de las mismas, tanto las personas físicas como las personas jurídicas (empresas), sean éstas públicas o privadas,
- Rigen los Estatutos creados por Acta Fundacional
- Registrado ante Registro de Asociaciones (autonómica, estatal)

Gobierno:

Se constituye

- Una asamblea general de socios. Reunión al menos 1 vez / año
- Una junta con un presidente, secretario, tesorero: órgano de representación encargados de gestionar y representar los intereses
- Cargos directivos gratuitos o retribuidos

Control: Sometimiento de la Junta a la Asamblea

Economía

- Sin necesidad de fondo económico / patrimonio
- Puede ser "de utilidad pública" y recibir donaciones / aportaciones (ventajas fiscales) (necesita 2 años antigüedad)

Características

Organización de una pluralidad de personas para una finalidad específica, de interés general

Ficha Fundación

Fundación: entidad sin ánimo de lucro creada para gestionar un patrimonio para una finalidad particular, para beneficiar a colectividades genéricas de personas. Puede ser pública, privada o mixta.

De lo simple (gestión patrimonial de Antoni Tapies) a lo más complejo (Fundación UOC)

Constitución :

Por escritura pública (adquiere la personalidad jurídica) con los Estatutos

Inscripción dentro de 6 meses en el Registro de Fundaciones (autonómico o Estatal)

Gobierno:

Patronato: formado por un mínimo de tres miembros, entre los cuales se debe elegir el **Presidente**. También debe haber un **secretario**, aunque este puede ser del patronato o ajeno a este.

Los cargos del patronato deben aceptarse mediante escritura pública y son gratuitos

Control: Sometimiento del Patronato al Protectorado

Sometido a los directrices del "fundador".

Economía

Patrimonio (dotación de bienes y derechos de cualquier clase) mínimo de 30.000 euros

Puede recibir aportaciones / donaciones

Ventajas fiscales (rebaja tipo impositivo), mecenazgo (beneficios para los que aportan)

Características

Garantía de que determinadas finalidades que no pueden ser cumplidas sino de modo extendido en el tiempo, lo pueden ser.

Asegura la existencia de un capital vinculado a un fin

Mixtos: aportación de patrimonio privado (pero menos de 50%)

Ficha Consorcio

Consorcio: Agrupación de personas públicas o privadas para la realización de una actividad o finalidad colectiva.

Ejemplos: Consorci Bibliotecas de Barcelona, Localret, Consorcio de transportes...

Finalidad:

- gestión fiduciaria de competencias traspasadas (total o parcialmente) al Consorcio: gestiona los intereses que, en otro supuesto, sólo mediante la actividad unilateral de cada uno de los entes consorciados podrían ser alcanzados
- Realización de obras o prestación de servicios de interés público o privado, pero con relevancia colectiva

Tipos:

- Privados (por contrato)
- Públicos (administrativos). Administración pública - entidad interadministrativa- no general ni territorial, normalmente al servicio de otras Administraciones Públicas, nacida de la asociación de varios entes administrativos para la consecución de fines colectivos o de común interés.
- régimen de presupuestación, contabilidad y control de la Administración pública a la que estén adscritos

Constitución:

- Privado: por contrato al que se pueden adherir más miembros
- Público: Atribución por un poder público, al aprobar los estatutos que definen fines, competencias y potestades
- Adscrito a una administración pública
- Regulación estatal o autonómica

Gobierno

- Suele tener Asamblea (de todos los participantes/miembros) y Junta/Consejo + Presidente + Director
- régimen presupuestario, contabilidad y control de la Administración pública a la que estén adscritos

Características

- personalidad propia e independiente respecto de las entidades integradas - organización independiente respecto de los entes que se asocian
- Agrupación de esfuerzos provenientes de la pluralidad de sujetos que lo promueven
- Tiene únicamente aquellas funciones que (con un criterio de especialización funcional) se decida atribuirle
- Puede incluir actores privados sin ánimo de lucro
- Puede ser transfronterizo

Ficha "Comunidad sin entidad"

Comunidad: agrupación de personas con un interés común, en este caso sin estructura jurídica, basado en un acuerdo no escrito y la confianza y con capacidad de auto-organización.

Ejemplos: Sentilo, y 99% de los proyectos de software libre

Constitución

- Declaración no vinculante de la voluntad de los partícipes de realizar una actividad en común.
- Puede auto-organizarse según los “estatutos” o documentos constitutivos (no jurídicos)

Gobierno

- Formal o informal
- Según “estatutos” y voluntad de las personas fundadores de la comunidad

Características

- Sin personalidad jurídica
- Basada en el interés común y la confianza (que puede reforzarse mediante “estatutos” expresos, pero sin carácter jurídico)
- Entrada “sujeta a aprobación de la comunidad existente” y salida libre

Economía.

- Sin presupuesto formal ni cuentas, si bien un miembro de la comunidad podrá gestionar una cuenta bancaria en nombre de los intereses comunes (figura fiduciaria).

SPAIN

Association and Foundations

	Association (“Asociación”)	Foundation (“Fundación”)
Nature	An association consists of a group of people, whether natural or legal, coming together to organise a collective activity.	A non-profit organisation that allocates economic resources to a purpose of general interest.
Structure	<p>The Association is composed of:</p> <ul style="list-style-type: none"> - The Association must be composed of at least three natural or legal persons; - Articles of association; - Assembly of members; and - Board of Directors. 	<p>The Foundation is composed of:</p> <ul style="list-style-type: none"> - Board (“<i>Patronato</i>”); - Statutes and Founding Act of Statutes; and - Public Administrations as “protectors” (“<i>Protectorado</i>”).
Constitution Process	<p>Elaboration of Statutes and Founding Act (see art. 6 and 7 Organic Law 1/2002). In general, both documents are done by public deed but it is not mandatory.</p> <p>The name of the Association must differ the other associations already in the Registry of Associations. it is further recommended that the name be different (as in not identical nor similar) to registered trademarks.</p> <p>Registration in the Registry of Associations (article 10 Law 1/2002). The declaration of public interest/ “<i>declaración de utilidad publica</i>” (not compulsory but useful for different reasons, see below) is made with the same Registry of Associations (see Royal Decree 1740/2003).</p> <p>To do so, the following must be provided: documentation to prove</p>	<p>Must receive a certificate, a “<i>certificación negativa</i>”, from the Foundations Registry confirming that the Foundation name has not already been taken by another registered foundation.</p> <p>Development of Statutes and Founding Act of Statutes, the act must include data of the founders and the Board, etc. (see Article 10 and 11 Law 50/2002.).</p> <p>Deposit of at least 30.000€ (Art.12 Law 50/2002), usually done through a proof of deposit in the bank.</p> <p>Public deed of the Constitution Act which sets out how the Foundation is constituted, members of the Board, secretary, etc. (art. 9.2 Law 50/2002).</p> <p>Taxes: to declare and pay any taxes on property transfers</p>

	<p>that the association fulfils the requirements hereunder and it has not debts with public administrations: (a) standard forms provided by the Registry; (b) report of the activities carried out in the the last two years; (c) annual accounts of the last two fiscal years (balance sheet, income statement and financial report); (d) Certificate from State Agency for Tax Administration saying that the association has no debts with the Agency; (e) certificate from the General Treasury of the Social Security saying that the association has no debts with this organism; (f) if applicable, a certified copy of a registered economic activity ("<i>Impuesto Actividades Económicas</i>"). (g) certification from the Board of Directors that it will manage the Association.</p> <p><u>Note.</u> In some parts of the country, associations are subject to regional law (which is similar to national law) and must be registered in the Regional Registry of Association (these regions include Andalucía, Canarias, Cataluña, Comunitat Valenciana and País Vasco). There are sectorial regulations to comply with for certain types of associations (such as youth associations, students associations, university students associations, sports associations, parents associations, consumer and user associations, businessmen associations and professional associations; political parties and religious association)</p>	<p>("transmisiones patrimoniales") and on Stamp Duties ("<i>actos jurídicos documentados</i>") to the Tax Office.</p> <p>Draft a report setting out the purposes of the Foundation (in line with the "Public Interests" set out by the law) and the allocated resources for such purposes (Art. 35. 1) Act 50/2002).</p> <p>It is recommended to request a provisional CIF.</p> <p>Give the Foundation Register all the aforementioned documents.</p> <p><u>Note.</u> In some parts of the country, Foundations are subject to regional law (which is similar to national law) and must be registered in the Regional or Sectoral Registry of Foundations (these regions include Andalucía, Canarias, Castilla y León, Cataluña, Galicia, La Rioja, Madrid, Navarra, País Vasco y Comunidad Valenciana).</p>
<p>Formalities and annual requirements</p>	<p>Inventory, annual accounts, balance sheet, income statement.</p> <p>Minute book.</p>	<p>Inventory, annual accounts, balance sheet, income statement and activity report.</p> <p>Draft an actual plan, to be reviewed by the Patronato.</p>

	If the association has been declared “ <i>de utilidad pública</i> ”, it must provide their account (according to the rules of “ <i>Plan General de Contabilidad</i> ”) and present a report setting out the activities undertaken.	External audits for large foundations.
Management	<p>As per articles of association. Usually an Association has:</p> <ul style="list-style-type: none"> - The Assembly of members is the most important governing body of the association. It approves the annual accounts, the budget, the statutes, and selects the Board of Directors (“<i>Junta Directiva</i>”). - The Board of directors manages the association daily. It holds the powers and must exercise all the functions set out in the Statutes as decided by the Assembly 	<p>Board (“<i>Patronato</i>”) is composed by at least three individuals or legal entities elected according the Statutes of the Foundation.</p> <p>The Board governs and represents the Foundation according to the Statutes of the Foundation.</p> <p>Public Administrations may exercise some control over the Board through bodies called “<i>Protectorados</i>”, such as changing members of the Board, or Statutes, etc. However, when the <i>Protectorados</i> impose a change, they will have to go through courts.</p>
Taxes	<p>Generally, both associations and foundations are subject to the same tax obligations.</p> <p>Both Associations and Foundations must inform the Tax Officer of their economic activity, such as donations, property transfers, when buying shares (stamp duties), etc. Furthermore, they both have to make tax declarations on all of the following, even when exempted from tax on it:</p> <ul style="list-style-type: none"> - Business Tax (“<i>Impuesto de Actividades Económicas</i>”): both are exempted from paying Business Tax (a) during the first and second year, (b) forever if their turnover is under 1.000.000€ (c) forever if the entity complies with the requirements set out below. - There are not exempted from: Value Added Tax (“<i>Impuesto del Valor Añadido</i>”), and Income Tax (“<i>Impuesto de la Renta de las Personas Físicas</i>”). - Corporation Tax (“<i>Impuesto de Sociedades</i>”): Corporation Tax is based on the annual net profits. There are partial exemptions which can vary according to whether they fulfil the requirements below. - Transfer Tax and Stamp Duty (“<i>Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados</i>”): the Entity may be exempted from paying these taxes in it complies with the requirements below. However, it must still declare any (a) onerous transfers of assets between individuals (e.g. sale of second-hand properties), (b) transactions, (c) documented legal acts, ie, the first 	

	<p>transfer of property or the constitution of mortgage.</p> <p>Art.14, 16 and 2 and 3 of the Law 49/2002 provides that donors may receive tax deduction + + be exempt of the taxes that we have indicated provided the Association complies with certain requirements, such as:</p> <p>Requirements for exemption: the entity must be registered and declared "<i>de utilidad pública</i>", it must respect accounting obligations, provide an annual financial report (with certain conditions), devote 70% of their income for purposes of public interest, not have any turnovers (independent of its public interest aims) exceeding 40% of their income, neither the founders, nor the associates, employers, statutory representatives (or family) may be the main beneficiaries of the activities undertaken by the Association or benefit from special conditions to use the services, members in charge of the organisation of the Association must do so free of charge, and in case of dissolution, the entire estate must go to other associations of the same type.</p>	
Advantages	<p>Tax deductions for donors as explained above.</p> <p>Limitation of individual liability (see bellow).</p> <p>If the association is declared to be of public interest "<i>declaración de utilidad pública</i>", it will have access to more public subventions, exemptions of taxes explained above and this public recognition may strengthen its image.</p>	<p>Tax deductions explained above.</p> <p>Tax deductions for donors as explained above.</p> <p>Limitation of individual liability (see bellow).</p>
Limitations of scope	<p>No limitation as to purpose or activity however, if the Association wants "public interest" benefits it be "declared of public interest" ("<i>declaración de utilidad publica</i>"). To do so, the association must fulfil the requirements set out above (Constitution).</p> <p>Non-profit organization (article 2 Organic Law 1/2002): The association can engage in economic activities with profits, employ people and have economic profits at the end of the year. However, these economic profits must be reinvested in activities aimed for the public interest as set out by the Association in its "<i>declaración de utilidad pública</i>".</p>	<p>Pursue objectives in the public interest (article 3 Law 50/2002).</p> <p>Be non-profit (article 2 Law 50 /2002): The Foundation can engage in economic activities with benefits, employ people and have economic benefits at the end of the year. However, these economic benefits must be reinvested in activities aimed for the public interest.</p> <p>"<i>Protectorados</i>" may exercise some control over the Board, however, any change that is <u>imposed</u> on the Board by them must be accepted by the courts.</p>
Regulation	Organic Law 1/2002	Law 50/2002

Liability regime	<p>Art.15.2 of the Organic Law 1/2002 limits the civil liability of its members to act on behalf of the association.</p> <p>Under art.15.3 of the Organic Law 1/2002, members of the Board of Directors (or other representatives of the association) may be liable for “malicious, culpable or negligent” acts or debts carried out on behalf of the association.</p>	<p>Art.17 of the Law 50/2002 limits the civil liability of its members to act on behalf of the Foundation.</p> <p>Art. 17.2 of the Law 50/2002 members of Board of Directors (or other representatives of the Foundation) may be liable for negligent or illegal acts, or acts that go against statutes of the Foundation when carried out on behalf of the Foundation.</p>
Costs	<p>Registry of Associations for the constitution: 37,38 €</p> <p>Notary fees: around 230€.</p> <p>Spanish lawyers fees to help set up the constitution of the Association: between €150 – €300 hourly / estimate amount: 3000€</p> <p>Running costs (accounts, filings): depends on size</p>	<p>Registry of Foundations for the constitution: 0€</p> <p>Notary fees: around 400€</p> <p>Spanish lawyers fees to help set up the constitution of the foundation: between €150 – €300 hourly / estimate amount: 3000€</p> <p>Running costs (accounts, filings): depends on size etc.</p>
Languages	<p>All documents may be written in English however public documents must be translated in Spanish by a certified legal translator.</p>	<p>All documents may be written in English however public documents must be translated in Spanish by a certified legal translator.</p>

Law:

- Ley 50/2002 de 26 de diciembre, de Fundaciones
- Ley Orgánica 1/2002, de 22 de marzo, reguladora del Derecho de Asociación
- Ley 49/2002, de 23 de diciembre, de régimen fiscal de las entidades sin fines lucrativos y de los incentivos fiscales al mecenazgo

Fundación Gestión y Participación Social:

- <http://www.asociaciones.org>

Asociación Española de Fundaciones:

- <http://www.fundaciones.org/es/inicio>
- http://intranet.fundaciones.org/EPORTAL_DOCS/GENERAL/AEF/DOC-cw54b8fcbcd4a30/LafundaciOn_concepto_constitucionyregimensustantivoytributario.pdf