

Statutes

BITKOM

**German Association for Information Technology,
Telecommunication and New Media**

§ 1 Name, Registered Seat, Legal form and Business year

1. The name of the association is "BITKOM Bundesverband Informationswirtschaft, Telekommunikation und neue Medien e.V.", hereinafter referred to as "BITKOM". It is registered in the Register of Associations at the Amtsgericht (Lower Court) Charlottenburg under the number 19542NZ.
2. BITKOM is an association within the meaning of § 21 BGB (Bürgerliches Gesetzbuch = German Civil Code).
3. BITKOM has its registered seat in Berlin.
4. The business year is the calendar year.

§ 2 Purpose and Tasks

1. BITKOM represents the joint economic, commercial, technical and scientific interests of the suppliers of products and services in the field of information technology including suppliers of software, telecommunications and new media vis-à-vis political parties, the economy and the public in Germany, Europe and on a global level. Apart from this, BITKOM also represents the joint interests of the associations active in this sector while observing the statutory rules of competition.
2. The core activities of BITKOM are
 - representing political interests in the Federal and State Government,
 - representing interests within the framework of European and international associations as well as directly vis-à-vis international organizations,
 - representing the sector among the public through active press work and marketing,
 - representing the sector vis-à-vis trade fair associations, other associations and social protagonists,
 - organizing a permanent exchange between specialists in the field and the managing executives and providing cooperation platforms for the members,
 - informing the members about relevant developments,
 - advancing technological development and standardization,
 - promoting and developing the markets in the field of information technology and communications.
3. BITKOM provides a balanced representation of the sector while taking into special consideration the interests of the small and medium-sized businesses and young companies.
4. BITKOM does not pursue any purposes directed towards a profit-making business operation or any party-political objectives.

§ 3 Membership

1. Ordinary membership in BITKOM can be acquired by companies that render in the main services in the sectors defined in § 2.1. It can also be acquired by business associations active in the field defined in § 2.1 representing the interests of suppliers.
2. Companies wishing to become members must have a registered office or a permanent establishment in Germany within the meaning of § 12 Tax Code. The membership status of

companies which were members of the association as of 1 August 2004 remains unaffected by the above.

3. Membership is voluntary.
4. A company associated with a BITKOM member company in the manner described below may become a full member of BITKOM with Group membership status. Following admission to the Association, such company is for its part a BITKOM member company within the meaning of para. 1, so that companies associated with it may for their part obtain Group membership status.

A company is considered associated in a manner entitling it to Group membership if

- a) it directly or indirectly holds more than 50% of the shares of a BITKOM member company or if
 - b) a BITKOM member company directly or indirectly holds more than 50% of the shares of the other company. A company wishing to join BITKOM with Group membership status is required to expressly request that status when applying for membership. An existing membership may at any time on request and if the pertinent requirements are satisfied be converted into a Group membership.
 - c) two BITKOM member companies each invest up to 50% directly or indirectly in a joint venture and if this is stated by each of them in writing.
5. Apart from this, the presiding committee may grant associated membership, on application, to organizations that do not meet the requirements for ordinary membership as stipulated in the statutes.
6. Those interested in becoming members should make a written application for membership addressed to the management. The presiding committee will decide on grant of membership. The presiding committee may delegate this right.
7. Other full members are the following persons as founder members:
 Heinz Bäurer, Hüfingen/Behla
 Josef Brauner, Jüchen
 Eberhard Färber, Haar
 Jörg Menno Harms, Stuttgart
 Dr. Volker Jung, Grünwald
 Werner Schmücking, Munich
 Erwin Staudt, Leonberg.
8. The presidium may confer honorary membership status on personalities who have rendered outstanding services to the ITK industry . Honorary members shall have no right to vote.

§ 4 Rights and Duties of the Members

1. Every ordinary member is entitled to use the equipment and services of BITKOM. This right of use can be appropriated by the member associations of BITKOM exclusively through employees of their head office and/or through members of their management board or presiding committees. The rights of use for associated members will be laid down by the presiding committee and can be adjusted to the respective individual cases.
2. The members are bound to BITKOM's resolutions that are passed according to the statutes. They are further obligated to pay the envisaged membership fees and contributions and provide true and pertinent information without undue delay to the management and to the organs of BITKOM to enable them to carry out their tasks. Members shall not disclose information that is termed confidential to a third party.

§ 5 Duration of membership

1. Membership begins with the decision of the presiding committee to grant membership. The management board can delegate this right.
2. Membership comes to an end by voluntary resignation, due to the dissolution of the member's organization, by expulsion of the member or by death.
3. The management board may expel a member if it infringes the provisions laid down in these statutes, in particular, if the member does not fulfill its duty to pay membership fees and contributions, if insolvency proceedings are instituted on the assets of a member or the institution of such proceedings was refused for lack of assets or if the member is found guilty of having grossly damaged BITKOM's reputation. The management board can delegate this right. The member should be given an opportunity to make a statement before it is expelled.
4. Each member may resign from BITKOM subject to six months' notice to the year's end. Notice of termination shall be given vis-à-vis the executive committee in writing, i.e. for the purpose of proof by registered letter. A member shall remain bound to the charter, the rules on membership dues and further obligations such as assessments up to the point in time of his/her resignation.
5. Members who resign from BITKOM or who are expelled from BITKOM lose all claims on the assets of the association starting from the day of resignation or expulsion. Fees and other payments that have been made will not be refunded.

§ 6 Fees

1. The fees are levied according to a fee regulation in respect of which a resolution is passed by the general assembly of BITKOM at the proposal of the presiding committee.
2. To cover the costs of certain projects within the scope of BITKOM's purpose and responsibilities, the meeting of members may adopt exceptional dues or assessments. BITKOM shall apportion to its members the membership dues it has to pay to BDI (Federal Association of German Industry).

§ 7 Organs

The organs of BITKOM are the general assembly, the management board, the presiding committee and the governing board.

§ 8 General Assembly

1. The general assembly is the highest organ and passes resolutions with respect to all matters that are of fundamental importance to BITKOM. The general assembly is also especially responsible for the election of the management board and the auditor, for amendments to the statutes, the fee regulations, the dissolution of BITKOM as well as the discharge of the management board, the presiding committee, the governing board and the management.
2. The general assembly will convene:
 - a) if it is necessary, in the interests of BITKOM, however, at least once in every second business year,
 - b) within a period of eight weeks at the request of a minimum of 10% of the members. The application for convening a general assembly shall be in writing form and addressed to the president and shall state the purpose and the reasons for the meeting.
3. The invitations to the general assembly shall be in writing or sent electronically and shall include the agenda. A minimum of four weeks notice must be given before the day of the meeting. The written invitation for convening the meeting does not require the signature of the person authorized to convene the meeting stipulated in item 4. In particular, a typewritten signature or

scanned signature shall be enough. Every ordinary member may make a written application for supplementing the agenda no later than two weeks before the general assembly. The supplementing of the agenda shall be at the president's discretion in accordance with his duties. However, the agenda shall be supplemented if the application is supported by at least 1/10 of the members.

4. The general assembly shall be convened and presided over by the president of BITKOM and by the vice-president who is the most advanced in age if the president is unable to attend. The meeting may nominate another chairman on the application of at least 2/3 of the present members.
5. Every ordinary member has one vote in the general assembly. Representation by another ordinary member is permitted by means of a simple written authorization. One member may represent a maximum of three other members.
6. The general assembly is basically capable of passing resolutions regardless of the number of participating members and shall pass resolutions by a simple majority. Resolutions with respect to amendments to the statutes and the dissolution of BITKOM require the approval of at least 2/3 of the votes cast.
7. Resolutions and elections (hereinafter collectively referred to as "decision-making acts") of the meeting of members may be adopted or held either at a meeting personally attended by the members or, alternatively, without a physical meeting by written ballot. Decision-making acts over the phone or by video conference shall likewise be deemed decision-making acts by members attending in person.
8. Decision-making acts by written ballot shall be permissible if consented to by a simple majority of members. The provisions of the charter or of statute on decision-making majorities shall not be affected by the above. In case of decision-making by written ballot, the person who, pursuant to para. 4, would have presided over the meeting of members replaced thereby, shall, in writing, communicate the subject draft decision(s) to all members entitled to vote. Apart from the substantive issue concerned, such communication shall also include the question of whether or not voting shall be by written ballot. Moreover, members shall be set a time limit of no less than two and no more than five business days for delivering their answers. Responses received after that time limit shall not be taken into account. Answers shall be directed to the Association's head office.
9. Para. 8 shall analogously apply to decision-making acts and elections performed by electronic means, e.g. by email.
10. A written record to be signed by the meeting's chairman shall be kept of elections and decision-making acts of the meeting of members. In case of decision-making by written ballot, the chairman of the meeting shall in addition communicate the outcome to all of the Association's members in writing.

§ 9 Management Board

1. The central managing board of BITKOM shall consist of at least 5 and not more than 100 persons who - unless the meeting of members resolves differently in a given case - must be owners, members of the boards of directors or managing directors of member companies and/or members of the boards of directors of member associations. They shall be elected by the meeting of members and should ideally proportionately represent, both in terms of expertise and structure, the various industry segments affiliated to BITKOM. Moreover, the chairmen of those member associations that were affiliated to the Association as of 1 August 2004 and the chairman of BITKOM's SME FORUM shall become ex officio members of the central managing board. These seats may be transferred to the given vice chairmen. The central managing board shall be entitled to co-opt up to 20 additional representatives of BITKOM members for the given term of office.

2. Membership in the management board is personal and shall be held in an honorary capacity.
3. The term of office of the elected members of the management board shall be for two years. Reelection is permitted. The office of a member of the management board shall be terminated by resignation, death, election of a successor, end of membership of the respective member organization, the change of the elected representative to a non-member company or by removal from office due to a resolution passed by the general assembly. If a member of the management board loses his position as manager or board member in the company but is still entitled to represent the respective BITKOM member, his office in the management board will remain effective. If a member of the management board resigns during his term of office, the management board may nominate a member of the management board for the remainder of the term of office.
4. The management board is responsible for all matters pertaining to BITKOM as far as these are not reserved by statutory regulations or by the statutes of other organs. In particular, the duties incumbent on it are
 - a) election of the members of the presiding committee,
 - b) passing a resolution with respect to the budget plan drawn up by the presiding committee,
 - c) approving the financial statements based on the report of the presiding committee and aiding the governing board and the management to administer the assets,
 - d) making decisions on expulsion of members at the proposal of the presiding committee.
5. Meetings of the central managing board shall be convened in the name of the Association's president at least one week in advance. As for form and content of the invitation, § 8 para. 3 shall analogously apply. Meetings shall be chaired by the president of BITKOM and, if he/she is prevented from attending, by the eldest of the available vice presidents. The central managing board shall have a quorum if half of its members take part in the decision-making. In all other respects, § 8 paras. 4, 5 and 7 to 10 of the charter shall analogously apply. The central managing board may adopt its own rules of procedure.

§ 10 Presiding Committee

1. The presidium is composed of the president, up to 3 vice presidents, the treasurer and further members of BITKOM's principal executive board (Hauptvorstand). The presidium shall not have more than 15 members, 12 of whom may be elected while up to three more members may be co-opted by the presidium from among the members of the principal executive board. The composition of the presidium should reflect the industry's structure. If a presidium member resigns prior to the termination of his/her term, the presidium may, in addition, co-opt for the residual term a presidium member from among the members of the principal executive board. § 9 para. 2 shall analogously apply.
2. The term of office of the president and the vice presidents is two years. It ends upon the election of a successor. Re-election is permissible, with the proviso that the president may be re-elected only once. § 8 paras. 4, 5 and 7 and § 9 para. 3 of the constitution shall analogously apply.
3. The president, the vice presidents and the treasurer constitute the managing executive board (Geschäftsführender Vorstand) within the meaning of § 26 BGB (German Civil Code). They remain in office until new elections are held. The president and a further member of the managing executive board may jointly represent BITKOM in and out of court.
4. In particular, the presiding committee shall
 - a) elect the chairman (president), the vice-chairman (vice-president) and the treasurer,
 - b) make decisions regarding important matters that have to be decided at short notice as far as this is not expressly reserved by the general assembly or the management board,

- c) draw up rules of procedure and guidelines for the organs of the association as required, decide on applications for membership or make suggestions to the management board with respect to expulsion of members respectively,
 - d) prepare the items for discussion and the applications for the general assembly,
 - e) propose a fee regulation to the general assembly and carry out the tasks assigned to it by means of the fee regulation,
 - f) set up forums, working groups, technical and steering committees decide on the formation of work groups and on their rules of procedure,
 - g) carry out any tasks and work assigned to it by the management board or by the general assembly for independent execution,
 - h) draw up the budget plan and submit it to the management board for passing a resolution,
 - i) approve the financial statements and submit it to the management board for passing a resolution.
 - j) prepare resolutions of the management board and general assembly,
 - k) appoint the secretary and remove him from office as well as draw up rules of procedure for the management if necessary.
5. The presiding committee can adopt rules of procedure.

§ 11 Management of BITKOM

A management will be appointed to execute the current tasks of BITKOM and to administer its assets. The management shall operate according to the directions of the governing board, especially of the chairman, and shall be appointed by the association. The presiding committee shall decide on the appointment and also on the removal from office.

§ 12 Work groups

1. The presiding committee may set up work groups as sub-divisions of BITKOM for cooperation with companies, associations and other organizations that do not meet the requirements for membership in BITKOM specified in the statutes. All members of BITKOM who are active in the corresponding sphere of activity have the right to become members in the work groups.
2. The work groups shall have their own rules of procedure and their own fee regulations as per a resolution passed by the presiding committee.

§ 13 SME Forum

BITKOM is setting up a forum for small and medium-sized firms (SME Forum) to live up to the objective it has set itself in § 2 para. 3. The forum comprises all small and medium-sized firms members of BITKOM. It shall elect its own chairman and one deputy chairman. Such election and the pertinent terms of office shall analogously be governed by § 9 para. 1 p.1, second half-sentence and para. 2 and 3 of the constitution. The presidium shall appoint one member of the board of management (Geschäftsführung) who shall be responsible for the SME Forum.

§ 14 Amendments to the statutes and dissolution of BITKOM

1. Applications to amend the statutes or for the dissolution of BITKOM may be made to the president by the presiding committee or by a minimum of 1/4 of the members, in writing, and stating the purpose and the grounds for the same, with a notice of four weeks.
2. In the event of the dissolution of BITKOM, the available assets of BITKOM after paying off all the liabilities shall be made available to the last general assembly. The assets of the association shall be used for purposes within the meaning of these statutes. The corresponding resolutions passed by the general assembly shall be put into effect only after the consent of the responsible *Finanzamt* (Tax Office).