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# Setting up W3C as an association based in Geneva, Switzerland

Assessing Geneva as a location of legal jurisdiction for W3C incorporation

## Abstract

This report provides a high-level overview of the benefits and disadvantages of W3C incorporating in Geneva, Switzerland. It recommends a legal structure for W3C (an *Association*), explains its principles, and addresses the considerations listed by W3C's Advisory Board.

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# Overview

Switzerland is one of the most stable countries in the world from a political, economic, and judicial perspective.

Geneva is an international city where English is the working language of over a quarter of the population. Most legal documents are available in English, and a lot of business is conducted in English here.

[Chapter Two of the Swiss Civil Code](#) defines a really lightweight legal structure called an *Association*. An association is designed to accommodate anything from very small and local voluntary associations (such as a sports club) to large multi-billion dollar structures, such as the International Federation of Association Football (FIFA).

Nonprofits adopting this structure can fairly simply file for tax-exemption. This is why it has been adopted by a large number of NGOs—for example, the International Committee of the Red Cross (ICRC)—and an important number of standards developing organizations, such as Ecma International, ISO, IEC, or GSMA.

The basic governance model of an association is very close to the way W3C is structured, with a General Assembly of members (equivalent to the Advisory Committee) and a Committee (similar to the Advisory Board). This would make adoption by W3C fairly straightforward.

Because the Government of Geneva derives a lot of prosperity from the presence of the various international organizations present on its soil, it facilitates access to government representatives at both the state and federal level, and has set up a number of programs to help them settle and be successful in Geneva, such as the International Geneva Welcome Center (CAGI). CAGI's website, [cagi.ch](http://cagi.ch), is a great resource to learn more about [setting up an Association](#), [tax-exemption](#), and obtain a [by-laws template \(statutes\)](#) that meet the tax-exemption requirements. It also has a very useful [FAQ](#).

At a time where ethical concerns in tech are growing, proximity to the United Nations (UN) offices headquartered in Geneva, such as the Office of the UN High Commissioner for Human Rights or the UN Human Rights Council, seems valuable. Other notable UN organizations located in Geneva, which could be of interest to

W3C from both a liaison and a business development perspective include: the World Health Organization (WHO), the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), and the International Telecommunication Union (ITU). Here again, the State of Geneva is doing a lot of work to connect these organizations to nonprofits present in Geneva and facilitate exchanges between them.

Finally, there's a symbolic dimension for the W3C to establish itself in Geneva, since this is where the Web was invented.

# Choosing the right legal structure

There are two legal structures that govern non-profits in Switzerland: **foundations** and **associations**.

## Foundations

Foundations are designed to administer assets they are endowed with for a particular purpose. The legislation for them is complex and burdensome. They would not be a good fit for W3C, according to both Michael Kleiner and Daniel Loeffler.

*It is worth noting here that the tax issues experienced by the Web Foundation are related to the fact that it was operating as a foundation.*

## Associations

Associations are a very lightweight legal structure designed to accommodate anything from very small and local voluntary associations such as sports clubs to large multi-billion dollar structures, such as the International Federation of Association Football (FIFA). They are defined in [Chapter Two of the Swiss Civil Code](#).

Nonprofits adopting this structure can fairly simply [file for tax-exemption](#), which is why this it has been adopted by a large number of NGOs—for example, the International Committee of the Red Cross (ICRC)—and an important number of standards developing organizations, such as Ecma International, ISO, IEC, or GSMA.

### **An association is the recommended structure for W3C.**

The basic governance model of an association is very close to the way W3C is structured, with a General Assembly of members (equivalent to the Advisory Committee) and a Committee (similar to the Advisory Board). This would make adoption by W3C fairly straightforward.

Creating an association is simple. An association has legal personality and may begin its activities as soon as its by-laws have been adopted by a constitutive General Assembly.

The CAGI provides a [template of by-laws](#) that could be used as a basis for W3C's by-laws. Drafting by-laws could be easily done by W3C's existing legal team, in collaboration with the AB and AC. It would be recommended to get a lawyer based in Geneva to check them.

The by-laws would then be adopted during an AC meeting which would become the constitutive General Assembly of the association.

During that same meeting, the General Assembly would vote to make all existing W3C members become members of the association and vote its AB members as members of the Committee.

The association would then register to the Commercial Registry of the state of Geneva, and file for tax-exemption.

# Considerations raised by the AB

## 1. Strong legal system with respect for the rule of law

According to the [2019 Global Competitiveness Report](#) of the World Economic Forum (WEF) (see Appendix A), Switzerland's legal system is one of the best rated in the world. Switzerland also ranks 1st for macroeconomic stability.

### 1.1 Court system and laws that are well understood by an abundance of legal professionals and enforced fairly.

Yes. The WEF ranks Switzerland 5th worldwide in terms of checks and balances, 4th for its judicial independence, and 3rd for the efficiency of its legal framework in challenging regulations and in settling disputes.

As a large number of international corporations, Banks, NGOs, and United Nations offices are headquartered in Geneva (and in nearby Cantons), there is an abundance of highly trained, English-speaking, legal professionals in Geneva.

### 1.2 Intellectual property laws that are consistent with and favorable to the W3C IPR policies.

The WEF ranks Switzerland 3rd worldwide for its intellectual property protection.

Switzerland has ratified all relevant treaties (afterall, the Berne Convention is named after Switzerland's capital). Additionally both WIPO and WTO are headquartered in Geneva.

### 1.3 Laws based on language of contracts/agreements as compared to subjective interpretations.

In [Introduction to Swiss Law](#), Marc Thommen states that “[t]he interpretation of a contract orients itself in the first place on the principle of will (subjective interpretation), [...]. Only where there is doubt about the common intention of the parties does the principle of confidence (objective interpretation) become relevant.”

## 2. Laws that are familiar to Team for ease of operation and cost

### 2.1 Ability to file governing documents in English (W3C's operational language)

All by-laws may be in English. The CAGI provides template by-laws that are in English and that would only require minimum changes to be applicable to W3C.

However, the State of Geneva will require a translation of the by-laws in French when applying for tax-exemption (which only needs to be done once).

## **2.2 Team must know enough to operate efficiently and effectively**

WEF ranks 8th when it comes to the burden of government regulation, which is especially light for associations (the kind of legal structure W3C should adopt), and 7th for its auditing and accounting standards.

### *Meeting legal requirements*

Understanding and abiding by the legal requirements (notably to maintain tax-exemption) is very straightforward; associations are designed to be run by ordinary citizens to organize things as simple as a sports club.

Such requirements are stipulated in the association's by-laws, which are generally fairly short and would be written in English.

### *Accounting*

Accounting requirements are straightforward and could be outsourced to accounting professionals which are fairly inexpensive in Geneva.

## **2.3 Keep legal and compliance costs as low as possible**

According to [Art. 69b](#) of the Swiss Civil Code, the association must only submit its accounts 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.

W3C members might require the foundation to submit itself to such an audit, however.

W3C would incur standard accounting and fiduciary expenses related to preparing its annual accounts and tax filing. This is fairly inexpensive in Geneva.

There shouldn't be any legal costs insured by the association beyond costs related to setting it up and obtaining tax-exemption. It is worth noting that attorney fees in Geneva are quite expensive with an average hourly rate of USD 500, going up to USD 800 per hour for complex issues.



### 3. Favorable taxation for W3C

Tax exemptions for nonprofits would be fairly easy to obtain in Geneva.

This grants full exemption for state and cantonal taxes for the association, but not for its employees. It also covers neither social security for employees based in Switzerland nor value added tax (VAT).

### 4. Favorable taxation for members and donors

#### 4.1 For entities based *in* Switzerland

- *Membership fees* of legal entities based *in* Switzerland would be tax deductible regardless of whether W3C obtained tax-exemption for itself.
- *Donations* from individuals and legal entities based *in* Switzerland would be deductible if W3C obtained tax-exemption for itself.

*It is worth noting that a number of W3C donors and sponsors have subsidiaries in Switzerland.*

#### 4.2 For entities based *outside* Switzerland

This is jurisdiction-specific. In general, though:

- *Membership fees* of legal entities based *outside* of Switzerland should be tax deductible.
- *Donations* from individuals and legal entities based *outside* of Switzerland would probably not be deductible.

### 5. Protection for corporate officers and BoD members

According to [Art. 75a](#) of the Swiss Civil Code the liability of an association is limited to that of its own assets unless specified otherwise in its by-laws.

According to [CAGI's FAQ](#):

*The members of an association, as well as the Committee members, cannot personally be held responsible for debts and obligations contracted by the association, neither for the damages caused in the pursuit of its activities.*

*Financial responsibility of members is limited to the amount of the membership fee. Therefore, they cannot be sued by creditors.*

## **6. Legal and business costs**

### **6.1 What are the costs of incorporation?**

Incorporation is free.

Inscription to the commercial register is around USD 700.

Having an attorney revise the draft by-laws should be fairly inexpensive (mid four-figures USD).

A one time translation of the by-laws to seek tax exemption should be under USD 500.

Filing for tax-exemption is free. Getting legal assistance to do so might be useful, but would also be fairly inexpensive (again, mid four-figures USD max).

### **6.2 What are the costs of annual maintenance?**

The cost would be limited to accounting and, optionally, external audit fees and domiciliation.

A number of fiduciaries offer domiciliation plus accounting packages for well below USD 10K/year.

### **6.3 What are the expectations of general on-going legal expenses?**

None.

### **6.4 What are the costs of doing business for the W3C?**

That really depends on the specifics. Would W3C have an office or just be domiciled in Switzerland?

Domiciliation starts at around USD 3K per year. A lot of fiduciaries offer domiciliation plus accounting packages for well below USD 10K/year.

### **Employment Cost and Ease, Currency Exchanges, Operating Overheads etc.**

TODO (clarify actual needs.)

## 7. Political stability and global standing

### 7.1 A jurisdiction that is well respected globally as a safe and great place to do business.

The WEF ranks Switzerland 5th overall in its [2019 Global Competitiveness Report](#). Switzerland also ranks 1st for macroeconomic stability.

### 7.2 Strong, fair and transparent government with low potential of political upheaval.

Yes. (TODO find relevant data points)

### 7.3 Respects and upholds the W3C values like openness, inclusion and diversity.

Yes. (TODO find relevant data points)

## 8. Pertinent trade restrictions

Switzerland is a Wassenaar Participating State whose national export controls are based on internationally harmonised goods lists.

According to Dr Patrick Edgar Holzer, Head of Section Export Control Policy Dual-Use and Head of the Swiss Delegation to the Wassenaar Arrangement (emphasis mine):

*US legislation might possibly be more encompassing in terms of geographic scope (extraterritorial application) and activities covered (e.g. foreign direct investment [FDI] controls) [than Switzerland].*

*In addition, the 2018 Export Control Reform Act (ECRA) authorises the US Department of Commerce to enact, if deemed necessary, unilateral controls for certain “emerging and foundational technologies” that may go beyond the harmonised goods lists of the multilateral export control regimes.*

***In contrast, Switzerland does not have FDI controls, and its export controls are based on the principle of territoriality and limited to those goods listed by the regimes.***

See Appendix B for the complete email exchange with Dr Patrick Edgar Holzer.

## 9. Restrictions on multinational entities

There are no restrictions on multinational entities in Switzerland for associations, which is why so many large NGO are headquartered in Switzerland.

Switzerland, however, doesn't allow hiring employees which aren't based in Switzerland (unlike how in the US, the H1-B allows employing offshore workers).

Additionally, it's worth noting that associations **cannot** have subsidiaries.

There are therefore two options that can be used separately or in combination to hire employees which are not based in Switzerland:

1. Hiring employees through a payroll company.
2. Creating independent legal entities in countries where W3C has staff (e.g. China, France, Japan, and the US). These entities become members of the association. They can be given a special membership status so they don't have voting rights in the General Assembly. They do not need to have a specific legal status. They are simply funded by the association to carry out certain duties.

# Resources

In order to prepare this document, I met or exchanged emails with:

**Michael Kleiner**

Economic Development Officer at Directorate General for Economic Development, Research and Innovation

**Daniel Loeffler**

Deputy Secretary-General at the Department of Development of the State of Geneva

**Ambassador Valentin Zellweger**

Permanent Representative of Switzerland to the Office of the United Nations in Geneva

**Ambassador Yannick Roulin**

Diplomat at the Federal Department of Foreign Affairs

**Dr Patrick Edgar Holzer**

Head of Section Export Control Policy Dual-Use and Head of the Swiss Delegation to the Wassenaar Arrangement

Websites:

- [Tax-exemption request process](#)
- [Documentation on tax-exemption \(pdf\)](#)
- Website of the International Geneva Welcome Center: [cagi.ch](http://cagi.ch)
  - [Setting up an Association](#)
  - [Tax-exemption](#)
  - [By-laws template \(statutes\)](#)
  - [FAQ](#)
- International comparison of Geneva as a business location: [Why Geneva?](#)

Examples of by-laws (statutes) of SDOs based in Switzerland and structured as an association:

- [GSMA](#)
- [Ecma International](#)
- [ISO](#)
- [IEC](#)