

Josef Bergt

Collection of Laws of Liechtenstein

Civil law



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## **COLLECTION OF LAWS**

### **OF LIECHTENSTEIN**

#### **LAW**

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                 Public Liability Act (AHG)
- LR 215.211.6 Far and Away Transactions Act (FAGG) LR  
290            Private International Law Act (IPRG)
- LR 944.0 Consumer            Protection Act  
                 (KSchG) LR 173.560  
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## **Table of contents**

<b>I. General Civil Code .....</b>	<b>1</b>
<b>From inventory contracts.....</b>	<b>158</b>
<b>Employment contract .....</b>	<b>219</b>
<b>II. Public Liability Act .....</b>	<b>316</b>
<b>III. Distance and Outbound Transactions Act.....</b>	<b>325</b>
<b>IV. Private International Law Act .....</b>	<b>345</b>
<b>V. Consumer Protection Act.....</b>	<b>362</b>
<b>VI. Notaries Act .....</b>	<b>390</b>
<b>VII. Property law .....</b>	<b>421</b>
<b>VIII. Copyright Act .....</b>	<b>586</b>
<b>IX. Marriage Act .....</b>	<b>630</b>





**I. General Civil Code**

of June 1, 1811

Table of contents

Introduction

From the civil laws in general

§§ [1-14](#)

1. Part

From the personal rights

1. Principal Part: Rights Relating to Personal Characteristics and Relationships §§ [15-43](#)

2. Principal Part: Of the Marriage Law (repealed) §§ 44-134

3. Principal Part: Rights between Parents and Children §§ [135-186a](#)4. Principal Part: Of Guardianship §§ [187-268](#)Section 5: Guardianship, curatorship and power of attorney for health care §§ [269-284g](#)

2. Part

From the property rights

1. Division of the Law of Property Of the rights in rem

Of things and their legal classification (repealed) §§ 285-308

1. Principal Part: Of the possession (repealed) §§ 309-352

2. Principal Part: Of the Right of Property (repealed) §§ 353-379

3. Principal Part: Acquisition of Property by Appropriation (repealed)  
§§ 380-403

4. Chapter: Acquisition of property by accretion (repealed) §§ 404-422

5. Principal Part: Of Acquisition of Property by Delivery (repealed) §§ 423-446

6. Principal Part: Of the Lien (repealed) §§ 447-471

## General Civil Code

---

7. Section: Of easements (servitudes) (repealed) §§ [472-530](#)
8. Principal Part: The Right of Succession §§ [531-551](#)
9. Main Part: Of the Declaration of the Last Will in General and the Testaments in Particular §§ [552-603](#)
10. Principal Part: Of Successors and entailed estates §§ [604-646](#)
11. Principal Part: Of Legacies §§ [647-694](#)
12. Principal Part: Of Restriction and Cancellation of the Last Will §§ [695-726](#)
13. Principal Part: Of the Legal Succession §§ [727-761](#)
14. Main Part: The Compulsory Part and the Inclusion in the Compulsory or Inheritance Part §§ [762-796](#)
15. Principal Part: Of Taking Possession of the Inheritance §§ [797-824](#)
16. Principal Part: Of the Community of Property and Other Rights in Rem (repealed) §§ [825-858](#)
2. Department
- From the personal property rights
17. Main Part: Contracts and Legal Transactions in General §§ [859-937](#)
18. Main Part: Of Donations §§ [938-956](#)
19. Main Part: Of the Depositary Agreement §§ [957-970c](#)
20. Main Part: Of the Lending Contract §§ [971-982](#)
21. Principal Part: Of the Loan Agreement §§ [983-1001](#)
22. Main Part: VonderBevollmächtigung und andersartender Geschäftsführung §§ [1002-1044](#)
23. Main Part: Of the Exchange Contract §§ [1045-1052](#)
24. Main Part: Of the Purchase Contract §§ [1053-1089](#)
25. Main Part: Of Contracts of Continuance §§ [1090-1150](#)
26. Main part: Of contracts for services §§ [1151-1174](#)
27. Main Part: Of the Contract on a Community of Goods (repealed) §§ [1175-1216](#)
28. Main Part: Of the Marriage Pacts and the Entitlement to Equipment §§ [1217-1266](#)
29. Principal Part: Of the Contracts of Fortune §§ [1267-1292](#)

30. Principal Part: The Right to Damages and Satisfaction §§ [1293-1341](#)

3. Part

From the common provisions of the personal and property rights

1. Principal Part: Of Attachment of Rights and Liabilities §§ [1342-1374](#)

2. Main Part: Of Change of Rights and Liabilities §§ [1375-1410](#)

3. Main Part: Of Cancellation of Rights and Liabilities §§ [1411-1450](#)

4. Section [1451-1502](#): Statute of Limitations and Acquiescence

### Introduction

From the civil laws in general

*Concept of civil law*

#### § 1

Civil law is the set of laws by which the private rights and duties of the inhabitants of the state are determined among themselves.

#### § 2

As soon as a law has been duly promulgated, no one may plead ignorance of it.

#### § 3

Beginning of the effectiveness of the laws

The effectiveness of a law and the legal consequences arising therefrom shall commence immediately after its promulgation, unless the promulgated law itself specifies the time of its effectiveness beyond that time.

Scope of the law

#### § 4

Retrieved

#### § 5

Laws do not have retroactive effect; therefore, they have no influence on previous acts and on previously acquired rights.

*Interpretation*

§ 6

No other understanding may be attached to a law in its application than that which shines forth from the peculiar meaning of the words in their context and from the clear intention of the legislator.

§ 7

If a legal case cannot be decided either from the words or from the natural sense of a law, consideration must be given to similar cases decided in the laws and to the grounds of other laws related to it. If the legal case remains doubtful, it must be decided according to the natural principles of law with regard to the carefully collected and maturely considered circumstances.

§ 8

Only the legislature has the power to declare a law in a generally binding manner. Such a declaration must apply to all still

The legislator adds that his declaration shall not be applied to the decision of such cases which have as their object the actions undertaken and the rights addressed before the declaration.

§ 9

*Duration of the law*

Laws retain their force until they are amended or expressly repealed by the legislature.

*Other types of regulations, as*

§ 10

*a) Habits*

Custom can be taken into account only in cases where a law refers to it.

§ 11

*b) Provincial Statutes*

*Objective*

§ 12

## General Civil Code

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### *c) Judicial pronouncements*

The decrees issued in individual cases and the judgments rendered by benches of judges in special litigation never have the force of law; they cannot be extended to other cases or to other persons.

#### § 13

### d) Privileges

The privileges and immunities granted to individual persons or entire bodies shall be assessed in the same way as other rights, insofar as the political ordinances do not contain any special provision in this respect.

#### § 14

### Main division of civil law

The provisions contained in the Civil Code deal with personal law, property law and the provisions common to them.

#### 1. Part

### From the personal rights

#### 1. Main section

From the rights, which refer to personal characteristics and circumstances

#### § 15

### Personal rights

The personal rights refer partly to personal characteristics and relationships, partly they are based on the family relationship.

#### *1. From the character of the personality*

#### § 16

### Innate rights

Every human being has inherent rights which are already obvious by reason, and is therefore to be regarded as a person. Slavery or serfdom, and the exercise of any power relating thereto, is not permitted in these countries.

#### § 17

### Legal presumption of the same

What is appropriate to the innate natural rights, this is assumed to exist as long as the lawful limitation of these rights is not proven.

§ 18

Acquired rights

Everyone is capable of acquiring rights under the conditions prescribed by law.

Pursuit of the rights

§ 19

Anyone who considers his rights to have been infringed is free to bring his complaint before the authorities designated by law. However, anyone who uses unauthorized assistance with obstruction of the same, or who exceeds the limits of self-defense, is responsible for it.

§ 20

Legal transactions concerning the head of state, but relating to his private property or to modes of acquisition based on civil law, shall also be judged by the judicial authorities in accordance with the law.

II. Personal rights arising from the property of age or lack of sound mind

§ 21

Retrieved

§ 22

Even unborn children are entitled to the protection of the law from the moment of their conception. In so far as their rights and not those of a third party are concerned, they are regarded as born; a stillborn child, however, is regarded as if it had never been conceived, with regard to the rights reserved for it in the case of life.

§ 23

In the doubtful case of whether a child was born alive or dead, the former is presumed. Anyone who claims the opposite must prove it.

## III. From the ratio of absence

## § 24

If a doubt arises as to whether or not an absentee or missing person is still alive, his death shall be presumed only under the following circumstances:

1. if a period of 80 years has elapsed since his birth and the place of his residence has remained unknown for ten years;
2. regardless of the period from his birth, if he remained unknown through 30 full years;
3. if he has been severely wounded in the war or if he has been on a ship, since it sank, or in some other near mortal danger and has been missing since that time for three years. In all these cases the declaration of death may be sought and made under the precautions specified (§ 277).

## § 25

In case of doubt as to which of two or more deceased persons departed first with death, the person claiming the earlier death of one or the other must prove his claim; if he cannot do so, they are all presumed to have died at the same time, and there can be no question of the transfer of the rights of one to the other.

## IV. From the relationship of a moral person

## § 26

The rights of the members of a lawful company among themselves are determined by the contract or purpose and the special regulations existing for the same. In relation to others, lawful companies usually enjoy equal rights with individuals. Illegal companies as such have no rights, neither against the members nor against others, and they are incapable of acquiring rights. Illicit societies, however, are those that are formed by

the political laws in particular are prohibited or appear to be contrary to security, public order or morality.

## § 27

The extent to which municipalities are subject to a special provision of public administration with regard to their rights is contained in the political laws.

## V. From the circumstances of a citizen

§ 28

Full enjoyment of civil rights is acquired through citizenship. (Citizenship in these hereditary states is inherent to children of an Austrian citizen by birth).

§§ 29 to 32 Repealed

Rights of aliens

§ 33

The aliens are entitled to the same civil rights and obligations as the natives, unless the status of a citizen is expressly required for the enjoyment of these rights. Also, in order to enjoy equal rights with the natives, the aliens must prove in doubtful cases that the state to which they belong treats the citizens of this country likewise as its own with regard to the law of which the question is.

§ 34 to 37 Revoked

§ 38

Envoys, public chargés d'affaires and persons in their service shall enjoy the immunities provided for by international law and public treaties.

§ 39

VI. Personal rights arising from the religious relationship

The difference of religion has no influence on the private rights, except insofar as this is particularly ordered by the laws for some subjects.

VII. From the family relationship, family, kinship and affinity

§ 40

Family is understood to mean the progenitors with all their descendants. The connection between these persons is called kinship, but the connection that arises between one spouse and the relatives of the other spouse is called affinity.

§ 41

1) The degrees of relationship between two persons are according to the number of procreations by means of which, in the straight line, one of them is related to the other,



## General Civil Code

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and in the collateral line, both are descended from their nearest common ancestor. In which line and in which degree a person is related to one spouse, in the same line and in the same degree he is related by marriage to the other spouse.

2) The provisions on affinity apply mutatis mutandis to the registered partnership.

### § 42

As a rule, the name parents includes all relatives in the ascending line, and the name children includes all relatives in the descending line, without distinction of degree.

### § 43

The special rights of the members of the family are indicated in the various legal relationships in which they are entitled to them.

2. Main Part About the Marriage Law

§§ 44 to 134 Revoked

3. Main section

From the rights between parents and children

*General rights and obligations*

### § 135

When children are born, a new legal relationship is created; rights and obligations are thereby established between parents and children.

### § 136

1) The parents of a child are understood to be the mother and the father.

2) Retrieved

3) Retrieved

### § 137

1) Parents and children shall stand by each other and treat each other with respect. The rights and duties of the father and mother are the same, unless otherwise specified.

2) Parents must promote the well-being of their minor children and provide them with care, security and a careful upbringing. The use of violence of any kind and the infliction of physical or mental suffering are inadmissible.

As far as possible and feasible, the parents should take care of the child by mutual agreement.

§ 137a

1) In exercising the rights and fulfilling the duties under this Part, in order to safeguard the best interests of the child, everything shall be refrained from that would affect the relationship of the minor with other persons to whom the child is entitled under this Part.

The child's rights and duties shall be impaired or the performance of the child's duties shall be made more difficult by the child's legal guardian.

2) Third parties may interfere with parental rights only to the extent that they are permitted to do so by the parents themselves, directly by law or by official order.

3) A person of full age who lives in the same household as a parent and his or her minor child not only temporarily and who has a family relationship with the parent must do everything reasonable under the circumstances to protect the best interests of the child.

§ 137b

1) In all matters concerning the minor child, in particular custody and personal contacts, the best interests of the child shall be taken into account as a guiding consideration.

2) In assessing the best interests of the child, particular consideration shall be given to the extent to which, taking into account the living conditions of the child, its parents and its other environment:

1. the child is provided with adequate food, medical and sanitary care, and housing;

2. care, security and protection of the child's physical and mental integrity are guaranteed, and the risk of the child suffering violence or witnessing violence against important caregivers, or being illegally removed or retained, is avoided;

3. a careful upbringing of the child is ensured and its aptitudes, abilities, inclinations and developmental possibilities are promoted;

4. the child is valued and accepted by the parents, his or her opinion is taken into account according to his or her understanding and ability to form an opinion, and any adverse effects that he or she might suffer as a result of the enforcement of a measure are prevented;

5. reliable contacts and secure bonds of the child with both parents

## General Civil Code

and important reference persons are guaranteed and conflicts of loyalty are avoided; and

6. the property and other rights and interests of the child are safeguarded.

*Parentage of the child*

## § 138

Parentage established in accordance with this Code and its modification, as well as the establishment of non-paternity, shall have effect vis-à-vis everyone.

## § 138a

1) Persons with capacity to consent and judgement may, if they do not have capacity of their own, be consulted on matters relating to their parentage and descent.

The person concerned may act with legal effect without their consent, provided that their legal representative consents. If the legal representative acts in such a case, he or she requires the consent of the person with the capacity to consent and judge. In case of doubt, minors who have reached the age of 14 are presumed to have the capacity to consent and judge.

2) The legal representative shall be guided by the best interests of the person represented. His or her acts of representation in matters of parentage do not require the court's approval.

## § 138b

After the death of the person concerned, the determination of parentage, its amendment or the determination of non-paternity may be effected by or against the legal successors.

## § 138c

Mother is the woman who gave birth to the child.

## § 138d

1) Father of the child is the man,

1. who is married to the mother at the time of the child's birth or who died as the mother's husband not earlier than 300 days before the child's birth;

2. who has acknowledged paternity; or

3. whose paternity has been established by a court.

2) If more than one man would be eligible as father under subsection 1(1), then

the one of them father, who last entered into marriage with the mother.

*Acknowledgement of the father*

§ 138e

- 1) Paternity is acknowledged by personal declaration in a domestic public or publicly certified document. Acknowledgement of paternity shall take effect from the date of the declaration, provided that the document or its publicly certified copy is received by the civil registrar.
- 2) The acknowledgment shall contain an exact designation of the acknowledger, the mother and the child, if already born.
- 3) Paragraphs 1 and 2 shall apply mutatis mutandis to consents to acknowledgement.

§ 138f

- 1) The child or the mother, provided that he or she is capable of understanding and judgment and is alive, may lodge an objection to the acknowledgment with the court within two years from the date on which he or she became aware of its legal validity.
- 2) The running of the time limit is suspended as long as the person entitled to file an objection is not entitled to do so himself or is prevented from filing an objection by an unforeseen or unavoidable event within the last year of the time limit.

§ 138g

- 1) If the paternity of another man has already been established at the time of the acknowledgement, the acknowledgement shall only become legally effective as soon as it has been established with generally binding effect that the other man is not the father of the child concerned.
- 2) However, an acknowledgment of paternity made at a time when the child's parentage from another man was established becomes legally effective if the child consents to the acknowledgment in a public or publicly authenticated document. If the child is not entitled to paternity, the acknowledgement only becomes legally effective if the mother, who is capable of understanding and judgment, herself names the acknowledger as father in the form mentioned. The acknowledgment shall take effect from the time of its declaration, provided that the documents issued on this declaration and on the consent to the acknowledgment and, if necessary, on the designation of the acknowledger as the father, or their publicly certified copies, are received by the civil registrar.
- 3) The man who has been determined to be the father or the mother, provided that she is capable of understanding and participating and is alive and has not designated the acknowledging party as the father in accordance with subsection (2), may lodge an objection to the acknowledgment with the court. § Section 138f shall apply mutatis mutandis.

4) For the consent of the minor child, the Office of Social Services is the legal representative of the child.

*Judicial determination of paternity*

§ 138h

1) The court shall determine the father to be the man from whom the child is descended. The application may be filed by the child against the man or by the man against the child.

2) At the request of the child, the man who has been with the mother for a period of not more than 300 and not less than 180 days before the birth may be determined as the father, unless he proves that the child is not descended from him. Such determination shall not be possible after the expiry of two years from the death of the man, unless the child proves that he is unable to provide the proof referred to in paragraph 1 for reasons on the part of the man.

§ 138i

1) The legal representative shall ensure that paternity is established unless the establishment of paternity is detrimental to the child's welfare or the mother exercises her right not to disclose the father's name.

2) The Social Services Office must inform the mother of the consequences of not establishing paternity.

Establishment of paternity in case of existing parentage

§ 138k

The child may apply for the establishment of his or her parentage even if the paternity of another man has already been established. In such a case, the establishment of parentage has the effect, to be pronounced by the court, that the child is not descended from the other man.

Establishment of non-parentage from the mother's husband

§ 138l

1) If a child born during the mother's marriage or before the expiration of 300 days after the death of the mother's husband is not descended from the latter, the court shall, upon request, declare this.

2) The application may be made by the child against the man and by the man against the child.

§ 138m

- 1) An application for a declaration that the child is not the offspring of the mother's husband may be filed within two years of knowledge of the relevant circumstances. This period begins at the earliest with the birth of the child, in the case of a change of parentage at the earliest with the effectiveness of the change. An application is not admissible as long as the child's descent from a different man has been established.
- 2) The running of the time limit is suspended as long as the person entitled to file an application is not entitled to do so or is prevented from filing an application within the last year of the time limit by an unforeseen or unavoidable event.
- 3) Later than 30 years after the birth of the child or after a change in parentage, only the child may request a determination of non-paternity.

Legally invalid declaration of acknowledgement of paternity

§ 138n

- 1) The court shall declare an acknowledgement of paternity to be legally invalid:
  1. ex officio, if:
    - a) the acknowledgment or, in the case of section 138g (2), the consent of the child or the designation of the acknowledger as the father by the mother does not comply with the formal requirements; or
    - b) the recognizing party or, in the case of section 138g (2), the child or the mother lacks the capacity of understanding and judgment, or  
the recognizer or the child lacked legal representation, unless the lack of legal representation has been subsequently remedied or the recognizer has approved the acknowledgment after attaining self-entitlement;
  2. on the basis of an objection, unless it is proven that the child is descended from the recognizer;
  3. at the request of the recognizer, if he proves,
    - a) that his acknowledgment was induced by cunning, unjust and well-founded fear or error that the child was descended from him; or
    - b) that the child is not his or her descendant and that he or she only subsequently became aware of circumstances that indicate that the child is not his or her descendant.
- 2) The application under para. 1 item 3 may be filed at the latest until the expiry of two years after the discovery of the deception, error or the said circumstances or after the cessation of the predicament. The period shall begin at the earliest with the

Birth of the child.

Legal relations between parents and childrenName

§ 139

- 1) If the parents are married to each other, the child is given their joint surname.
- 2) If the parents do not have a common surname, the child shall be given the surname which the parents have determined vis-à-vis the civil registrar on the occasion of the marriage or at the latest on the occasion of the notification of the birth of the first child in a public or publicly certified document as the surname of the children resulting from the marriage. For this purpose, the parents may designate only the family name of one parent.

§ 139a

- 1) If the parents are not married to each other, the child shall be given the surname of the mother. If the mother has a double name, she must declare to the civil registrar at the birth of the child in a public or publicly authenticated document which part of the double name the child is to have.
- 2) The father may give the minor child his family name. The naming requires the consent of the mother, the child's legal representative and the child itself if it has reached the age of 14. The right of consent of one of these persons does not apply if he or she is not only temporarily incapable of making an intelligible statement, if his or her whereabouts have been unknown for at least six months, or if the connection with him or her could not be established or could be established only with disproportionate difficulty. The court shall in any case decide on the waiver of the right of consent upon application of one of the parties. If a required consent is refused without justifiable reason, the court shall replace it at the request of a party if this is in the best interests of the child; the child's consent may not be replaced.
- 3) The naming and the consents thereto shall be declared to the civil registrar in a public or publicly certified document. The naming comes into effect as soon as the required declarations and, if applicable, the court decision have reached the civil registrar.

§ 139b

- 1) If the parents of a minor child marry each other, if a minor child is adopted in place of a child or if there is a change in the child's parentage, sections 139 and 139a shall apply mutatis mutandis.

2) The change of the surname of a minor child who has already attained the 14 years of age, requires his consent to be declared to the civil registrar.

#### Maintenance

##### § 140

1) The parents shall contribute to the child's needs in accordance with their circumstances, taking into account the child's aptitudes, abilities, inclinations and development potential.

2) The parent who runs the household in which he or she cares for the child thus makes his or her contribution. In addition, he or she shall contribute to the child's support to the extent that the other parent is unable to fully meet the child's needs or would have to contribute more than would be appropriate to his or her own living conditions.

3) The entitlement to maintenance is reduced to the extent that the child has his or her own income or is capable of self-support, taking into account his or her living conditions.

##### § 141

If the parents are unable to provide maintenance, the grandparents shall owe it in accordance with the child's needs as measured by the parents' living conditions. In all other respects § 140 shall apply *mutatis mutandis*; however, a grandchild's claim to maintenance shall also be reduced to the extent that it can reasonably be expected to draw on its own assets. Moreover, a grandparent must only pay maintenance to the extent that he or she does not thereby jeopardize his or her own reasonable maintenance, taking into account his or her other duties of care.

##### § 142

The debt of a parent to support the child shall pass to his heirs up to the value of the estate. The child's entitlement shall include everything that the child has received after the deceased through

a contractual or testamentary donation, as a statutory share of the inheritance, as a compulsory share or through a benefit under public or private law. If the value of the inheritance is not sufficient to ensure the child's maintenance until the child is expected to become self-supporting, the child's claim shall be reduced accordingly.



General Civil Code

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## § 143

- 1) A child shall owe maintenance to his parents and grandparents, taking into account his living conditions, to the extent that the person entitled to maintenance is unable to maintain himself and to the extent that he has not grossly neglected his duty of maintenance towards the child.
- 2) The maintenance obligation of the children shall be inferior to that of a spouse, a former spouse, ancestors and descendants of closer degree of the person entitled to maintenance. Several children shall pay maintenance proportionately according to their strength.
- 3) The maintenance claim of a parent or grandparent is reduced to the extent that it is reasonable for him/her to draw on his/her own assets. Moreover, a child is only obliged to pay maintenance to the extent that it does not jeopardize its own reasonable maintenance, taking into account its other duties of care.

## § 143a

- 1) If the father and mother of a child are not married to each other, the father is obliged to reimburse the mother for the costs of childbirth as well as the costs of her maintenance for the first six weeks after childbirth and, if further expenses become necessary as a result of the childbirth, also for these.
- 2) The claim shall be time-barred upon the expiration of three years from the date of delivery.

*Parental custody*

## § 144

The parents must care for and educate the minor child, manage its assets and represent it. Insofar as the custody is shared by both

The members of the Board of Directors shall exercise these rights and fulfill these duties in a consensual manner.

## § 144a

- 1) Both parents are entitled to custody if they are married to each other at the time of the child's birth. The same applies from the time of marriage if the parents marry after the birth of the child.
- 2) If the parents are not married at the time of the child's birth, the mother alone has custody of the child.

## § 145

- 1) If one parent who has joint custody of the child with the other parent

If the parent to whom the custody of the child has been entrusted has died, if a custodian has been appointed for him or her in accordance with section 269 subs. 3(2) and (3), if his or her whereabouts have been unknown for at least six months, if contact with him or her cannot be established or can be established only with disproportionate difficulty, or if the custody of the child has been wholly or partly withdrawn from him or her, the other parent shall have sole custody of the child. If the parent who has sole custody is affected in this way, the court shall decide, taking into account the best interests of the child, whether custody is to be granted in whole or in part to the other parent or whether and to which pair of grandparents (grandparents) it is to be granted; the latter shall also apply if both parents are affected. The regulations on custody then apply to this pair of grandparents (this grandparent part).

2) At the request of the parent to whom care and upbringing have been transferred in whole or in part, the court shall declare such transfer.

3) If custody is transferred to the other parent or if the court transfers custody, the assets and all documents and evidence relating to the person of the child must be handed over if the transfer or transfer of custody relates to this.

§ 145a

As long as a parent does not have full legal capacity, he or she does not have the right and duty to manage the child's assets and represent the child.

§ 145b

Repealed

§ 145c

1) If a third party has transferred property to a minor child and excluded one parent from the administration of this property, the administration of this property and representation in this area shall be the sole responsibility of the other parent. If the third party has excluded both parents from the administration or if the other parent is affected in the manner of § 145 (1) first sentence, these powers shall pass to the guardian, if such a guardian is to be appointed (§ 187), otherwise to a counsel to be appointed by the court (§ 275).

2) If the third party has appointed an administrator for the donated property, such administrator shall, if he is suitable, be appointed by the court as counsel for such property to the exclusion of others from the administration.

3) If one parent has donated assets to the child and has excluded the other parent from administration or has appointed an administrator for the donated assets, subsections 1 and 2 apply *mutatis mutandis*.

General Civil Code

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## § 146

1) The care of the minor child includes in particular the protection of the physical well-being and health as well as the direct supervision, the education, especially the development of the physical, mental, spiritual and moral forces, the promotion of the aptitudes, abilities, inclinations and development possibilities of the child as well as his education in school and profession.

2) The extent of care and education depends on the living conditions of the parents.

3) In matters of care and upbringing, the parents must also take into account the will of the child, unless this conflicts with the child's best interests or their living conditions. The will of the child is all the more decisive the more he or she is able to understand the reason for and the significance of a measure and to determine his or her will in accordance with this understanding.

## § 146a

1) The minor child shall obey the orders of the parents. The parents shall take into account the age, development and personality of the child when issuing and enforcing their orders.

2) Retrieved

## § 146b

1) If the care and upbringing of the child so require, the parent entitled thereto shall also have the right to determine the child's whereabouts. If the child is elsewhere, the authorities and organs of public supervision shall, at the request of an authorized parent, cooperate in determining the child's whereabouts and, if necessary, in retrieving the child.

2) The parent entrusted with care and upbringing also has the right to determine the child's place of residence. If the parents have agreed or the court has determined which of the parents entrusted with the care and upbringing shall primarily care for the child in his/her household, that parent shall also have the right to determine the child's place of residence within the country.

3) The child's place of residence may only be transferred abroad if both parents entitled to care and upbringing agree or if the court approves it. When deciding on the approval, the court must take into account both the best interests of the child and the rights of the parents to freedom of movement, freedom of occupation and protection against violence.

## § 146c

1) Consent to medical treatment can only be given by the child with the capacity to consent and judge; in case of doubt, the existence of this capacity to consent and judge is presumed for minors who have reached the age of 14. If the child lacks the necessary capacity of insight and judgment, the consent of the person entrusted with care and upbringing is required.

2) If a child who has the capacity to consent and exercise judgement consents to treatment that is usually associated with serious or lasting impairment of physical integrity or personality, the treatment may only be carried out if the person entrusted with the care and upbringing of the child also consents.

3) The consent of the child who has the capacity to consent and the consent of the person entrusted with care and upbringing is not required if the treatment is so urgently necessary that the delay associated with obtaining consent or assent would endanger the life of the child or would be associated with the risk of serious damage to health.

§ 146d

Neither a minor child nor the parents can consent to a medical measure aimed at the permanent reproductive incapacity of the minor child.

§ 147

If a minor child who has reached the age of 14 has unsuccessfully presented his or her opinion about his or her education to the parents, he or she may appeal to the court. After careful consideration of the reasons given by the parents and the child, the court shall make the appropriate orders in the best interests of the child.

§ 148

Retrieved

§ 149

1) The parents shall manage the property of a minor child with the care of ordinary parents. They shall maintain it as it stands and increase it as far as possible; money shall be invested in accordance with the provisions on the investment of wards' money.

2) In any case, the costs of administration, including the expenses necessary for the maintenance of the property and the ordinary business operations, and the payments due shall be taken into account from the assets; furthermore, also the

## General Civil Code

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Costs of maintenance, insofar as the child is obliged to draw on his or her property in accordance with sections 140 and 141 or the child's needs are not covered in some other way.

### § 150

1) The parents shall render an annual account of the minor child's property to the court if

a) the property includes immovable property, a right to immovable property, a share in a legal entity or a share in a company without personality; or

b) the child's assets, irrespective of the components referred to in subparagraph (a), are of such a size that the child's maintenance can be met from their proceeds (section 140(3)).

2) The court may exempt the parents from rendering accounts in whole or in part insofar as there are no doubts that they will manage the child's assets in an orderly manner; this is generally to be assumed if they themselves have donated the assets or the major part thereof to the child.

### § 151

1) A minor child may neither dispose of nor commit itself in a legal transaction without the express or tacit consent of its legal representative.

2) After reaching the age of 14, however, he or she may dispose of and commit himself or herself to property left to his or her free disposal and to income from his or her own earnings to the extent that this does not jeopardize the satisfaction of his or her necessities of life.

3) If a minor child enters into a legal transaction that is customarily entered into by minors of his or her age and relates to a minor matter of everyday life, this legal transaction shall become legally effective retroactively upon fulfillment of the child's obligations, even if the requirements of subsection 2 are not met.

### § 152

Unless otherwise stipulated, a minor child who has reached the age of 14 may independently undertake to provide services by contract, except for services on the basis of a teaching or other training contract. The legal representative of the child may terminate the legal relationship established by the contract prematurely for important reasons.

§ 153

Insofar as a minor child cannot be attributed fault earlier (§ 1310), it shall, subject to Art. 20 para. 2

PGR, with the completion of the 14th year of life in accordance with the provisions of the law on damages.

§ 154

1) Each parent alone is entitled and obliged to represent the child; his or her act of representation is legally effective even if the other parent does not agree with it.

2) Acts of representation and consents of one parent concerning the change of the first name or the surname, the entry into and the withdrawal from a church or religious community, the transfer into the care of a third party, the acquisition of a nationality or the renunciation of such a nationality, the preliminary dissolution of an apprenticeship, training or service contract and the acknowledgement of paternity shall require the consent of the other parent in order to be legally effective. This does not apply to the receipt of declarations of intent and documents for service.

3) Acts of representation and consent of one parent in property matters require the consent of the other parent and the approval of the court in order to be legally effective, unless the property matter is part of the ordinary course of business. Under this condition, the sale and encumbrance of real estate, the establishment, acquisition, conversion, sale or dissolution as well as the change of the object of an enterprise, the entry into such an enterprise or the conversion of a company or cooperative, the renunciation of an inheritance right, the unconditional acceptance or the exclusion of an inheritance right, as well as the transfer of a company or cooperative, are among such matters, the unconditional acceptance or disclaimer of an inheritance, the acceptance of an encumbered gift or the rejection of a gift offer, the investment of money with the exception of the types governed by Section 230, as well as the filing of a lawsuit and all procedural decrees relating to the subject matter of the proceedings per se. Paragraph 2, last sentence, applies *mutatis mutandis*.

§ 154a

1) In civil court proceedings, only one parent alone is entitled to represent the child; as long as the parents do not agree on the other parent or the court appoints him or her or a third party as representative pursuant to § 176, the parent who takes the first procedural act shall be the representative.

General Civil Code

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2) The consent of the other parent and approval of the court required under section 154 shall apply to the entire proceeding.

§ 155

Retrieved

§ 156

Retrieved

§ 157

Retrieved

§ 158

Retrieved

§ 159

Retrieved

§ 160

Retrieved

§ 161

Retrieved

§ 162

Retrieved

§ 162a

Repealed

§ 162b

Repealed

§ 162c

Repealed

§ 162d

Repealed

§ 163

Retrieved

§ 163a

Repealed

§ 163b  
Repealed  
§ 163c  
Repealed  
§ 163d  
Repealed  
§ 164  
Retrieved  
§ 164a  
Repealed  
§ 164b  
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§ 164c  
Repealed  
§ 164d  
Repealed  
§ 165  
Retrieved  
§ 165a  
Repealed  
§ 165b  
Repealed  
§ 165c  
Repealed  
§ 166  
Retrieved  
§ 167  
Retrieved  
§ 168  
Retrieved



General Civil Code

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## § 169

Retrieved

## § 170

Retrieved

## § 171

Retrieved

## § 172

*Termination of custody*

The custody of the child shall expire when the child reaches the age of majority.

## § 173

The parents may, with the court's approval, agree that, in deviation from an existing arrangement, custody shall be vested in both of them jointly or in one of them alone; in this case, the custody of one parent may be limited to certain matters. The court shall approve such an agreement if the child, who is at least fourteen years old, does not object, if the parents are willing and able to exercise the custodial duties to which they are entitled by mutual agreement, and if the best interests of the child do not conflict with the approval.

## § 174

- 1) If the mother has sole custody by law, the father may apply to the court for joint custody with the mother. The court shall grant the application unless this is contrary to the best interests of the child.
- 2) If one parent has sole custody on the basis of an agreement between the parents or a court order and the other parent applies for joint custody with the other parent, the court shall only grant the application if, due to changed circumstances, the custody of both parents is more in the best interests of the child than the sole custody of the parent who has had custody up to now.
- 3) If one parent applies for a court order that he or she alone is to have custody, the court shall, irrespective of whether custody has hitherto been granted to both parents or only to the other parent on the basis of the law, a court order or an agreement, only make such an order if this is in the best interests of the child for important reasons. A

good cause for the order of sole custody of a parent exists in particular if the exercise of custody with the other parent is not possible or not reasonable for the welfare of the child.

4) In any case, the court may only order a change of custody if the parents cannot reach an agreement and the child, who is at least four to ten years old, does not object. In its decision, the court shall take into account whether one of the parents is willing and able to perform the duties associated with custody, in particular the care and upbringing of the child, alone or, to the extent that custody can be

The child shall be entitled to the rights of both parents in agreement with the other parent.

§ 175

1) If the parents of a minor child who have joint custody live apart not merely temporarily, both parents shall, unless this is contrary to the best interests of the child or for weighty reasons of one parent, contribute to the care and upbringing of the child, in particular also to its personal care, in accordance with an agreement reached between them. If they do not reach an agreement on the extent to which the child is to be cared for in the household of one parent and the other, the court shall, at the request of one parent, decide on the basis of the best interests of the child in whose household the child is mainly to be cared for and the extent to which the child is to be cared for by the other parent.

2) If one parent is the sole carer for the child in his or her household, he or she is only obliged to act in agreement with the other parent in matters of daily life to the extent that this is feasible.

§ 176

1) If the conduct of the parents endangers the welfare of the minor child, the court, whoever is called upon to do so, shall make the orders necessary to secure the welfare of the child. In particular, the court may withdraw custody of the child in whole or in part, including rights of consent and assent provided by law. In individual cases, the court may also substitute a legally required consent or assent if there are no justified reasons for the refusal.

2) Such orders may be made by a parent, such as when the parents fail to agree on an important matter concerning the child, other relatives in a straight ascending line, foster parents (a foster parent), the department of social services, and the child who is at least fourteen years of age, by

General Civil Code

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The person concerned may apply to the court for an order, but only in matters relating to his or her care and upbringing. Other persons may request such orders.

3) The total or partial deprivation of the child's care and upbringing or of the administration of the child's property includes the deprivation of legal representation in the respective area; legal representation in these areas may be deprived in itself if the parents or the parent concerned fulfill their other duties.

4) If the law requires the consent or approval of the persons entrusted with care and education (legal guardians), the declaration of the person entrusted with legal representation in this area is necessary, but also sufficient, unless otherwise specified.

## § 176a

If the child's well-being is endangered and therefore the complete removal from his or her previous environment is necessary against the will of the legal guardians, and if his or her placement with relatives or other suitable close persons is not possible, the court shall transfer custody of the child in whole or in part to the Office for Social Services. The Office for Social Services may transfer the exercise of custody to third parties.

## § 176b

By an order under sections 176 and 176a, the court may restrict custody only to the extent necessary to ensure the best interests of the child.

## § 177

## Custody in case of annulment, separation or divorce of marriage

If the marriage of the parents of a minor child is declared invalid, separated or divorced by the pronouncement of the court, or if the parents live separately, the custody of both parents shall continue. However, they may conclude an agreement in court in which:

1. the amount of time the child will be cared for in the household of one and the other parent is determined, if necessary in which household the child will be mainly cared for;
2. The custody of a parent is limited to certain matters; or
3. that one parent alone has custody of the child. Personal contacts, rights to information and expression

§ 177a

1) If one parent does not have custody, the child has the right and this parent has the duty and the right to regular personal contacts that meet the child's needs. The parents and the child, who is at least fourteen years old, shall arrange the personal contacts by mutual agreement. If such an agreement is not reached, the court shall, at the request of the child or of one of the parents, regulate such contacts in a manner appropriate to the child's best interests and determine the duties. The arrangement shall take into account the needs of the child in accordance with his or her age and shall ensure the establishment and maintenance of a close relationship between the parents and the children.

2) If the best interests of the child so require, the court shall restrict or prohibit personal contacts, in particular if this appears to be necessary due to the use of violence against the child or an important caregiver of the child or if the parent fails to fulfill his or her obligation under section 137a (1).

3) Paragraphs 1 and 2 shall apply mutatis mutandis between grandchildren and their grandparents. However, the personal contacts of grandparents shall also be restricted or prohibited to the extent that otherwise the family life of the parents (one parent) or their relationship with the child would be disturbed.

4) If personal contacts of the minor child with a third party willing to do so serve the best interests of the child, the court shall, at the request of the child, a parent or the third party, if the latter has or has had a special personal or family relationship with the child, make the orders necessary to regulate the personal contacts. It shall make such orders at the request of the Office for Social Services or ex officio if the best interests of the child would otherwise be endangered.

§ 178

1) To the extent that a parent does not have custody, in addition to the right to personal contact, he or she has the right to be informed of important matters concerning the person of the child, such as the relocation of the

(2) and (3) of the person who has custody of the child and to express his or her views on the matter within a reasonable period of time. This statement shall be taken into account if the wish expressed therein is more in the best interests of the child. In addition, this participation may also be requested from third parties involved in the care of the child, such as

General Civil Code

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obtain information about the child's condition and development from teachers or doctors in the same way as the parent who has custody.

2) If the exercise of these rights would endanger the welfare of the child or if the parent makes improper use of these rights or does so in a manner that is unreasonable for the other parent or the child, the court shall restrict or revoke these rights upon application or, if the welfare of the child is endangered, ex officio.

## § 178a

Repealed

## § 178b

*Consideration of the child's opinion*

Before making orders concerning the care or upbringing of a child, the court shall hear the child in person as far as possible; a child who is not yet ten years old may also be questioned by the Office of Social Services or in another suitable manner. The child shall not be heard if the best interests of the child would be endangered by the questioning or by a postponement of the order or if an expression of opinion cannot be expected with regard to the age or development of the child.

Connections similar to the legal relationship between parents and children

*1. Adoption in lieu of child*

## § 179

1) Persons entitled to their own rights who have not solemnly taken the vows of celibacy may adopt in the place of a child. Adoption in the place of a child establishes elective filiation.

2) Adoption of an elective child by more than one person, either simultaneously or, as long as the elective childship exists, successively, is only permitted if the adopters are married to each other. As a rule, spouses may only adopt jointly. Exceptions are permitted if the natural child of the other spouse is to be adopted, if one spouse cannot adopt because he or she does not meet the legal requirements with regard to personal eligibility or age, if his or her whereabouts have been unknown for at least one year, if the spouses have given up marital cohabitation for at least three years, or if similar and particularly weighty reasons justify adoption by only one of the spouses.

3) Persons to whom the care of the property of the child to be adopted is entrusted

The assets entrusted to them by official order may not be accepted until they have been released from this obligation. They must have previously rendered account and proved the preservation of the entrusted property.

§ 179a

*Form; entry into effect*

1) Adoption in lieu of a child shall be effected by a written contract between the adopter and the adopted child and by court approval at the request of one of the contracting parties. In the event of its approval, it shall take effect at the time of the contractual agreement. If the adopter dies after this time, this shall not prevent the approval.

2) The elective child who is not entitled to his/her own rights concludes the contract through his/her legal representative, who does not require court approval for this. If the legal representative refuses to give his or her consent, the court shall, at the request of the adopter or the adopted child, substitute it if there are no justifiable grounds for the refusal.

§ 180

*Age*

1) The father of choice must have reached the age of 30, the mother of choice the age of 28. If spouses adopt jointly or if the child of choice is a natural child of the spouse of the adopting person, this age limit may not be exceeded if there is a difference in age between the adopting person and the child of choice.

menden and the elective child already have a relationship corresponding to the relationship between natural parents and children.

2) The father and mother of choice must be at least 18 years older than the child of choice; a slight shortfall in this period is irrelevant if there is already a relationship between the adopter and the child of choice corresponding to the relationship between natural parents and children. If the adopted child is a natural child of the spouse of the adopter or is related to the adopter, an age difference of 16 years is sufficient.

*Approval*

§ 180a

1) Adoption shall be granted if a relationship corresponding to the relationship between natural parents and children exists or is to be established. It must be in the best interests of the elective child who does not have parental rights. If the elective child is entitled to his/her own rights, there must be a justified concern on the part of the adopter or the elective child.

General Civil Code

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2) Except where the requirements of paragraph 1 are not met, approval shall be refused if there is an overriding concern of a natural child of the adopter, in particular if the child's maintenance or upbringing would be endangered; otherwise, economic concerns shall not be taken into account unless the adopter acts with the exclusive or overriding intention of harming a natural child.

## § 181

1) The permit may be issued only if the following persons consent to its adoption:

1. the parents of the minor elective child;
2. the spouse of the adopter;
3. the spouse of the child of choice.

2) The right of consent of a person referred to in paragraph 1 does not apply if he or she has concluded the adoption agreement as the legal representative of the child of choice; furthermore, if he or she is not only temporarily incapable of making a reasonable statement or if his or her whereabouts have been unknown for at least six months.

3) The court shall replace the refused consent at the request of a party to the contract if there are no justified reasons for the refusal.

## § 181a

1) Have a right to be heard:

1. the elective child who is not his or her own from the age of five, unless he or she has already lived with the adopter since that age;
2. the parents of the adult elective child;
3. the foster parents or the director of the home where the elective child is located;
4. the Office of Social Services.

2) The right to be heard of a beneficiary referred to in subsection 1 shall not apply if he or she concluded the adoption agreement as the legal representative of the elective child; furthermore, if he or she could not be heard or could be heard only with disproportionate difficulty.

*Effects*

## § 182

1) Between the adopter and his descendants on the one hand and the

The child of choice and his or her descendants who are minors at the time the adoption becomes effective shall have the same rights as those conferred by marital descent.

2) If the adopted child is adopted by spouses as adoptive parents, the family law relationships between the natural parents and their relatives, on the one hand, and the adopted child and his or her descendants who are minors at the time the adoption becomes effective, on the other hand, shall expire at that time, with the exceptions specified in § 182a. If the elective child is adopted only by an elective father (mother), these relations shall cease only with respect to the natural father (mother) and his (their) relatives; insofar as these relations would thereafter continue, the court shall, if the parent in question has consented thereto, order the extinction of this parental part of the relationship.

The expiry shall take effect from the time of submission of the declaration of consent, but at the earliest from the time the acceptance becomes effective.

§ 182a

1) The obligations of the natural parents and their relatives to provide maintenance, marriage property and equipment to the adopted child and his or her descendants who are minors at the time the adoption becomes effective, which are based on family law, shall remain in force.

2) The same shall apply to the obligation of the adopted child to maintain the child's parents, provided that the parents have not grossly neglected their obligation to maintain the child, who is not yet 14 years old, prior to the adoption of the child.

3) However, the obligations which remain in force under subsections 1 and 2 shall be subordinate in rank to the same obligations established by the acceptance.

§ 182b

1) The rights established in the law of succession between the natural parents and their relatives, on the one hand, and the elective child and his or her descendants who are minors at the time the adoption becomes effective, on the other hand, shall remain in force.

2) In the case of legal succession to the property of the elective child in the second line, the elective parents and their descendants, on the one hand, shall take precedence over the natural parents and their descendants, on the other; if the elective child has been adopted by only one elective father (mother) and both the elective father (mother) or his (her) descendants and the natural mother (mother's)



If there is no legitimate father or his descendants, the estate shall be divided equally between the tribe of the elective father (the elective mother) and that of the legitimate mother (the legitimate father).

§ 183

Retrieved

§ 183a

Retrieved

*Revocation and  
cancellation*

§ 184

1) The court approval shall be revoked by the court with retroactive effect:

1. ex officio or at the request of one of the contracting parties if, at the time of conclusion of the adoption contract, the adopting party was not entitled to vote on its own, unless it has indicated, after acquiring its own entitlement, that it wishes to continue to vote on its own behalf;

2. ex officio or at the request of one of the contracting parties if an elective child who is not entitled to his/her own right has concluded the adoption contract himself/herself, unless the legal representative or, after acquiring the right to his/her own right, the elective child has subsequently consented or the court has replaced the refused subsequent consent of the legal representative within the meaning of section 179a(2);

3. ex officio or at the request of one of the contracting parties if the elective child has been adopted by more than one person, unless the adopters were married to each other at the time of the approval;

4. ex officio or at the request of one of the contracting parties if the adoption contract was concluded exclusively or primarily with the intention of enabling the child of choice to use the surname of the father or mother of choice or to create the outward appearance of a child of choice in order to conceal unlawful sexual relations;

5. at the request of one of the contracting parties, if the acceptance agreement has not been concluded in writing and no more than five years have elapsed since the approval decision became legally effective.

2) If one of the contracting parties did not know of the reason for revocation (para. 1 items 1 to 3 and 5) at the time of conclusion of the acceptance contract, the revocation shall be deemed to be a rescission (§ 184a) in its relationship with the other contracting party to the extent that it claims this.

3) A third party who has acquired rights in reliance on the validity of the adoption in lieu of the child prior to the revocation cannot be incept- tioned.

that the authorization has been revoked. To the detriment of one of the contracting parties who was not aware of the reason for revocation when the acceptance contract was concluded, a third party may not claim the effects of the revocation.

§ 184a

1) The elective infancy shall be annulled by the court:

1. if the declaration of a party to the contract or a person entitled to consent has been induced by deception or unjustified and well-founded fear and the party concerned applies for cancellation within one year of discovery of the deception or cessation of the coercion;

2. ex officio, if the maintenance of the elective child would seriously endanger the welfare of the elective child who is not entitled to vote for himself/herself;

3. at the request of the elective child, if the annulment is in the best interests of the elective child after the dissolution or annulment of the marriage of the elective parents or after the death of the elective father (mother) and does not contradict a justified interest of the elective father (mother) affected by the annulment, even if already deceased;

4. if the elective father (mother) and the elective child entitled to his/her own rights apply for annulment.

2) If the elective childship exists vis-à-vis an elective father and an elective mother, the annulment within the meaning of para. 1 may only be granted vis-à-vis both of them; the annulment vis-à-vis one of them alone is only permissible in the event of an annulment, separation or divorce of their marriage.

§ 185

1) The legal relationships established by the adoption between the elective father (mother) and his (her) descendants on the one hand and the elective child and his (her) descendants on the other hand shall expire upon the entry into force of the annulment decision.

2) As of this date, the family law relations between the natural parents and their relatives, on the one hand, and the elective child and his or her descendants, on the other hand, shall be revived insofar as they have lapsed in accordance with section 182.

3) As of the date specified in paragraph 1, with respect to the elective child and

## General Civil Code

the legal effects of the adoption under the law on names as if they had not occurred.

## § 185a

Revocation or cancellation on grounds other than those set out in sections 184 and 184a shall be inadmissible, as shall any contractual agreement or legal action to contest the acceptance contract.

*2. The foster relationship*

## § 186

- 1) Foster parents exercise their rights on the basis of authorization by the immediate legal guardians (§ 137a) or by the Office of Social Services (§ 176a).
- 2) Foster parents have the right to be heard and to file petitions in guardianship and foster care proceedings concerning the person of the child.

## § 186a

- 1) The court shall transfer custody of the child in whole or in part to foster parents upon their application if a relationship exists that is close to the relationship between natural parents and children, the foster relationship is not intended to be only for a short period of time and the transfer is in the best interests of the child. The regulations on custody then apply to the foster parents.
  - 2) If the parents or grandparents have custody or have had custody and do not consent to the transfer, it may be ordered only if without it the welfare of the child would be endangered.
  - 3) The transfer shall be revoked if this is in the best interests of the child. At the same time, the court shall decide to whom custody shall be transferred, taking into account the best interests of the child.
  - 4) Before making its decision, the court shall hear the parents, the legal representative, the foster parents, other legal guardians, the Office for Social Services and, in any event, the child who is already ten years old. § Section 181a(2) shall apply mutatis mutandis.
4. Main part From guardianship

## § 187

*Determination of guardianship*

A minor shall be appointed a guardian if not at least one

person is entitled to limited legal representation within the scope of custody.

§ 188

Retrieved

I. From guardianship

§ 189

Inducement to order

If the case arises that a guardian must be appointed for a minor, the relatives of the minor or other persons closely related to the minor shall be bound, under appropriate sanction, to report the matter to the court under whose jurisdiction the minor is.

§ 190

*Who initially appoint the guardian*

The court must appoint a suitable guardian ex officio as soon as it comes to its knowledge.

*Necessary excuse from a guardianship at all*

§ 191

To take over a guardianship are at all incapable:

1. Minors and persons who, for reasons other than being under age, are unable to manage all or some of their own affairs properly;
2. Persons from whom, especially because of the disposition or characteristics revealed by a criminal conviction, a decent upbringing of the ward or a careful administration of the ward's property cannot be expected.

§ 192

Religious clergy and persons residing abroad shall also not, as a rule, be entrusted with guardianship.

§ 193

Retrieved

§ 194

General Civil Code

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*or from a specific guardianship*

- 1) A guardian may not be appointed,
  1. whom a parent has excluded from guardianship, unless the guardianship court finds such exclusion to be manifestly unjustified;
  2. who has lived in enmity with the parents of the minor or with the minor himself, or
  3. Who is involved in a legal dispute with the minor.
- 2) Whether a person appears suitable to assume guardianship as a result of the existence of unpaid claims between him/her and the minor shall be assessed by the court.

§ 195

*Voluntary excuses*

Against their will, they cannot be required to take over guardianship: Secular clergy and foreigners residing in the country, as well as those who are 60 years old, who have custody of several children or grandchildren, or who already have a guardianship to look after.

Types of appointment to guardianship

*1. testamentary*

§ 196

- 1) If he is suitable, the person whom a parent has appointed as legal representative by will shall be appointed as guardian in the first place. If, however, a parent has merely appointed an administrator for the minor's property by will, it shall be presumed that he or she intended to appoint him or her as guardian in the first place; otherwise, if the appointed administrator is suitable, he or she shall be appointed only as special curator for the property.
- 2) If the parents have made different testamentary dispositions, the one who is more suitable shall be appointed as guardian or special curator.

§ 197

Retrieved

§ 198

*2. legal*

If no guardian or no suitable guardian has been appointed for a child by will, the nearest suitable relative shall be appointed guardian.

§ 199

3. *judicial*

If a guardianship cannot be appointed in the manner stated, it shall be up to the court to decide whom it wishes to appoint as guardian, taking into account capacity, status, property and residence.

Form of the real appointment of the guardian

§ 200

Every appointed guardian, without distinction, shall immediately be instructed by the guardianship court to take over the guardianship. The guardian, even if he is under a different jurisdiction for his person, is obliged to take over the guardianship and is subjected to the guardianship authority with regard to all matters pertaining to this office.

*Form to refuse the order*

§ 201

If the person whom the court has appointed as guardian believes that he is not qualified for this office or that the law exempts him from it, he must, within 14 days from the time of the court order made known to him, apply to the guardianship court or, if he is not subject to it for his person, to his personal court office, which shall accompany his reasons with its opinion and submit them to the guardianship court for a decision.

*Responsibility of the guardian in respect of this subject matter*

§ 202

A person who conceals his or her ineligibility for guardianship shall be liable for all damage and loss of benefit suffered by the minor as a result.

§ 203

The person who refuses to take over a guardianship without a well-founded reason also exposes himself to this responsibility, and he shall moreover be compelled to do so by appropriate means of coercion.

Commencement of guardianship

§ 204

General Civil Code

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A person may only assume the office of guardian after having received a mandate to do so from the appropriate court. Whoever arbitrarily intrudes into a guardianship shall be obliged to compensate all damage suffered by the minor as a result.

## § 205

## Angelobung

Every guardian must swear that he will educate the minor to righteousness, that he will represent him in and out of court, that he will administer the property faithfully, and that he will conduct himself in all respects in accordance with the law.

## § 206

## Certificate

The court shall issue a certificate of appointment to each guardian.

*Management of guardianship Provisional judicial prudence*

## § 207

Every guardianship court is obliged to keep a so-called guardianship or orphan's book. In this book, the first names, surnames, ages of the minors, and everything that has happened during the assumption, continuation and termination of the guardianship must be entered.

## § 208

In this book also all documents shall be referred to in such a way that both the court itself and subsequently the orphans who have come of age can see everything that is useful for them to know in a certified form.

## § 209

*Exclusion of the guardian from asset management*

If a person has granted property to a minor who is under guardianship and has excluded the guardian from the administration of such property or has appointed an administrator for the property granted, section 145c shall apply mutatis mutandis, unless it is directly applicable.

## § 210

## Position of several guardians

If more than one guardian has been appointed, they may, admittedly, manage the assets of the

minors jointly or partially. If, however, they administer it jointly or divide the administration among themselves without the approval of the court, each of them shall be liable for the entire damage suffered by the minor. The court must always ensure that the responsibility for the person of the minor and the main management of the business is incumbent on only one person.

#### Tasks of the Office of Social Services

##### § 211

If a child is born in the country and the administration of property and representation do not belong to one parent, or if a minor child is found in the country and its parents are unknown, the Office of Social Services shall be the child's guardian until the court decides otherwise.

##### § 212

1) The Office of Social Services shall, to the extent that it appears necessary under the circumstances, inform the legal representative of a child born in Germany within a reasonable period of time after the birth about parental rights and obligations, in particular about the child's right to maintenance,

If necessary, also about the determination of paternity, and to offer him his assistance for the exercise of the rights of the child.

2) For the determination or enforcement of the child support claims as well as for the determination of paternity, if applicable, the Office of Social Services is special counsel for the child if the written consent of the legal representative has been obtained.

3) For other matters, the Office of Social Services is special assistance to the child if he or she agrees to be represented and has the written consent of the legal representative.

4) The power of representation of the Office of Social Services does not limit the power of representation of the other legal representative, but the following applies

§ 154a *mutatis mutandis*. The Office for Social Services and the other legal representative shall inform each other of their acts of representation.

5) The power of representation of the Social Services Agency shall end if the legal representative revokes his consent in writing, the Social Services Agency withdraws its declaration under subsection (3), or the court removes the Social Services Agency as special advisor at the request of the legal representative because it is no longer able to contribute to the protection of the rights and the enforcement of the claims of the child under the circumstances of the case.



General Civil Code

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## § 213

If a minor is to be appointed a guardian or special assistance and a person suitable for this purpose cannot be found, the court shall appoint the Office of Social Services.

## § 214

1) Sections 203, 205, 206, 216 (2), 237 second sentence, 266 and 267 shall not apply to the Office for Social Services. Before investing the property of a minor, the Social Services Office shall only be obliged to obtain the consent of the court if such investment does not comply with the provisions of section 230.

2) The Office of Social Services does not require the court's approval for actions to establish paternity and pay alimony or to enter into agreements on the amount of statutory alimony. Agreements on maintenance payments

of a minor, concluded before the Office of Social Services or by it and certified by it, shall have the effect of a judicial settlement.

3) The Office of Social Services shall provide information to persons caring for and raising a child or legally representing a child about its representation activities with respect to that child, provided that the best interests of the child are not jeopardized thereby.

## § 215

1) The Office for Social Services shall apply for the court orders necessary to safeguard the welfare of a minor in the area of guardianship. In case of imminent danger, it may take the necessary measures of care and upbringing as special assistance on a provisional basis with effect until a court decision is taken, if it applies for the necessary court orders without delay, but in any case within eight days. The Office for Social Services may apply for a temporary order pursuant to Art. 277a of the Code of Execution and for its execution pursuant to Art. 277c of the Code of Execution if the other legal representative has not filed a required application without delay; Section 212 (4) shall apply *mutatis mutandis*.

2) The Office of Social Services shall be consulted, if necessary, prior to making orders concerning the care and upbringing of a minor, unless the best interests of the child would be endangered by the delay of the order involved. At the request of the court, the Office of Social Services shall assist in the interview of a child or shall conduct such interview itself.

*Special duties and rights of the guardian*

*a) With regard to the education of the person*

§ 216

1) If the care and upbringing of a minor are not the responsibility of a person who has custody of the minor, they shall be the responsibility of the guardian.

2) Unless otherwise provided, the guardian shall obtain the court's approval in important matters concerning the person of the child.

§ 217

*Corresponding commitment of the foster carer*

The minor shall owe deference and obedience to his guardian; but he shall also be entitled to complain to his next of kin or to the judicial authority if the guardian abuses his power in any way whatsoever or impairs the duties of necessary care and custody. Also the relatives of the minor and anyone who gets to know about it shall have the right to file a complaint. The guardian shall also have recourse to this authority if he is unable to put a stop to the abuses of the minor by the power granted to him for his upbringing.

§ 218

*Who first take care of the upbringing Lifted*

*Determination of the quantity and sources of education costs*

§ 219

Retrieved

§ 220

Retrieved

§ 221

If the minor is completely destitute, the guardianship court shall try to persuade the next of kin with means to provide for him, unless they are already legally bound to do so. In addition, the guardian shall have a claim on the public institutions of social assistance until the minor is able to support himself by his own work and use.

*Special duties of guardianship*

## b) With regard to asset management

## § 222

*Research and safeguarding of assets*

The custody entrusted to the guardianship court over the orphan's property requires that it first seek to investigate the orphan's property and secure it by freezing, inventory and appraisal.

## § 223

*through the lock and inventory*

Movable property shall be taken into custody by judicial freeze if it is necessary for security. A list of the minor's assets must always be drawn up.

## § 224

then by the appraisal of the property either directly by the pre

The inventory of the assets and the valuation of the movable property must be made without loss of time, if necessary also before the appointment of a guardian. The inventory shall be kept with the probate files and a certified copy thereof shall be communicated to the guardian. The valuation of the immovable property must be carried out as soon as practicable; however, it may also be omitted altogether if the value is shown from other reliable sources.

*or by means of the real authority*

## § 225

If immovable property of the minor is located in another state, the guardianship authority must request the ordinary jurisdiction of the other state to take inventory and appraisal and to notify the same, but leave to that jurisdiction the appointment of a legal representative over such property, unless otherwise provided in interstate agreements.

## § 226

Retrieved

## § 227

Where the movable assets belong

Those movables which are located on an immovable property in order to remain permanently on the same are to be regarded as a part of this property; all other movables, also promissory notes and even the capitals liable on an immovable property belong under the guardianship jurisdiction.

§ 228

*General rule with regard to asset management*

The provisions on the management of the property of a minor who is a spouse or child shall apply to the management of property by a guardian.

The following provisions shall also apply.

§ 229

Special provisions for the purpose of direct asset management, in particular with regard to valuables

Jewels, other valuables and promissory notes, as well as all important documents, shall be placed in the custody of the court; the guardian shall receive a list of the former, and of the latter the copies necessary for his use.

§ 230

*of the money (investment of ward money)*

1) As far as money of a minor is not to be used for special purposes according to the law, it is to be invested immediately in a safe and most fruitful way by savings deposits, the acquisition of securities (claims), the granting of loans, the acquisition of real estate or in another way according to the principles of ward security. This shall only be given if the security, including any preceding charges, does not burden a house by more than half of its true value and a property by more than two thirds of its true value.

2) If it is economically expedient, the ward's money shall be invested in more than one of these ways.

§ 231

*of other movable assets*

The other movable property, which is not to be kept for the use of the minor or for the memory of the family or according to the order of the parents

General Civil Code

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The household goods, which can be used advantageously in any other way, must generally be offered for sale to the public. The household goods may be freely left to the parents and co-heirs at the court appraisal price. Items which have not been sold at public auction may be sold by the guardian below the valuation price with the permission of the guardianship court.

## § 232

with regard to the immovable

An immovable property may be sold only in case of emergency or for the obvious benefit of the minor with the approval of the guardianship court, and in general only by public auction; however, for important reasons, a sale by private contract may also be approved by the court.

## § 233

for important changes to be made

In general, a guardian may not undertake anything without the court's consent in all transactions which do not belong to the ordinary business and which are of greater importance. Thus, he may not arbitrarily reject or unconditionally accept an inheritance; sell property entrusted to his custody; conclude a lease agreement; terminate any capital with legal security; assign any claim; settle any legal dispute; start, continue or discontinue any factory, action or business without court approval.

## § 234

upon collection of the capital

A guardian may not, on his own, collect capital from the minor if it is repaid. The debtor, to whom such a capital is terminated, must, for his security, have the guardian show him the court's authorization to collect the capital, and not be content with the guardian's receipt alone; he is also free to make the payment directly to the court himself.

## § 235

with further use of the same

As often as the case arises that an outstanding capital is to be received, the President shall make arrangements for its advantageous use and obtain the court's approval for the actual use.

§ 236

to secure uncovered receivables

The guardian must obtain documents for debt claims for which no documents are available as proof, and those which are not secured must be secured as far as possible or collected at the time of forfeiture. However, the parents shall not be deprived of the minor's capital, even if it is not legally insured, but the minor is probably not exposed to any risk of loss, if they would find it difficult to repay it without alienating their immovable property or assigning their business.

§ 237

Deposit

The guardian shall not be obliged to pay a security deposit upon entering into the guardianship. He shall remain exempt from the obligation to pay a deposit as long as he strictly observes the provisions of the law concerning the security of property and submits an account in due time.

§ 238193194

Liability for accounting

The provisions on the accounting of parents of a minor child shall apply to the guardian's accounting.

§ 239

*Time of accounting*

The accounts shall be submitted to the guardianship court with all the necessary supporting documents at the end of each year or at the latest within two months after the end of the year. In these accounts the income and expenditure, the surplus or the reduction of the capital must be precisely determined. If the minor's assets include an act, the court shall be satisfied with the certified statement of account or the so-called balance sheet submitted and shall keep the latter secret. Against a guardian who

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 General Civil Code
 

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fails to submit the invoice within the specified time, the legal means of coercion appropriate to the circumstances shall be applied.

## § 240

*Place where to put the bill*

Retrieved

Type of accounting

## § 241

The guardianship court is obliged to have the guardian's accounts audited and corrected by accounting experts, insofar as special regulations exist or circumstances require it. The guardian shall be notified of the completion of this examination.

## § 242

Retrieved

## § 243

Special provisions for the guardian in the case of indirect asset management

Retrieved

## § 244

In the case of contracts of the  
beneficiary Rescinded

## § 245

*Representation*

1) The representative of a minor under guardianship shall be the guardian, unless the minor is represented by a special adviser. Unless otherwise provided, he or she shall require the approval of the court to represent him or her in the matters referred to in section 154(2) and (3). Section 154a(2) shall apply mutatis mutandis.

2) The guardian may only consent to medical treatment that is usually associated with serious or lasting impairment of physical integrity or personality if a physician independent of the attending physician confirms in a medical certificate that the child does not have the necessary capacity of insight and judgment and that the treatment is necessary to safeguard the child's best interests. If such a certificate

If the guardian does not give his or her consent or if the child indicates that he or she rejects the treatment, the consent must be approved by the court. If the guardian does not give consent to medical treatment and the child's welfare is endangered as a result, the court may replace the consent or transfer custody to another guardian.

*In which cases the minor is connected without the consent of the guardian.*

§ 246

Retrieved

§ 247

Retrieved

§ 248

Retrieved

*Termination of guardianship*

§ 249

*a) Through death*

A guardianship ends entirely on the death of the minor. However, if the guardian dies or is dismissed, another must be appointed in accordance with the provisions of the law (sections 198 and 199).

§ 250

*b) by reviving the powers of the parents*

The guardianship shall also end if a person who has custody is entitled to the administration of property and representation, even if only in partial areas; in the second case of § 211, the guardianship shall also end if such a parent appears.

§ 251

*c) through maturity*

The guardianship expires when the minor comes of age.

§ 252

d) The age of majority legally assumed by means of the granted indulgence is lifted.

e) by the official or requested dismissal of the guardian

§ 253



General Civil Code

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The dismissal of the guardian shall be ordered by the court ex officio in some cases, and in others upon request.

*Cases of official dismissal*

## § 254

A guardian must be dismissed ex officio if he or she administers the guardianship in breach of duty, if he or she is found to be incapable or if, in view of him or her, such doubts arise that would have excluded him or her from assuming the guardianship by virtue of the law.

## § 255

If a guardianship over a child of the guardian who is not his or her own endangers the child's marriage or family life, the court shall order the guardian to dismiss the request of the other spouse, unless this is opposed by an important concern of the ward.

## § 256

If the testator or the court has appointed a guardian only for a certain period of time or has excluded him or her for a certain event, he or she must be dismissed as soon as this period has elapsed or the certain event has occurred.

*Cases of the guardian*

## § 257

If during the guardianship such reasons arise that would have exempted or excluded the guardian from taking over the same by virtue of the law, he is entitled in the former case, but in the latter case he is obliged to apply for discharge.

## § 258

A guardian who has been entrusted with the guardianship of a minor as the presumed closest relative is free to propose a later discovered, nearer and more suitable relative in his place: only the nearer relative has no right to demand that a less near relative assigns to him a guardianship which he has already assumed; he would have been prevented from reporting earlier.

*d) or the dismissal legally requested by others.*

## § 259

If the court has appointed a non-relative to guardianship, it stands

Each relative shall be free to apply for guardianship. The decision on this shall be made by the court, taking into account the best possible promotion of the best interests of the child.

§ 260

If a minor spouse is under guardianship, it depends on the court's assessment whether the guardianship should be assigned to the adult spouse.

*Conditions for dismissal of the guardian*

§ 261

a) ordinary time

As a rule, a guardian may resign from guardianship only at the end of the guardianship year, after his successor has properly taken over the administration of the property. However, if the court finds it necessary for the security of the person or the assets, it may also remove the guardian immediately.

§ 262

*b) Final invoice*

A guardian is obliged to hand over his final account to the court within two months of the end of his guardianship at the latest, and shall receive from the court a certificate of the honest and proper administration of his office. However, this certificate does not release him from the liability arising from a fraudulent act discovered later.

§ 263

*c) Handover of the property*

At the end of a guardianship, it is the duty of the guardian to hand over the property to the person who has come of age or to the newly appointed guardian in return for a receipt and to identify himself to the court. The recorded list of assets and the annually approved accounts shall serve as a guideline for such transfers.

§ 264

*Liability of the guardian due to third party fault*

In general, a guardian shall be liable only for his own fault and not also for the fault of his subordinates. If, however, he has knowingly employed incompetent persons, he shall retain such persons or shall not be liable for the compensation of the damage caused by them.

If the customer has persisted in causing the damage, he shall also be liable for this negligence.

#### § 265

Subsidiary liability of the guardianship court Repealed

#### § 266

*Compensation of the guardian*

- 1) The guardian shall be entitled to an annual allowance, taking into account the nature and extent of his or her activities and the time and effort usually involved, provided that the satisfaction of the child's needs is not jeopardized thereby.
- 2) Unless the court deems a lower compensation appropriate for special reasons, it shall amount to five percent of all income after deduction of the statutory taxes and duties to be paid therefrom. Payments which, by virtue of a special statutory order, serve to cover certain expenses are not to be taken into account as income. If the value of the child's property exceeds 20,000 francs, the court may also grant compensation of up to two percent of the additional amount per year, provided the guardian has rendered outstanding services in preserving the property or using it to meet the child's needs. If the guardianship concerns only a part of the guardianship or if the guardian's activity does not last a full year, the entitlement to compensation shall be reduced accordingly.
- 3) In case of particularly extensive and successful efforts of the guardian, the court may also assess the compensation higher than under subsection 2, first sentence, but not higher than ten percent of the income.

#### § 267

*Remuneration and reimbursement of expenses of the guardian*

- 1) If the guardian uses his special professional knowledge and skills for matters which would otherwise have to be entrusted to a third party, he shall be entitled to appropriate remuneration for this. However, this entitlement does not apply to the costs of legal representation if the minor child meets the requirements for the granting of legal aid or if these costs are reimbursed by the opposing party in accordance with statutory provisions.

2) The guardian shall in any case be reimbursed by the minor child for cash expenses necessary for the appropriate exercise of guardianship, actual expenses and the costs of liability insurance pursuant to section 264, unless they are borne directly by third parties in accordance with statutory provisions.

3) Claims under subsections (1) and (2) shall not exist insofar as they would jeopardize the satisfaction of the child's vital needs.

§ 268

Legal remedy of the guardian in case of complaints

A guardian who considers himself aggrieved by a decree of the guardianship court shall first file the complaint with the same court, and only if this was fruitless, file the appeal with the higher court.

5. Main section

From guardianship, curatorship and health care proxy

§ 269

*Requirements for the appointment of a custodian*

1) If a person of full age who suffers from a mental illness or is mentally incapacitated (incapacitated person) is unable to manage all or some of his or her affairs without risk of disadvantage to himself or herself, a guardian shall be appointed for this purpose at his or her request or ex officio.

2) The appointment of a custodian is not permitted if the affairs of the incapacitated person are being handled by another legal representative.

or in the context of other assistance, especially in the family, in nursing homes, in institutions for the disabled or in the context of social or psychosocial services, to the extent necessary. An administrator may not be appointed even if a power of attorney, in particular an advance care power of attorney, or a binding living will provides for the management of the affairs of the disabled person to the extent necessary. A guardian may not be appointed solely in order to protect a third party from the pursuit of a claim, even if it is only an alleged claim.

3) Depending on the extent of the disability and the nature and scope of the matters to be taken care of, the custodian is to be entrusted with

1. with the management of individual matters, such as the enforcement of or defense against a claim or the entering into and settlement of a legal transaction,

General Civil Code

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2. with the management of a certain group of matters, such as the management of part or all of the assets, or,
3. as far as this is unavoidable, with the management of all affairs of the disabled person.
- 4) Provided that the welfare of the incapacitated person is not endangered thereby, the court may also determine that the disposal or obligation in respect of certain property, income or a certain part thereof is excluded from the scope of the guardian.

## § 270

*Order*

- 1) When selecting a guardian or curator, the nature of the matters to be taken care of for the person to be represented (the person in need of care) must be taken into account.
- 2) No person may be entrusted with guardianship or curatorship:
  1. non-autonomous persons;
  2. Persons who, especially because of a criminal conviction, cannot be expected to exercise guardianship or curatorship in a manner conducive to the welfare of the fostered person.

## § 271

- 1) The person whom the court intends to appoint as guardian or curator shall notify the court of all circumstances which make him appear unsuitable for this purpose. If he culpably fails to make this notification, he shall be liable for all disadvantages suffered by the person in care as a result.
- 2) A lawyer may only refuse to assume a guardianship or curatorship if this cannot reasonably be expected of him, taking into account his personal, family, professional and other circumstances. This shall be presumed in the case of more than five guardianships or curatorships.

## § 272

*Rights and duties*

- 1) The guardianship or curatorship includes all activities required to take care of the matters assigned to the guardian or curator. In doing so, the guardian or curator shall promote the best interests of the person in care.
- 2) In important matters concerning the person of the person in foster care, the

the administrator or curator must obtain the court's approval. Measures or acts of representation taken without approval are inadmissible and ineffective unless there is imminent danger.

3) In property matters, § 245 shall apply *mutatis mutandis*.

§ 273

Compensation, remuneration and reimbursement of expenses

1) The custodian or curator shall be entitled to an annual remuneration, taking into account the nature and extent of his activities, in particular in the field of personal care, and the time and effort usually involved. This shall amount to five per cent of all income after deduction of the taxes and duties to be paid therefrom, whereby emoluments which by virtue of special statutory order serve to cover certain expenses shall not be taken into account as income; in the case of particularly extensive and successful efforts of the administrator or curator, the court may also assess the compensation at up to ten per cent of such income. If the value of the assets of the person in care exceeds 20,000 francs, two percent of the excess amount shall be awarded in compensation per year in addition, provided that

the custodian or curator has rendered special services in the administration of the property or its use to meet the needs of the person in care. The court shall reduce the compensation if it deems this appropriate for special reasons.

2) If the guardian or curator uses his or her special professional knowledge and skills for matters which would otherwise have to be entrusted to a third party against payment, he or she shall be entitled to appropriate remuneration for this. However, this entitlement shall not apply to the costs of legal representation if the beneficiary meets the requirements for the granting of legal aid or if these costs are reimbursed by the opposing party in accordance with statutory provisions.

3) The cash expenses necessary for the appropriate exercise of the guardianship or curatorship, the actual expenses and the costs of liability insurance taken out to cover liability under section 274 shall in any case be reimbursed to the guardian or curator by the person in need of care, insofar as they are not borne directly by third parties in accordance with statutory provisions.

4) Claims under the preceding paragraphs shall not exist to the extent that they would jeopardize the satisfaction of the beneficiary's vital needs.

§ 274

## General Civil Code

*Liability*

The guardian or curator shall be liable to the foster child for any damage caused by his or her fault. The judge may mitigate or waive the obligation to pay compensation to the extent that it would be unreasonably harsh on the guardian or curator, taking into account all the circumstances, in particular the degree of fault or a special close relationship between the fostered person and the guardian or curator.

## § 275

*Modification and termination*

1) The court shall transfer the guardianship or curatorship to another person upon application or ex officio if the guardian or curator dies, does not have the required suitability, cannot be expected to perform the office, one of the circumstances of § 270 (2) occurs or becomes known or the welfare of the person in care requires it for other reasons.

2) The custodian or curator shall be removed upon application or ex officio if the prerequisites for his appointment under sections 269, 277 and 278 cease to apply; if these prerequisites cease to apply only to part of the matters entrusted to the custodian or curator, his scope of action shall be restricted. His scope of action shall be extended if this is necessary. If the beneficiary dies, the guardianship or curatorship shall cease. § Section 263 shall apply mutatis mutandis.

3) The court shall consider, at reasonable intervals not exceeding five years, whether the best interests of the ward require termination or modification of the guardianship or curatorship.

## § 275a

Repealed

## § 276

Retrieved

*Requirements for the appointment of a curator*

## § 277

*a) Prevention and collision clause*

1) At the request of a party or ex officio, the court shall appoint a

Curator in the cases specifically provided for by law and in the following other cases:

1. if a person of full age is unable to act himself or herself or to designate a representative in an urgent matter due to illness, absence or the like;
  2. if the legal representative of a minor or otherwise incompetent person has interests in a matter that conflict with those of the representative;
  3. if the legal representative is prevented from representing the company.
- 2) If the interests of two or more persons who are minors or otherwise lack full capacity to act and who have the same legal representative conflict, the legal representative shall not allow any of the said persons to represent. The court shall appoint a special curator for each of them.

§ 278

*b) Administrative curacy*

If an estate lacks the necessary administration, the court shall order the necessary and, in particular, appoint a curator in the following cases:

1. in case of prolonged absence of a person with unknown residence;
2. Retrieved
3. In case of uncertainty of succession and to protect the interests of the child before birth;
4. Retrieved
5. in the case of public collection of funds for charitable and other purposes serving the public good, as long as the administration or use is not provided for.

*Special provisions for guardianship*

§ 279

*a) Selection of the custodian*

- 1) When selecting the guardian, special consideration shall be given to the needs of the incapacitated person and to the fact that the guardian shall not be in a relationship of dependence or in any other close relationship with a hospital, a home or any other institution where the incapacitated person is staying or being cared for. Wishes of the disabled person, ins-



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General Civil Code

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In particular, suggestions made before the incapacitated person lost his or her legal capacity and ability to see and judge (guardianship order) and suggestions made by close relatives must be taken into account, provided they are in the best interests of the incapacitated person.

2) A suitable person close to the disabled person shall be appointed as guardian. If an incapacitated person reaches the age of majority, a parent previously entrusted with guardianship shall be appointed guardian, provided this is not contrary to the best interests of the incapacitated person. If both parents were previously entrusted with guardianship, both parents may also be appointed as guardians.

parent may be appointed guardian, provided this is in the best interests of the incapacitated person.

3) If a suitable close person is not available, a suitable association shall be appointed as administrator with the latter's consent. If an association is also unavailable, an attorney-at-law or a legal adviser or another suitable person shall be appointed with the consent of the latter in accordance with section 271 (2).

4) An attorney-at-law or a trainee shall be appointed as guardian primarily if the administration of the affairs requires predominantly legal knowledge, and a suitable association shall be appointed primarily if there are other special requirements associated with the guardianship.

5) A person may only assume as many guardianships as he or she is able to properly perform, taking into account the duties of a guardian, in particular those of personal contact. It is presumed that a person, except for a suitable association, cannot assume more than five guardianships, and a lawyer cannot assume more than 15 guardianships; guardianships to deal with individual matters are not taken into consideration.

§ 280

*b) Legal capacity of the disabled person*

1) The incapacitated person may neither dispose of nor commit himself/herself in legal transactions within the scope of the guardian's activities without the latter's express or tacit consent.

2) If the incapacitated person concludes a legal transaction concerning a minor matter of everyday life within the scope of the guardian's activities, this legal transaction shall become legally effective retroactively upon fulfillment of the duties incumbent on the incapacitated person.

§ 281

*c) Consideration of the will and needs of the disabled person*

1) The guardian must strive to ensure that the disabled person can shape his or her living conditions according to his or her wishes and ideas within the scope of his or her abilities and possibilities.

2) The incapacitated person has the right to be informed by the custodian of any intended important measures concerning his or her person or property.

The person concerned shall be entitled to be informed in good time and to express his or her views on this, as well as on other measures, within a reasonable period of time; these views shall be taken into account if the wish expressed therein is not less in the best interests of the incapacitated person.

3) If the custodian is entrusted with the administration of the assets or income of the disabled person, he or she shall use them primarily to meet the needs of the disabled person in accordance with his or her personal circumstances.

4) If the welfare of the incapacitated person is endangered, the court shall at any time, by whomsoever it is seized, make the orders necessary to safeguard his welfare.

d) Personal care

§ 282

The guardian shall maintain personal contact with the disabled person to the extent required by the circumstances of the individual case and shall endeavor to ensure that the disabled person is provided with the necessary medical and social care. If the guardian is not only appointed to take care of individual matters, contact should take place at least once a month.

§ 283

1) An incapacitated person can only give his or her own consent to medical treatment if he or she is capable of seeing and making judgments. Otherwise, the consent of the guardian is required, whose sphere of activity includes the management of this matter.

2) The guardian may only consent to medical treatment that is usually associated with a serious or lasting impairment of physical integrity or personality if a physician independent of the attending physician confirms in a medical certificate that the incapacitated person does not have the necessary capacity of insight and judgment and that the treatment is necessary to safeguard his or her well-being. If

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General Civil Code

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such certificate is not available or the incapacitated person indicates that he or she refuses the treatment, the consent shall require the court's approval. If the custodian does not give consent to medical treatment and the welfare of the incapacitated person is endangered as a result, then

the court may replace the guardian's consent or transfer the guardianship to another person.

3) The consent of the incapacitated person with capacity, the consent of the guardian and the decision of the court are not required if the treatment is so urgent that the delay associated with obtaining the consent, the consent or the decision of the court would endanger the life of the incapacitated person or would be associated with the risk of serious damage to health.

§ 284

The guardian may not consent to a medical measure aimed at the permanent reproductive incapacity of the incapacitated person, unless there is otherwise a serious risk to the life or serious damage to the health of the incapacitated person due to permanent physical suffering. Similarly, the custodian may not consent to research involving impairment of the physical integrity or personality of the incapacitated person unless the research may be of immediate benefit to his or her health or well-being. In any case, the consent shall be subject to court approval.

§ 284a

1) A disabled person decides for himself/herself where he/she will live, provided he/she has the capacity to consent and make judgments.

2) Otherwise, the custodian shall be responsible for this task insofar as this is necessary to safeguard the welfare of the incapacitated person and his or her scope of action includes the care of this matter. If the place of residence of the incapacitated person is to be changed permanently, this shall require court approval.

*Health care proxy*

§ 284b

1) A health care power of attorney is a power of attorney which, according to its content, is intended to take effect if the principal loses the legal capacity or the capacity for insight and judgment required to take care of the matters entrusted to him or her, or loses his or her ability to express himself or herself. The

The matters for which the power of attorney is granted must be specified. The authorized representative may not be in a relationship of dependence or in any other close relationship with a hospital, a home or any other institution in which the principal is staying or by which the principal is being cared for.

2) The power of attorney for health care must be written and signed by the principal in his or her own hand. If the principal has signed the power of attorney in his own hand but not written it in his own hand, he must confirm in the presence of three unbiased witnesses who are authorized to act on his own behalf and who know the language that the content of the power of attorney document signed by him corresponds to his will. Immediately after the declaration of the principal, the witnesses shall confirm compliance with this formal requirement by adding a note on the document indicating their witness status. If the principal does not sign the power of attorney document, a lawyer or the court must certify the principal's affirmation.

3) If the health care proxy is also to include consent to medical treatment within the meaning of Section 283 (2), decisions on permanent changes in the place of residence and the management of property matters that are not part of ordinary business operations, it must be established before a lawyer or at court, expressly specifying these matters. In doing so, the grantor of the power of attorney must be informed of the legal consequences of such a power of attorney for health care and the possibility of revoking it at any time. The lawyer or the court must document the provision of this instruction in the power of attorney document, stating his name and address, by his own signature.

§ 284c

An incapacitated person who has granted a power of attorney for health care does not need an administrator unless the authorized representative does not act or does not act in the sense of the power of attorney agreement, otherwise endangers his or her well-being through his or her activities or the incapacitated person indicates that he or she no longer wishes to be represented by the authorized representative. The appointment of an administrator may also be dispensed with if a power of attorney does not satisfy the requirements of the § Section 284b, but there is no reason to fear, based on the circumstances of the individual case, that the authorized representative will perform his or her duties to the detriment of the incapacitated person.

§ 284d

1) When dealing with the entrusted matters, the authorized representative shall inform the

General Civil Code

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The proxy shall comply with the will of the principal as expressed in the power of attorney agreement. The authorized representative must take into account the will of the principal, which becomes apparent after the occurrence of the event of precaution from statements made by the principal or otherwise from the circumstances of the individual case, if it does not correspond less to the best interests of the principal. In the absence of an ascertainable will, the authorized representative must promote the best interests of the principal as far as possible.

2) The authorized representative cannot give the power of attorney to consent to medical treatment or to decide on a change of residence.

*Central Representative Directory*

## § 284e

1) The district court maintains a Central Representation Register, in which are registered:

1. the guardianship order (section 279(1));
2. the health care proxy (§ 284b);
3. the effectiveness of the health care proxy; and
4. the revocation of the guardianship order and the health care proxy.

2) When registering, the following must be stated in particular:

1. the designation of the document as a health care proxy or guardianship order, or the effective date of the health care proxy;
2. First name, surname, date of birth and residential address of the grantor of the power of attorney, the disposer and the authorized representative or the proposed custodian; and
3. after specifying the party, the custodian of the health care proxy or guardianship order and the date the document was executed.

3) The Regional Court shall notify the grantor of the power of attorney or the disposer of the registration in the Central Representative Register; in the case of subsection 1(3), the Regional Court shall inform the authorized representative of the registration in the Central Representative Register and its consequences.

## § 284f

1) The registration of the revocation of a health care proxy or guardianship order shall be made in accordance with section 284e(2) and shall be accompanied by the date of revocation.

2) The district court shall register the effectiveness of the submitted health care proxy upon presentation of a corresponding medical certificate stating that the proxy holder lacks the required legal capacity, capacity of insight and judgment or capacity of expression. If guardianship proceedings are pending, the regional court shall obtain information from the Central Register of Representatives on the registration of the effective date of the health care proxy. After registration, the regional court shall issue the authorized representative with a confirmation of the registration of the effective date of the health care proxy. The confirmation shall be accompanied by an overview of the rights and obligations associated with the health care proxy, in particular the obligation to refrain from using the confirmation in legal transactions after termination of the power of representation.

3) The district court shall register the end of the power of representation if the grantor of the power of attorney or his administrator revokes the power of attorney for health care. The district court shall inform the authorized representative of the end of the power of representation and the consequences, in particular of the obligation to no longer use the confirmation in legal proceedings.

#### § 284g

1) A third party may rely on the occurrence of an insured event if the authorized representative presents him or her with a confirmation of the registration of the effective date of the health care proxy in the Central Register of Representatives when performing an act of representation. The third party's reliance is not protected if he or she is aware or negligently unaware that the event giving rise to the power of attorney has not occurred.

2) The state shall be liable for errors in the registration of a health care proxy and in the issuance of the confirmations pursuant to section 284f(2) in accordance with the provisions of the Public Liability Act.

3) Upon request, the district court shall grant access to the register to the other courts, social insurance institutions, social assistance institutions and other decision-makers in social law cases, the authorized representative and the principal.

#### 2. Part

From the property rights

Of things and their legal classification

§ 285 to 308 Revoked

1. Division of the Law of Property Of the rights in rem

1. Main Part Of Ownership

General Civil Code

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§§ 309-352

Retrieved

2. Main part Ownership rights

§§ 353 to 379 Revoked

3. Main

section From the acquisition of ownership by appropriation

§§ 380 to 403 Revoked

4. Main

section From acquisition of ownership by accretion

§§ 404 to 422 Revoked

5. Main

section From acquisition of ownership by transfer

§§ 423 to 446 Revoked

6. Principal Part Of the Lien

§§ 447 to 471 Revoked

7. Main

section From easements (servitudes)

§§ 472 to 530 Revoked

8. Principal Part of the Right of Inheritance

§ 531

Estate

The rights and obligations of a deceased person, insofar as they are not based on personal relationships, are called his estate.

§ 532

*Law of succession and inheritance*

The exclusive right to take possession of the whole estate or a part of it determined in relation to the whole (e.g. half, one third) is called the right of succession. It is an absolute right, which can be exercised against any person who

The heir to the estate is called the heir and the estate is called the inheritance. The person to whom the right of succession belongs is called the heir, and the estate, in relation to the heir, is called the inheritance.

Title to the inheritance right

§ 533

The right of inheritance is based on the will of the testator declared in accordance with statutory provisions, on a contract of inheritance (§§ 602 ff.) or on the law.

§ 534

The three types of inheritance right mentioned can also exist side by side, so that one heir is entitled to a part determined in relation to the whole from the last will, another from the contract of inheritance, and a third from the law.

§ 535

*Difference between inheritance and legacy*

If a person is not bequeathed such an inheritance, which relates to the entire estate, but only a single thing, one or more things of a certain kind, a sum or a right, the thing bequeathed, although its value constitutes the largest part of the estate, is called a legacy, and the person to whom it has been bequeathed is not to be regarded as an heir, but only as a legatee.

Time of accrual of inheritance

§ 536

The right of inheritance does not arise until after the death of the testator. If a presumed heir dies before the testator, he or she has not yet been able to transfer the inheritance right to his or her heirs.

§ 537

If the heir has survived the testator, the right of inheritance shall pass to his heirs even before the inheritance is taken over, like other freely inheritable rights, if it had not otherwise been extinguished by renunciation or in some other way.

Ability to inherit

§ 538

As a rule, anyone who has the right to acquire property can also inherit. If someone has renounced the right to acquire something at all or has restricted it to a certain



General Civil Code

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If a person has validly renounced an inheritance, he or she has thereby lost the right to inherit in general or the right to a specific inheritance.

## § 539

The extent to which spiritual communities or their members are eligible to inherit is determined by the political regulations.

## Causes of inability

## § 540

A person who has committed a judicially punishable act against the testator, which can only be committed intentionally and is punishable by more than one year's imprisonment, or who has grossly neglected his duties towards the testator arising from the legal relationship between parents and children, is unworthy of the right of succession as long as it cannot be inferred from the circumstances that the testator has forgiven him.

## § 541

In the case of intestate succession, the descendants of the person who has made himself unworthy of the right of inheritance are called to succeed in his place, even though he has survived the testator.

## § 542

Anyone who has forced or fraudulently induced the testator to declare his last will and testament, prevented him from declaring or amending his last will and testament, or suppressed a last will and testament already made by him, shall be excluded from the right of succession and shall remain liable for all damage caused to a third party as a result.

## § 543

Retrieved

## § 544

Retrieved

*After what time to assess the ability*

## § 545

The capacity to inherit can only be determined according to the time of the actual accrual of the inheritance. As a rule, this point in time is the death of the testator (Section 703).

## § 546

A later acquired capacity to inherit does not give the right to deprive others of what has already rightfully accrued to them.

Effect of acceptance of the inheritance

§ 547

The heir, as soon as he has accepted the inheritance, precedes the testator with respect to the same. Both are considered as one person in relation to a third party. Prior to the acceptance of the heir, the estate shall be regarded as if it were still possessed by the deceased.

§ 548

Liabilities that the decedent would have had to pay out of his or her assets are assumed by his or her heir.

§ 549

The costs of burial appropriate to the use of the place, the status and the property of the deceased shall also be included among the burdens liable on an inheritance.

§ 550

Several heirs shall be regarded as one person with regard to their joint right of succession. In this capacity, they stand all for one and one for all before the judicial transfer (inheritance) of the estate. The extent to which they are liable after the transfer has taken place is determined in the main section on the taking of possession of the inheritance.

§ 551

*Waiver of the right to inherit*

A person who can validly dispose of his or her inheritance rights is also authorized to waive them in advance by contract with the testator. In order to be valid, the contract must be certified by a court record. Unless otherwise agreed, such a waiver also affects the descendants.

9. Main section

From the declaration of the last will in general and the wills in particular

§ 552

Declaration of the last will

The arrangement by which a testator may dispose of his property or a part of it

General Civil Code

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The last will and testament is a revocable bequest to one or more persons upon death.

### Requirements

#### *I. Inner shape*

#### § 553

If a last disposition appoints an heir, it is called a will; but if it contains only other dispositions, it is called a codicil.

#### Allocation of the inheritance

#### § 554

##### *a) When only one heir*

If the testator has appointed a single heir indefinitely without limiting him to a part of the estate, he shall receive the entire estate. If, however, the sole heir has been assigned only a share of the estate determined in relation to the whole, the remaining parts shall go to the legal heirs.

#### § 555

##### *b) if several without division*

If several heirs have been appointed without a provision for division, they shall divide in equal shares.

#### § 556

##### *c) when all in certain parts*

If several heirs have been appointed, all of them in certain shares of the estate but not exhausting the whole, the remaining parts shall devolve on the legal heirs. If, however, the testator has appointed the heirs to the entire estate, the legal heirs shall have no claim, even if he has omitted something in the calculation of the amounts or in the enumeration of the items of the estate.

##### *d) when some are used with parts, others without parts*

#### § 557

If among several appointed heirs some a certain part (e.g..

If a third part or a sixth part of the estate has been distributed to a third person, but not to a specific person, the latter shall receive the remainder of the estate in equal shares.

#### § 558

If nothing remains, then of all the determined parts for the indefinite

If the heirs are appointed for an indefinite period of time, they shall deduct from the share of the heirs appointed for an indefinite period of time such a proportionate amount that the heir receives an equal share with the heir who has received the smallest share. If the shares of the heirs are equal, they must give so much to the undesignated heir that he receives an equal share with them. In all other cases where a testator has miscalculated, the division shall be made in such a way that the will of the testator is fulfilled as far as possible in accordance with the declared proportions of the whole.

§ 559

What heirs are considered one person

If among the appointed heirs such persons come together, some of whom must be considered as one person in the legal succession against the others (e.g. the brother's children against the brother of the testator), they shall also be considered only as one person in the division from the will. A body, a community, an assembly (e.g. the poor) are always counted only for one person.

Right of increase

§ 560

If all heirs are appointed to the inheritance without determination of the parts or in the general expression of an equal division and one of the heirs cannot or does not wish to make use of his inheritance rights, the completed part shall accrue to the remaining appointed heirs.

§ 561

If one or more heirs have been appointed with, another or several without determination of the share of the inheritance, the completed part shall accrue only to the single or several remaining undetermined heirs.

§ 562

In no case shall the right of accrual accrue to an heir who has been appointed for a specific purpose. If, therefore, there is no remaining heir who has been appointed for an indefinite period, a completed share of the inheritance shall not accrue to a remaining heir who has been appointed for a definite part, but to the heir by operation of law.

§ 563

Whoever receives the settled share of the inheritance also assumes the burdens associated with it, insofar as they are not restricted to personal acts of the appointed heir.

General Civil Code

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## § 564

The testator must appoint the heir himself; he cannot leave his appointment to the pronouncement of a third party.

## § 565

The statement must be deliberate, determined and free

The will of the testator must be determined, not by mere affirmation of a proposal made to him; it must be declared in a state of full prudence, with deliberation and seriousness, free from coercion, fraud, and essential error.

Causes of the inability to testify

*1. Lack of prudence*

## § 566

If it is proven that the declaration was made in a state excluding the prudence required for this purpose, such as mental illness, mental disability or drunkenness, it shall be invalid.

## § 567

If it is asserted that the testator, who had lost the use of reason, was in full prudence at the time of the last disposition, the assertion must be put beyond doubt by experts in the art or by persons of authority who have thoroughly investigated the state of mind of the testator or by other reliable evidence.

## § 568

A person for whom a custodian is appointed under section 269 may, if so ordered by a court, make a testament only orally in court; this shall not apply in the case of section

The court must try to satisfy itself by reasonable investigation that the declaration of the last will and testament was made freely and with deliberation. The declaration must be recorded in a protocol, and what has emerged from the investigation must be added.

## § 569

*2. immature age*

Minors up to the age of 14 are incapable of making a will. Minors under the age of 18 may, except in the case of § 597, only testify orally in court. The second and third sentences of § 568 apply accordingly.

*3. material misconception*

§ 570

A material error on the part of the testator renders the bequest invalid. The error is substantial if the testator has missed the person whom he intended to bequeath or the object which he intended to bequeath.

§ 571

If it turns out that the person or the thing bequeathed was only named or described incorrectly, the disposition is valid.

§ 572

Even if the motive stated by the testator is found to be wrong, the disposition remains valid unless it can be proved that the testator's will was based solely on this erroneous motive.

§ 573

*4. Vows of the Order*

Persons belonging to an order are generally not authorized to testify: Only if the order has obtained a special favor that its members may testate, if persons of the order have received dissolution from the vows, if they have ceased to be members of their order, convent or monastery by dissolution of their order, convent or monastery, or, if they are employed in such a relationship that by virtue of the political decrees they are no longer considered members of the order, convent or monastery, but can acquire complete property, they are permitted to dispose of it by declaration of the last will and testament.

§ 574

Retrieved

Date of validity of the order

§ 575

A legally validly declared last will and testament cannot lose its validity due to obstacles that occur later.

§ 576

An initially invalid last will and testament does not become valid if the impediment is subsequently removed. If no new will is made in this case, the statutory law of succession applies.

II. External form of the declarations of the last will and testament

§ 577

General Civil Code

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1) One can testify out of court or in court, in writing or orally, in writing but with or without witnesses.

2) Judicial wills are deposited ex officio. Out-of-court wills may be deposited in court by the testator in person. A record must be made of the deposit.

1. Out of court in writing

§ 578

Anyone who wishes to make a will in writing and without witnesses must write the will or codicil in his own hand and sign his name in his own hand. The day, month, year and place where the last will is made is not necessary, but advisable to avoid disputes.

§ 579

A last will and testament which the testator has had written down by another person must be signed by the testator himself. He must also expressly declare before three competent witnesses, at least two of whom must be present at the same time, that the document contains his last will and testament.

hold. Finally, the witnesses must also sign themselves, either internally or externally, but always on the document itself and not on an envelope, with an addition indicating their capacity as witnesses. The witness does not need to know the contents of the will.

§ 580

A testator who cannot write must, in addition to observing the formalities prescribed in the preceding paragraph, affix his hand sign instead of his signature, and do so in the presence of all three witnesses. To facilitate lasting proof of who the testator is, it is also advisable for one of the witnesses to sign the testator's name as signatory.

§ 581

If the testator cannot read, he must have the document read to him by a witness in the presence of the other two witnesses who have seen the contents and confirm that it is in accordance with his will. The writer of the last will and testament may in all cases be a witness at the same time, but if the testator cannot read, he is excluded from the reading of the document.

§ 582

A testator's disposition by reference to a piece of paper or an essay shall be effective only if such essay is provided with all the requirements necessary for the validity of a last declaration of will. Moreover, such written remarks indicated by the testator may be used only to explain his will.

§ 583

As a rule, one and the same record applies only to one testator. An exception exists for spouses and bride and groom as well as registered partners (§ 583a).

§ 583a

*Joint will*

- 1) Spouses and spouses under the condition of marriage as well as registered partners may appoint each other as well as third persons as heirs in a joint will. Such a will is revocable.
- 2) The existence of one disposition is not dependent on that of the other, unless this is specifically agreed.

§§ 584 to 586 Revoked

*2. Judicial*

§ 587

The testator may also make a written or oral testament before a court. The written order must be signed at least by the testator's own hand and delivered to the court in person. The court shall draw the testator's attention to the fact that his or her personal signature must be attached, then seal the document by court order and note on the envelope whose last will is contained therein. A record shall be made of the procedure and the document shall be deposited in court (section 577(2)).

§ 588

If the testator wishes to declare his will orally, the declaration shall be recorded in a record and the same shall be filed under seal as reported in the preceding paragraph concerning the written record.

§ 589

The court hearing the written or oral declaration of the last will and testament



General Civil Code

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The court of first instance which records the declaration must consist of at least two persons under oath, one of whom is a judge in the place where the declaration is recorded. The testimony of the second judicial person, apart from the judge, may also be represented by two other witnesses.

## § 590

In an emergency, court personnel may go to the decedent to record his or her last will and testament.

*Incompetent witnesses at final orders*

## § 591

Persons under 18 years of age, persons who, due to a disability, lack the capacity to testify to the testator's last will and testament in accordance with the respective form of the will, as well as those who do not understand the language of the testator, cannot be witnesses to last orders.

## § 592

Retrieved

## § 593

Retrieved

## § 594

An heir or legatee shall not be a competent witness in respect of the estate devised to him, nor shall his spouse, registered partner, parents, children, brothers and sisters, or persons related by marriage in the same degree, and the paid members of his household. In order to be valid, the will must be written by the testator himself or confirmed by three witnesses different from the persons mentioned.

## § 595

If the testator designates an estate to the person who writes the last will or to his spouse, registered partner, children, parents, siblings or persons related by marriage in the same degree, the arrangement must be put beyond doubt in the manner mentioned in the preceding paragraph.

## § 596

What is decreed by the impartiality and ability of the witness to put the person of the testator out of doubt, is also to be applied to the judicial persons recording a last will.

From the beneficiary last orders

§ 597

1) If there is an imminent danger that the testator will die or lose the capacity to testify before he is able to declare his last will in another way, he may also testify orally or in writing (§ 579) with the assistance of two capable witnesses who must be present at the same time. If there is a risk of contagion, it is not necessary for both witnesses to be present at the same time. Persons who have passed the age of fourteen are also valid witnesses. A last will declared in this way loses its validity three months after the danger has ceased to exist.

2) An oral last will and testament must be confirmed by the concurring statements of the two witnesses at the request of anyone who cares to do so, otherwise this declaration of the last will and testament is invalid (§ 601).

§§ 598 to 600 Revoked

§ 601

Invalidity of the shapeless last orders

If the testator has failed to observe any of the requirements prescribed herein and not expressly left to mere prudence, the last will and testament shall be invalid.

*Inheritance contract*

*1. Requirements for the validity of the inheritance contract*

§ 602

1) By a contract of inheritance the future estate or a part of it is promised and the promise is accepted.

2) A third party can also be appointed as heir by means of a contract of inheritance.

3) In order for an inheritance contract to be valid, it is necessary that the relevant provisions for last orders have been complied with.

4) Judicial inheritance contracts are deposited ex officio. Out-of-court inheritance contracts may be deposited personally by each party to the inheritance contract. A record must be made of the deposit.

§ 602a

What applies to conditions in contracts in general is also applicable to inheritance contracts.

*2. Effect of the inheritance contract*

## General Civil Code

## § 602b

An inheritance contract does not prevent the contracting parties from disposing of their assets during their lifetime. The right under the inheritance contract is subject to the death of the testator. In the event that the contracting heir does not survive the testator, it cannot be transferred to others, nor can he be required to provide security for the sake of the future inheritance.

## § 602c

If the testator has only disposed of part of the estate, the remaining part shall not accrue to the contractual heir but to the statutory heirs. Those entitled to a compulsory portion retain their rights as against another last disposition.

## § 602d

## 3. Termination of the inheritance contract

1) The contract of inheritance may be revoked in accordance with the provisions of para. 2 or invalidated in accordance with the law.

2) An inheritance contract may be unilaterally revoked for reasons justifying disinheritance (Sections 768 et seq.) and for gross ingratitude (Section 948). Furthermore, the contract of inheritance may be revoked among spouses, registered partners or persons living in a de facto cohabitation in the event of the dissolution of the cohabitation. The revocation

must be in writing and the signature must be notarized in order to be valid.

3) The inheritance contract between spouses expires upon invalidation (Art. 39 Marriage Act), divorce (Art. 50 et seq. Marriage Act) or separation (Art. 63 et seq. Marriage Act) of the marriage, the inheritance contract between registered partners upon judicial dissolution of the registered partnership (Art. 26 et seq. PartG).

## § 602e

*Legacy contract*

1) By a legacy contract, legacies (§ 535) are promised and the promise is accepted.

2) The provisions on the contract of inheritance apply *mutatis mutandis*.

## § 603

## From gifts on death relationship

The extent to which a gift on death is to be regarded as a contract or as a last will and testament is determined in the main section on gifts.

10. Main

section

Of Successors and entailed estates

Common Substitution

§ 604

Any testator may, in the event that the appointed heir does not obtain the inheritance, appoint one, and, if he does not obtain it either, a second, and in the same case a third or even several subsequent heirs. This arrangement is called a common substitution. The first in line to be appointed becomes heir.

§ 605

If the testator has expressed only one of the certain cases that the appointed heir cannot be heir or that he does not want to be heir, the other case is excluded.

Rights from the same

§ 606

The burdens imposed on the heir shall also be extended to the successor heir taking his place, unless they are restricted to the person of the heir by the express will or the nature of the circumstances.

§ 607

If the co-heirs alone have been mutually appointed as subsequent heirs, it shall be assumed that the testator intended to extend the parts measured out in the appointment also to the substitution. If, however, in the substitution, someone else is appointed in addition to the co-heirs, the completed share of the inheritance shall accrue to all in equal shares.

§ 608

*Fideikommissarische Substitution*

The testator may oblige his heir to leave the inheritance to a second appointed heir after his death or in other specific cases. This arrangement is called a fideikommissarische Substitution. The fideikommissarische Substitution implicitly includes the common one.

§ 609

*To what extent parents may substitute for their children*

Also the parents can give to their children, even in the case that they have to testate

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## General Civil Code

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The heir to the estate of a deceased person who is incapable of inheriting the estate of a deceased person shall appoint an heir or a successor only in respect of the property which he or she leaves to the deceased person.

### § 610

#### Tacit fideicommissary substitution

If the testator has forbidden the heir to testate about the estate, it is a fideicommissar substitution, and the heir must keep the estate for his legal heirs. The prohibition to alienate the thing does not exclude the right to testate over it.

#### Restriction of fideicommissarial substitution

### § 611

The series in which the fideicommissary heirs shall succeed one another shall not be limited at all if they are all contemporaries of the testator; it may extend to the third, fourth and still further.

### § 612

If the heirs are not contemporaries, but such heirs who were not yet born at the time of the execution of the will, the fideicommissarial subordination may extend to the second degree with respect to sums of money and other movable property. With regard to immovable property, it applies only to the first degree; however, in determining the degrees, only that successor heir is counted who has come into possession of the inheritance.

### § 613

#### Rights of the Heir in the Event of a Fideicommissar Substitution

Until the case of fideicommissarische Substitution occurs, the appointed heir is entitled to the limited property right with the rights and liabilities of a Fruchtniesser.

### § 614

#### Interpretation of the substitution

If a substitution is expressed in doubtful terms, it shall be interpreted in such a way as to restrict the freedom of the heir to dispose of the property as much as possible.

#### Types of extinguishment of common and fideicommissar substitution

### § 615

1) The common substitution expires as soon as the appointed heir has accepted the inheritance, the fideikommissarische when none of the appointed successors is left or when the case for which it was established ceases.

2) Unless another will of the testator is to be assumed, the right of the fideikommissar heir shall pass to his heir (§ 537) even if he does not experience the occurrence of the event of substitution.

§ 616

In particular, the fideicommissarial substitution made to a testamentary incompetent (§§ 608 and 609) loses its force if it is proved that he was of sound mind at the time of his last disposition, or if the court has granted him free administration of the property because he has attained sound mind; and the substitution is not revived whether he has been placed again under a curator because of recidivism and has not made a last disposition in the meantime.

§ 617

The substitution made by a testator to his child at the time when he had no descendants expires if he has left descendants capable of inheriting.

Fideikommiss

§§ 618 to 645 Revoked

§ 646

*Difference of a entail from foundations*

Foundations are different from substitutions and entailments. The provisions on foundations are contained in the law regulating the law of persons and companies.

11. Main Part Of Legacies

§ 647

For the validity of a legacy (§ 535) it is necessary that it be left by an able testator, a person capable of inheriting, by a valid last will and testament.

§ 648

The testator may also predetermine a bequest to one or more co-heirs, in respect of which they shall be considered only as legatees.

General Civil Code

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## § 649

As a rule, legacies shall fall to all heirs in proportion to their share of the inheritance, even in the event that the property belonging to a co-heir has been bequeathed. However, it depends on the testator whether he/she wishes to assign the execution of the bequest to a co-heir or also to a legatee.

## § 650

A legatee may not refrain from the complete fulfillment of a bequest made to him on the ground that it exceeds the value of the bequest made to him. If, however, he does not accept the bequest, the person to whom it falls must take over the assignment or leave the bequest which has fallen to him to the legatee designated to receive it.

## § 651

A testator who has bequeathed a legacy to a certain class of persons, as: A testator who has bequeathed a legacy to a certain class of persons, such as relatives, servants or the poor, may leave the distribution to the heir or a third party of which of these persons and what is to go to each. If the testator has not determined anything about this, the choice is reserved for the heir.

## § 652

## Substitutions for legacies

In the case of a bequest, the testator may order a common or fideicommissary substitution; the provisions of the preceding main section shall apply.

## Objects of a legacy

## § 653

Anything that is in common circulation: things, rights, works and other hand-outs that have value can be bequeathed.

## § 654

If property is bequeathed which is in common use but which the legatee is incapable of possessing for his person, he shall be remunerated for the ordinary value.

## § 655

## General rule of interpretation for legacies

Words are also taken in their ordinary meaning in the case of bequests, unless it has to be proved that the testator was accustomed to associate with certain expressions a special meaning peculiar to him or that the bequest would otherwise be without effect.

Special provisions on the legacy

*a) of things of a certain kind*

§ 656

If the testator has bequeathed one or more things of a certain kind, but without a more detailed provision, and if several such things are present in the estate, the heir is entitled to choose. He must, however, choose one item of which the legatee may make use. If the legatee is left to take or choose one of the several items, he may also choose the best one.

§ 657

If the testator has expressly bequeathed one or more things of a certain kind only from his own property, and no such things are to be found in the estate, the bequest loses its effect. If they are not found in the prescribed quantity, the legatee must be content with the existing ones.

§ 658

If the testator does not bequeath one or more things of a certain kind expressly from his own property, and if there are no such things in the estate, the heir must provide them to the legatee in a capacity appropriate to his status and needs. The bequest of a sum of money obliges the heir to pay it, regardless of whether there is cash in the estate or not.

§ 659

The testator may also leave the choice of which of several things the legatee is to have to a third party. If the third party does not make the choice or if he dies before the choice is made, the judicial authority shall determine the legatee's estate with regard to the legatee's status and needs. This judicial determination shall also apply in the event that the legatee has died before the selection has been made.

*b) the legacy of a particular thing*

§ 660

The bequest of a particular thing may be made by the legatee if it is in a



General Civil Code

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or repeated in different arrangements, cannot be demanded at the same time in nature and value. Other bequest

The legatee shall be entitled to the same number of legacies as often as they have been repeated, whether they contain the same type of thing or the same amount.

## § 661

The bequest is without effect if the bequeathed item was already a property of the legatee at the time of the last disposition. If the legatee took it over later, he shall be paid the ordinary value. If, however, he has received it from the testator himself, free of charge, the bequest shall be considered cancelled.

## § 662

## c) of a foreign thing

The bequest of another person's property which belongs neither to the testator nor to the heir or legatee who is to provide it to a third person shall have no effect. If the persons mentioned have a share or claim in the thing, the bequest is to be understood only from this claim or share. If the thing bequeathed is pledged or encumbered, the recipient shall also assume the encumbrances thereon. If, however, the testator expressly decrees that a certain foreign object is to be purchased and paid to the legatee, but the owner does not wish to sell it for the valuation price, this value is to be paid to the legatee.

*d) A claim*

## § 663

The bequest of a debt to be made by the testator to the legatee obligates the heir to return the promissory bill or to execute to the legatee the release from the debt and the arrears of interest.

## § 664

If the testator bequeaths a claim to a third party, the heir must leave the claim to the legatee together with the arrears and further current interest.

## § 665

The bequest of the debt to be paid by the decedent to the legatee shall have the effect that the heir shall acknowledge the debt expressed in a specific manner by the decedent or designated by the legatee, and shall pay it, without regard to the conditions or time limits contained in the debt, at the latest within the

The deceased shall be obliged to rectify the legacies within the time limit set for the payment of the remaining legacies. However, the recognition of the bequest cannot be detrimental to the testator's creditors who are at risk.

§ 666

The remission of the debt is to be understood only from the present debts, not also from the debts arising only after the bequest has been made. If the lien or the guarantee is discharged by a legacy, it does not follow that the debt has also been discharged. If the payment periods are extended, the interest must still be paid.

§ 667

If the testator owes a sum to a person and bequeaths an equal sum to that person, it is not presumed that the testator intended to pay off the debt with the bequest. In this case, the heir pays the sum twice, once as a debt and then as a legacy.

§ 668

The bequest of all outstanding claims does not include claims arising from public loan papers, nor capital liable on immovable property, nor claims arising from a right in rem.

e) of the marriage property

§§ 669 to 671 Revoked

*f) of maintenance; education; or board*

§ 672

The legacy of maintenance includes food, clothing, housing and other needs for life, as well as the necessary education. All this is also understood as education. Education ends when the child comes of age. Food is understood as food and drink for life.

§ 673

The extent of the legacies mentioned in the preceding paragraph, if it does not appear from the express, nor from the tacit, will of the testator, declared by the previous support, must be determined according to the state which is peculiar to the legatee, or to which he has been prepared by the food he has received.

§ 674

General Civil Code

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## g) the movables; the household goods

By movables (meublen) are understood only the utensils necessary for the decent use of the dwelling, by household goods or furnishings at the same time the utensils necessary for the management of the household. The tools for the operation of the trade are, without a clearer explanation, not included.

*h) of a container*

## § 675

If a person has been bequeathed a container which does not exist in itself but is only a part of a whole, it is generally presumed that only those items have been bequeathed which are found in it at the deceased's death and for the storage of which the container was intended by its nature or was customarily used by the deceased.

## § 676

If, on the other hand, the container is movable or a separate object, the legatee is entitled only to the container and not to the objects contained therein.

## § 677

If a cabinet, a box or a drawer is bequeathed with all the things in it, gold and silver, jewelry and cash, even the promissory bills issued by the legatee to the testator, shall also be included. Other promissory bills or deeds on which the testator's claims and rights are based are only included if there is nothing else in the box apart from them. A bequest of liquid property also includes the vessels intended for its conveyance.

## § 678

## i) jewels, jewelry and finery

Jewels are generally understood to be precious stones and good pearls, jewelry to include faux stones, and jewelry made of or covered with gold and silver, which serves to adorn the person, and finery to include that which is used to adorn the person in addition to jewelry, finery and articles of clothing.

## § 679

## k) of gold or silver; of linen

The bequest of gold or silver includes the processed and unprocessed, but not the coined, nor even that which is only a part or an ornament of another bequest, e.g. a watch or a box. Linen is not counted as clothing, and lace is not counted as linen, but as plaster.

§ 680

Retrieved

§ 681

m) About naming: children

Under the word: children, if the testator considers the children of another, only the sons and daughters are understood, but if he considers his own children, also the descendants taking their place, which were already produced at the death of the testator.

§ 682

n) Related

A legacy set aside without further provision for the relatives shall be given to those who are the closest according to the legal succession, and the rule established above in § 559 on the distribution of an inheritance among such persons as are considered to be one person shall also be applied to legacies.

§ 683

o) Service persons

If the testator has left a legacy to his servants, and they are designated only by the employment relationship, it is presumed that it is to be received by those who are in the employment relationship at the time of his death. However, in this case, as in the other cases, the presumption may be overruled by stronger grounds for presumption to the contrary.

§ 684

*Accrual date for legacies*

As a rule (§ 699), the legatee acquires a right to the bequest for himself and his successors immediately after the death of the testator. The right of ownership to the bequeathed property, however, can be acquired only in accordance with the provisions for the acquisition of property set forth in the 5th principal part.

Payment date

General Civil Code

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## § 685

The bequest of individual items of the estate and rights relating thereto, small rewards of the servants, and pious bequests may be claimed immediately, but others only after one year from the death of the testator.

## § 686

In the case of a bequest of a single estate, the legatee shall also be entitled to the current expenses incurred since the death of the deceased.

The legatee shall be entitled to the interest, benefits accrued and any other accrual. On the other hand, he shall also bear all encumbrances on the legacy and even the loss if it is diminished or completely destroyed through no fault of another.

## § 687

If someone is bequeathed an amount to be paid in recurring periods, as: every year, month and the like, the legatee receives a right to the entire amount of this period, even if he has only experienced the beginning of the period. However, the amount can be claimed only at the end of the period. The first period begins to run on the day of the testator's death.

## § 688

*Right of the legatee to secure*

In all cases in which a creditor is entitled to demand security from a debtor, a legatee may also demand security for his bequest.

## § 689

## To whom a completed legacy would fall?

A legacy which the legatee is unable or unwilling to accept shall fall to the successor (§ 652). If there is no successor and the entire legacy is intended for several persons either undivided or expressly in equal shares, the share that one of them does not receive accrues to the others in the same way as the inheritance accrues to the co-heirs. Except in the two cases mentioned, the completed legacy shall remain in the estate.

## Right of the heir if the burdens exhaust the estate

## § 690

If the entire inheritance is exhausted by legacies, the heir shall have nothing

The deceased shall be entitled to demand reimbursement of his expenses incurred for the benefit of the estate and a reward commensurate with his efforts. If he does not wish to administer the estate himself, he must request the appointment of a curator.

§ 691

If not all legatees can be satisfied from the estate, the legatee's legacy shall be paid before all others, and the legatee shall be entitled to maintenance from the day of the inheritance.

or even exceed

§ 692

If the estate is not sufficient to pay the debts, other obligatory expenses and to correct all legacies, the legatees shall suffer a proportionate deduction. Therefore, as long as such a danger exists, the heir is not obliged to correct the legacies without security.

§ 693

In the event, however, that the legatees have already received the legacies, the deduction shall be determined according to the value which the legacy had at the time of receipt and the benefits derived therefrom. However, even after the bequest has been received, the legatee is still free, in order to avoid the contribution, to restore the bequest or the above-mentioned value and the benefits received to the estate; with regard to the improvements and aggravations, he is treated as a bona fide owner.

*From the statutory contributions to public institutions*

§ 694

The contributions which a testator has set aside in the will in accordance with the political regulations for the support of the poor, invalid and hospitals and of public education are not to be regarded as legacies; they are a state obligation, must themselves be paid by the legal heirs and cannot be judged according to the principles of private law, but only according to the political regulations.

12. Main section

Of restriction and annulment of the last will and testament

§ 695

Right of the testator to limit or modify his last will and testament The testator may limit his order to a condition, to a time,

limit by an order or a declared intention. He may also amend his will or codicil or revoke it altogether.

*Types of restriction of the last will*

1. Condition

§ 696

A condition is an event on which a right is made dependent. The condition is affirmative or negative, depending on whether it relates to the success or failure of the event. It is a condition precedent if the right conferred becomes effective only after its fulfillment; it is a condition subsequent if the right conferred is lost upon its occurrence.

*Regulations*

§ 697

*a) about incomprehensible*

Quite incomprehensible conditions are to be respected for not buried.

§ 698

*b) impossible or unauthorized*

An order granting a right to a person under an impossible condition precedent is invalid, even if the fulfillment of the condition would have been impossible only subsequently and the impossibility would have become known to the testator. A resolving impossible condition shall be deemed not to have been fulfilled. All this shall also apply to impermissible conditions.

§ 699

*c) possible and allowed conditions*

If the conditions are possible and permitted, the right depending on them can be acquired only by their exact fulfillment, they may depend on chance, on the will of the intended heir, legatee or a third party.

§ 700

*d) Condition of non-marriage and non-establishment of a registered partnership*

The condition that the heir or legatee should not marry or enter into a registered partnership, even after reaching the age of majority, shall be deemed not to have been imposed. Only a widowed person or a surviving registered partner, if he or she has one or more children, is required to have

has fulfilled the condition. The condition that the heir or legatee does not marry or enter into a registered partnership with a certain person may be validly imposed.

§ 701

*e) if the condition has been fulfilled during the life of the testator*

If the condition prescribed in the last will and testament has already been fulfilled during the life of the testator, the fulfillment of the same must be repeated after the death of the testator only if the condition consists in a hand-me-down by the heir or legatee which can be repeated by him.

§ 702

*Whether the condition should also be extended to those subsequently appointed*

A condition attached to the heir or legatee shall not be extended to the heir or legatee subsequently appointed by the decedent without the express declaration of the decedent.

§ 703

Effect of a possible condition precedent

In order to acquire an inheritance subject to a condition precedent, it is necessary that the intended person survives the fulfillment of the condition and is capable of inheriting upon the occurrence of the same.

2. Time

§ 704

If it is uncertain whether the time to which the testator restricts the intended right will come or not, this restriction is considered a condition.

§ 705

If the time is of such a nature that it must come, the intended right, like other unconditional rights, is also transferred to the heirs of the intended person and only the transfer is postponed until the set date.

§ 706

If it would be obvious that the time measured out in the last order could never come, then the determination of this time is regarded like the burial of an impossible condition. Only in the case that the testator is likely to have



General Civil Code

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If the testator has merely made a mistake in the calculation of the time, the time will have to be determined according to the testator's probable will.

Legal relationship at a condition or time between the contemplated and subsequent person

## § 707

As long as the right of the heir or the legatee remains postponed because of a condition not yet fulfilled or because of the time not yet come, so long there shall be, in the first case, between the legal and appointed heir and, in the second case, between the heir and the legatee, with regard to the former possession and enjoyment of the estate, the right of the heir or the legatee to the estate.

The same rights and liabilities as in the case of a fideicommissary substitution shall apply to the transfer of a legacy or bequest.

## § 708

A person who receives an inheritance or a legacy under a negating or dissolving condition or only for a certain period of time shall have the same rights and liabilities against the person to whom the inheritance or legacy accrues upon the occurrence of the condition or the certain point in time as are due to an heir or legatee against the fideicommissar substitute (§ 613).

## 3. Order

## § 709

If the testator has bequeathed an estate to someone under a mandate, this mandate is to be regarded as a condition subsequent that the estate should be forfeited by the non-fulfillment of the mandate (§ 696).

## § 710

In the event that the order cannot be fulfilled exactly, one must at least try to come as close as possible to the same. If this cannot be done, the burdened party shall nevertheless retain the intended estate, unless the contrary is evident from the will of the testator. Whoever has rendered himself incapable of fulfilling the obligation shall lose the estate intended for him.

## § 711

If the testator expressed the intention for which he intended the estate, but did not make it obligatory, the intended person cannot be required to use the estate for this intention.

§ 712

The order by which the testator instructs his heir to perform an impossible or unauthorized act with the proviso that if he does not comply with the order he shall pay a legacy to a third party is invalid.

§ 712a

If an animal is made a beneficiary in a testamentary disposition, the relevant disposition shall be deemed to mandate that the animal be cared for in a manner appropriate to the animal.

*Of repeal of the orders, to wit:*

1. By establishing a new order; a will

§ 713

An earlier will shall be revoked by a later valid will not only with respect to the appointment of the heir but also with respect to the other provisions if the testator does not clearly indicate in the latter that the earlier will is to continue in whole or in part. This provision shall also apply if in the later will the heir is appointed to only a part of the inheritance. The remaining part shall not go to the heirs appointed in the earlier will but to the legal heirs.

*or codicils*

§ 714

A later codicil, several of which may exist side by side, cancels earlier bequests or codicils only insofar as they are in conflict with the same.

§ 715

If it cannot be decided which will or codicil is the later, both shall apply insofar as they can coexist, and the provisions set forth in the main section on community of property shall apply.

§ 716

*notwithstanding the previously declared immutability*

The addition in a will or codicil that any subsequent arrangement shall be null and void at all or, if it is not designated with a certain characteristic, shall be considered as not having been made.

2. by revocation

General Civil Code

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## § 717

If the testator wishes to revoke his order without making a new one, he must expressly revoke it either orally or in writing or obliterate the deed.

## § 718

Revocation can only be validly effected in a state in which one is capable of declaring a last will and testament.

*a) an explicit*

## § 719

An oral revocation of a judicial or extrajudicial last order requires as many and such witnesses as are necessary for the validity of an oral will, but a written one requires a declaration written and signed by the testator's own hand or at least signed by him and the witnesses required for a written will.

## § 720

An order of the testator forbidding the heir or legatee to contest the last will and testament under threat of deprivation of a benefit shall never be of any effect in case only the authenticity or the meaning of the declaration is contested.

*b) tacit*

## § 721

Whoever cuts through the signature in his will or codicil, crosses it out or erases the entire contents, shall destroy it. If only one of several documents with the same wording has been obliterated, no revocation can be inferred from this.

## § 722

If the imagined violations of the deed happened only by accident or if the deed got lost, the last will and testament does not lose its effect if the accident and the content of the deed are proved otherwise.

## § 723

If a testator has destroyed a later order but left the earlier written order intact, the earlier written order shall be reinstated. An earlier oral order shall not thereby be revived.

or c) suspected

§ 724

A bequest shall be considered revoked if the testator has collected and levied the bequeathed debt, if he has alienated the thing intended for someone and has not received it back, or if he has transformed it into another in such a way that the thing loses its previous form and name.

§ 725

If, however, the debtor has adjusted the claim of his own accord, if the disposal of the legacy has been effected by court order, if the thing has been transformed without the testator's consent, the legacy shall exist.

§ 726

3. by renunciation of the heirs

If neither an heir nor a successor wishes or is able to accept the estate, the right of inheritance falls to the legal heirs. However, they are obliged to comply with the testator's other dispositions. If they also renounce the inheritance, the legatees are proportionately considered as heirs.

13. Main section

From intestate succession

Cases of intestate succession

§ 727

If the deceased did not leave a valid declaration of last will and testament, if he did not dispose of all his property in the same, if he did not duly provide for the persons to whom he was obliged by law to leave a share of the inheritance, or if the appointed heirs cannot or do not wish to accept the inheritance, the legal succession shall apply in whole or in part.

§ 728

In the absence of a valid declaration of the last will and testament, the entire estate of the deceased shall devolve upon the legal heirs. If, however, there is a valid declaration of the last will and testament, they shall be entitled to that share of the estate which is not intended for anyone in the declaration.

§ 729

## General Civil Code

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### *Provision for the case of reduced compulsory portion*

If a person to whom the testator was obliged to leave a share of the inheritance by virtue of the laws has been shortened by a last will and testament, he may invoke the provision of the law, and

claim the share of the inheritance due to him/her in accordance with the following main section.

#### Legal heirs

##### § 730

1) Legal heirs are the spouse or registered partner and those persons who are next of kin to the deceased.

#### 2) Retrieved

##### I. Legal right of inheritance of relatives

##### § 731

1) To the first line belong those who unite under the testator, as their tribe, namely: his children and their descendants.

2) The second line includes the decedent's father and mother together with those who unite with him under father and mother, namely: his brothers and sisters and their descendants.

3) The third line includes the grandparents together with the siblings of the parents and their offspring.

4) Of the fourth line, only the decedent's first great-grandparents are called to inherit.

#### 1. Line: The children

##### § 732

If the testator has children of the first degree, the entire inheritance shall devolve upon them; they may be of male or female sex, they may have been born during the testator's lifetime or after his death. Several children shall divide the inheritance into equal parts according to their number. Grandchildren of still living children and great-grandchildren of still living grandchildren have no right of succession.

##### § 733

If a child of the testator has died before him, and if there are one or more grandchildren of the same, the share given to the deceased child shall fall to the deceased child.

The share of the deceased grandchild that would have been due to the deceased grandchild shall be allocated to the deceased grandchild in its entirety or to the several grandchildren in equal shares. If one of these grandchildren has also died and left great-grandchildren, the share of the deceased grandchild shall be divided equally among the great-grandchildren in the same manner. If there are more distant descendants of a decedent, the division shall be made proportionately according to the above rule.

§ 734

In this way an inheritance is divided not only when grandchildren of deceased children meet children still living, or more distant descendants meet nearer descendants of the testator, but also when the inheritance is to be divided merely between grandchildren of different children or between great-grandchildren of different grandchildren. Therefore, the grandchildren left by each child and the great-grandchildren left by each grandchild, be they many or few, can never receive more or less than the deceased child or grandchild would have received if they had remained alive.

2. Lineage: The parents and their descendants

§ 735

If there is no one who is descended from the testator himself, the inheritance shall fall to those who are related to him through the second line, namely: to his parents and their descendants. If both parents are still alive, the entire inheritance shall be due to them in equal shares. If one of these parents is deceased, his surviving children or descendants shall succeed to his right, and the half which would have been due to the deceased shall be divided among them according to the principles laid down in §§ 732 to 734 for the division of the estate between children and distant descendants of the testator.

§ 736

If both parents of the testator are deceased, that half of the inheritance which would have been due to the father shall be distributed among his surviving children and their descendants; but the other half which would have been due to the mother shall be distributed among her children and their descendants.

divided in accordance with sections 732 to 734. If there are no children of these parents other than those produced jointly by them or descendants of the same, they shall divide the two halves equally between them. If, however, in addition to these there are children produced by the father or by the mother or by one and the other in another marriage, the children produced by the father and the mother or by one and the other in a different marriage shall receive the children produced by the father and the mother.

The children produced jointly by the mother or her descendants shall receive their due share of both the paternal and maternal halves, which shall be equal to that of the unilateral siblings.

#### § 737

If one of the deceased parents of the testator has left neither children nor descendants, the entire inheritance shall go to the other parent who is still alive. If this part is also no longer alive, the entire inheritance shall be distributed among his children and descendants according to the principles already stated.

#### 3. Lineage: The grandparents and their descendants

#### § 738

If the parents of the testator have died without descendants, the inheritance passes to the third line, namely: to the grandparents of the testator and their descendants. The inheritance is then divided into two equal parts. One half belongs to the father's parents and their descendants, the other to the mother's parents and their descendants.

#### § 739

Each of these halves shall be divided equally among the grandparents of one and the other side, if they are both still living. If one of the grandparents or both of one or other of them have died, the half belonging to that side shall be divided between the children and descendants of those grandparents according to the principles according to which in the second line the whole inheritance must be divided between the children and descendants of the parents of the deceased (§§ 735 to 737).

#### § 740

If both grandparents of the paternal or maternal side are deceased and there are no descendants neither of the grandfather nor of the grandmother of this side, then the grandparents of the other side still living or after the death of the same, their surviving children and descendants shall be entitled to the entire inheritance.

#### 4. Line: The great grandparents

#### § 741

1) After complete extinction of the third line, the great-grandparents of the decedent are

The grandparents of the father of the deceased are entitled to the legal succession. The grandparents of the father of the decedent shall receive one half of the inheritance and the grandparents of the mother the other half. In each half of the inheritance, the two pairs of grandparents share equally. If one part of a pair of grandparents is absent, the eighth of the inheritance attributable to this part shall go to the surviving part of this pair of grandparents. If a pair of grandparents is absent, the other pair of grandparents of the same parent of the deceased shall be entitled to their quarter.

2) If the grandparents of one of the deceased's parents are absent, the grandparents of the other parent shall be entitled to the half of the estate attributable to them to the same extent as to the half of the estate directly attributable to them.

§§ 742 to 749 Revoked

§ 750

If a person is related to the testator from more than one side, he shall enjoy from each side the right of succession to which he is entitled as a relative from that side in particular (§ 736).

§ 751

*Exclusion of the more distant relatives*

The right of succession is restricted to these four lines of kinship in respect of freely inheritable property.

II. Legal right of inheritance of legitimated children

§ 752

Retrieved

§ 753

Retrieved

§ 754

III. Children born out of

wedlock Repealed

§ 755

IV. *The elective child*

Retrieved

§ 756



V. Inheritance rights of parents in respect of children mentioned in sections  
752 to 754 Repealed

*II. Legal right of inheritance of a spouse or registered partner*

§ 757

1) The spouse or registered partner of the deceased is the legal heir to half of the estate in addition to the children of the deceased and their descendants, and to two-thirds of the estate in addition to the parents and siblings of the deceased or grandparents. If, in addition to grandparents, there are descendants of deceased grandparents, the deceased's

The spouse or the registered partner shall inherit from the remaining third of the estate the part that would accrue to the descendants of the deceased grandparents. The same applies to those portions of the estate that would accrue to the descendants of deceased siblings. In other cases, the spouse or registered partner receives the entire estate.

2) The spouse's share of the inheritance shall include everything that the spouse receives from the decedent's estate by marriage pact or inheritance contract. For the registered partner, this applies with regard to an inheritance contract.

§ 758

If the spouse or registered partner has not been legally disinherited, he or she is entitled to the right to continue to live in the joint home and to the movable property belonging to the joint household, insofar as this is necessary for its continuation in accordance with the previous living conditions.

§ 759

1) The legal right of inheritance of the spouse expires if the marriage has been declared invalid, divorced or separated by the court.

2) If the former spouses again enter into marriage with each other or if the court's separation decree loses its effectiveness, the legal right of inheritance of the spouse shall revive.

3) This provision applies *mutatis mutandis* to the registered partnership.

§ 760349350

*Heirless estate*

If there is no one entitled to the succession or if no one acquires the inheritance, the estate shall fall to the country as an heirless estate.

§ 761

*Deviations from the general order of succession*

The deviations from the legal succession determined in this main part with regard to peasant estates and the inheritance of ecclesiastical persons are contained in the political laws.

14. Main section

The compulsory portion and its inclusion in the compulsory or inheritance portion  
Which persons are entitled to a compulsory portion?

§ 762

The persons whom the testator must consider in the last order are his children, in the absence of such his parents, and the spouse or registered partner.

§ 763

Under the name of children, according to the general rule (§ 42), grandchildren and great-grandchildren are also included, and under the name of parents all grandparents. No distinction shall be made between children whose parents are married to each other and children whose parents are not married to each other, as soon as the law and order of intestate succession would apply to these persons.

§ 764

The share of the inheritance which these persons are entitled to claim is called the compulsory share; they themselves are called compulsory share beneficiaries in this respect.

*In what amount*

§ 765

1) As a compulsory share, each child, spouse or registered partner is entitled to half of what he or she would have been entitled to according to the statutory succession.

2) The spouse or registered partner is entitled to double the compulsory share if he or she contributed significantly to building up the deceased's assets and the increase in assets generated during the marriage or registered partnership accounts for the majority of the inheritance.

§ 766

In the ascending line, each beneficiary of a compulsory portion is entitled to a third of what he or she would have received according to the legal succession.

§ 767

General Civil Code

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*and under what restrictions*

- 1) A person who has renounced the right of succession, who is excluded from the right of succession in accordance with the provisions contained in the eighth principal act, or who has been lawfully disinherited by the testator, shall have no claim to a compulsory portion and shall be regarded in the measurement of the same as if he did not exist at all.
- 2) A reduction in the compulsory portion pursuant to section 773a shall not increase the compulsory portion of the other beneficiaries of the compulsory portion.

*Requirements of a lawful disinheritance*

## § 768

A child may be disinherited:

1. if it left the testator helpless in a state of emergency;
2. if he/she has been sentenced to life imprisonment or 20 years imprisonment for one or more criminal acts committed with intent;
3. if it persistently leads a way of life contrary to public morality.

## § 769

For the same reasons, the spouse, registered partner and parents may also be disinherited; the spouse or registered

In addition, the partner if he has grossly neglected his duty of assistance, the parents if they have grossly neglected the care and upbringing of the deceased.

## § 770

In general, a beneficiary of the compulsory portion may also be deprived of the compulsory portion by the last declaration of will on account of such acts which make an heir unworthy of the right of inheritance pursuant to §§ 540 to 542.

## § 771

The cause of disinheritance, whether expressed by the testator or not, must always be proved by the heir, and must be founded in the words and the spirit of the law.

## § 772

The disinheritance shall be revoked only by an express revocation declared in the statutory form.

## § 773

If in the case of a very indebted or profligate beneficiary of the compulsory portion there is a probable concern that his children would lose all or most of the compulsory portion due to him, he may be deprived of the compulsory portion by the testator, but only in such a way that it is allocated to the children of the beneficiary of the compulsory portion.

§ 773a

*Reduction of compulsory portion*

- 1) If the testator and the beneficiary of the compulsory portion did not at any time have a close relationship such as usually exists in the family between such relatives, the testator may reduce the compulsory portion to half.
- 2) Sections 771 and 772 apply mutatis mutandis to the reduction of the compulsory portion.
- 3) The right to a reduction of the compulsory portion shall not be available if the testator has rejected the exercise of the right to personal intercourse with the beneficiary of the compulsory portion on principle.

§ 774

*How to leave the compulsory part*

The compulsory portion may be bequeathed in the form of an inheritance or legacy, even without an express designation of the compulsory portion. However, it must remain entirely free to the beneficiary of the compulsory portion. Any condition or encumbrance restricting the same is invalid. If a larger share of the inheritance is intended for the beneficiary of the compulsory portion, it may only be applied to the part which exceeds the compulsory portion.

Remedies of the beneficiary of the compulsory portion

§ 775

*a) in case of unlawful disinheritance or reduction in the compulsory part*

A beneficiary of a compulsory portion who has been disinherited without the conditions prescribed in sections 768 to 773 may claim the full compulsory portion due to him or her and, if he or she has been reduced in the pure amount of the compulsory portion, supplementation thereof.

*b) in the event of a complete override*

§ 776

If, out of several children whose existence was known to the testator, one is completely passed over with silence, it can also only claim the compulsory portion.

## § 777

If, however, it can be proved from the circumstances that the passing over of one of several children was only due to the fact that the testator was unaware of the existence of the same, the person passed over is not obliged to be content with the compulsory portion, but he may demand the share of the inheritance which falls to the person entitled to the compulsory portion who is the least favored, but if the only remaining person entitled to the compulsory portion is appointed or all the others are appointed to equal shares, he may demand an equal share of the inheritance.

## § 778

If the testator has a single beneficiary of the compulsory portion, and he passes him over with silence due to the above-mentioned error, or if a childless testator receives a beneficiary of the compulsory portion only after the declaration of his last will and testament, for whom no provision has been made, then only the legacies intended for public institutions, for the reward of services rendered or for pious intentions shall be paid proportionately in an amount not exceeding the fourth part of the pure estate, but all other instructions of the last will and testament shall be completely invalidated. However, if the person entitled to the compulsory portion predeceases the testator, they shall regain their force.

## § 779

- 1) If a child dies before the testator and leaves descendants, these descendants, who have been passed over with silence, shall take the place of the child with regard to the right of inheritance.
- 2) The descendants of a predeceased beneficiary of the compulsory portion whose compulsory portion has been reduced may only claim the reduced compulsory portion.

## § 780

The descendants of a disinherited child are only entitled to claim the compulsory portion, even if the disinherited person has survived the testator.

## § 781

If the spouse, registered partner or parents are passed over with silence, they may only claim the compulsory portion.

## § 782

If the heir can prove that a person entitled to a compulsory share who has been passed over with silence has been guilty of one of the causes of disinheritance listed in sections 768 to 770, the heir shall be entitled to a share in the inheritance.

If a person has been guilty of a misdemeanor, the override is regarded as a tacit legal disinheritance.

§ 783

*Who has to contribute to the payment of the inheritance or compulsory portion*

In all cases in which a beneficiary of a compulsory portion has not been paid the due inheritance or compulsory portion at all or not completely, both the appointed heirs and the legatees, but not the spouse or registered partner with the statutory advance bequest, must contribute proportionately up to the full payment.

§ 783a

*Deferral and payment by installments of the claim to a compulsory portion*

1) The heir may demand deferral of the compulsory portion or payment of the compulsory portion in installments if immediate fulfillment of the entire claim to the compulsory portion would be an undue hardship for the heir due to the nature of the objects of the estate, in particular if it would force him/her to give up the family home or to sell an asset that forms the economic basis of life for the heir and his/her family. The interests of the beneficiary of the compulsory portion must be taken into account appropriately.

2) In the event of deferral or payment in installments, interest shall be payable on the claim for the compulsory portion. In addition, the beneficiary of the compulsory portion may demand security. The court shall decide on the amount and due date of the interest and on the type and extent of the security.

3) A final decision under paras. 1 and 2 may be annulled or amended by the court upon application if the circumstances have changed significantly after the decision was made.

4) The probate court shall be competent to decide on the applications pursuant to paras. 1 to 3. If a legal dispute is pending regarding the claim to the compulsory portion, the applications pursuant to paras. 1 and 2 shall be filed in these proceedings.

*Method of measurement and calculation of the compulsory part*

§ 784386387

In order to correctly measure the compulsory portion, all movable and immovable property belonging to the estate, all rights and claims which the decedent may freely transfer to his or her successors shall be taken into account.

was authorized to inherit, even everything that an heir or legatee owes to the mass,

General Civil Code

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described in detail and appraised. The beneficiaries of the compulsory portion shall be free to attend the valuation and to make their remarks. They may not insist on the items of the estate being offered for sale in order to ascertain their true value. Debts and other encumbrances which were already attached to the property during the lifetime of the testator shall be deducted from the estate.

## § 785

1) At the request of a child entitled to a compulsory portion, a spouse entitled to a compulsory portion or a registered partner entitled to a compulsory portion, gifts made by the deceased must be taken into account when calculating the estate. The object of the gift shall be added to the estate at the value that is decisive for the imputation under section 794.

2) The right under subsection (1) shall accrue to a child only in respect of such gifts as were made by the decedent at a time when he or she had a child entitled to a compulsory portion, to a spouse only in respect of such gifts as were made during his or her marriage to the decedent, and to a registered partner only in respect of such gifts as were made during the registered partnership.

3) In any case, gifts made by the decedent out of income without diminution of his basic assets, for charitable purposes, in accordance with a moral duty or out of considerations of decency shall not be taken into account. The same shall apply to gifts made earlier than two years before the death of the testator to persons not entitled to a compulsory portion.

## § 786

The compulsory portion shall be calculated without regard to legacies and other encumbrances arising from the last will. Until the actual allocation, the estate is to be regarded as a joint property between the heirs and the beneficiaries of the compulsory portion in proportion to the profit and the disadvantages.

*Offset to the compulsory part*

## § 787

1) Everything that the beneficiaries of the compulsory portion actually receive from the estate by legacies or other dispositions of the decedent shall be taken into account in determining their compulsory portion.

2) If gifts are to be taken into account when determining the compulsory portion

If the gifts received from the testator are not part of the estate, each beneficiary of the compulsory portion must allow the gifts to be added to the increase in his compulsory portion pursuant to § 785 which he himself received from the testator.

§ 788

What the testator gave during his lifetime to a child for furnishing or directly for taking up an office or trade, or used to pay the debts of a child of full age, shall be included in the compulsory portion.

§ 789

In general, the benefits paid by the testator inter vivos as an advance on the compulsory portion are to be included in the compulsory portion, and in the compulsory portion of the spouse or registered partner also everything that he or she receives as a statutory advance legacy (§ 758).

*or to the share of inheritance in the case of intestate succession*

§ 790

The children's inheritance from the last will and testament is taken into account only if the testator expressly decrees it. On the other hand, even in the case of intestate succession, a child must take into account the-

The grandchild shall be credited with what it received from the testator during his lifetime for the purposes mentioned above (§ 788). A grandchild shall have included in his inheritance not only what he himself has received directly, but also what his parents, in whose place he takes his place, have received in this way.

§ 791

What parents have given to a child, except in the cases mentioned, is considered a gift if the parents have not expressly stipulated reimbursement, and is not taken into account.

§ 792

The parents may expressly waive the imputation to a child even in the case of legal succession. If, however, the necessary upbringing of the other children could be met neither from their own nor from the parents' property, the child must have credited to him/her that which he/she has received in advance for the purposes mentioned in § 788 to the extent that it is necessary for the upbringing of the siblings.

§ 793

The crediting of the received to the share of inheritance is done by the fact that each child



General Civil Code

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receives the same amount before the division. If the estate is not sufficient for this purpose, the previously beneficiary child may not claim a share of the inheritance, but may also not be required to make any restitution.

## § 794

If the received property does not consist of cash but of other movable or immovable property, the value of the latter shall be determined according to the time of receipt; the value of the former, on the other hand, according to the time of accrual of the inheritance.

## § 795

*Entitlement of the beneficiary of the compulsory portion to the necessary*

A beneficiary of a compulsory portion who is excluded from his compulsory portion by law must always be assessed the necessary maintenance.

## § 796

*and of the spouse or registered partner on decent maintenance*

The spouse or registered partner has, except in the cases of §§ 759 and 795, as long as he does not enter into a new marriage or a registered partnership, a claim to the heirs up to the value of the estate for a decent maintenance corresponding to the proportions. This entitlement shall include everything which the entitled person receives after the deceased by contractual or testamentary donation, as a legal share of the estate, as a compulsory share, by payment under public or private law; likewise his or her own property or the proceeds of a gainful activity actually pursued by him or her or of such gainful activity as may be expected of him or her under the circumstances.

## 15. Main section

From taking possession of the inheritance

*Conditions for legal possession of an inheritance*

## § 797

No one may take possession of an inheritance on his own authority. The right of inheritance must be negotiated in court and the inheritance must be transferred into legal possession by the court.

## § 798

How far the court has to proceed ex officio after a death case, and

The time limits and precautions to be observed in this transaction shall be determined by the special provisions governing the court proceedings. Here it is determined what the heir or the person who otherwise has a claim to the estate is obliged to do in order to obtain what is due to him.

§ 798a

If the court transfers an over-indebted estate in lieu of payment, the transfer order shall constitute a title to the acquisition.

*Designation of the legal title; declaration of inheritance*

§ 799

Whoever wishes to take possession of an inheritance must show the court the legal title, whether it falls to him from a final decree, from a valid inheritance contract or from the law, and expressly declare that he accepts the inheritance.

§ 800

The acceptance of the inheritance or the declaration of acceptance of the inheritance must contain at the same time whether it is unconditional or with reservation of the legal benefit of the inventory.

§ 801

Effect of the unconditional

The unconditional declaration of acceptance of the inheritance has the consequence that the heir is liable to all creditors of the deceased for their claims, and to all legatees for their legacies, although the estate is not sufficient.

§ 802

*and the conditional declaration*

If the inheritance is accepted with the reservation of the legal benefit of the inventory, the inventory shall be taken immediately by the court at the expense of the estate. Such an heir shall be bound to the creditors and legatees only to the extent that the estate is sufficient for their claims and also for his own claims to which he is entitled apart from the right of inheritance.

*Entitlement to conditional or unconditional acceptance or disclaimer of the succession*

§ 803

General Civil Code

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The testator may not take away the reservation of this legal benefit from the heir, nor prohibit the establishment of an inventory. Even the reference to this in an inheritance contract between spouses or registered partners is of no effect.

## § 804

The establishment of the inventory may also be requested by the person who is entitled to a compulsory part.

## § 805

Anyone who is able to administer his rights himself is free to accept the inheritance unconditionally or with reservation of the above legal benefit, or to renounce it. Guardians and trustees shall comply with the regulations issued at the appropriate place (§ 233).

## § 806

The heir can no longer revoke his judicial declaration of acceptance of the inheritance, nor even amend the unconditional one and reserve the legal benefit of the inventory.

## § 807

If, of several co-heirs, some declare themselves to be heirs unconditionally, but others or only one of them declare themselves to be heirs with the reservation of the aforementioned legal benefit, an inventory must be drawn up and the declaration of acceptance of the inheritance limited to this reservation must form the basis of the probate proceedings. In this case, as well as in all cases in which an inventory must be drawn up, the person who has made an unconditional declaration of acceptance of the inheritance shall also enjoy the legal benefit of the inventory as long as the inheritance has not yet been handed over to him.

## § 808

If a person is appointed heir who would have been entitled to the right of inheritance in whole or in part even without a last will and testament, he is not entitled to invoke the legal succession and thus to vindicate the declaration of the last will and testament. He must either accept the inheritance from the last will or renounce it altogether. However, persons who are entitled to a compulsory share may renounce the inheritance with reservation of their compulsory share.

## § 809

Transfer of the right of inheritance

If the heir dies before accepting or disclaiming the inheritance, his heirs shall have the right to accept or disclaim the inheritance if the testator did not exclude them or designate other heirs (section 537).

Arrangements prior to the inheritance

§ 810

*a) Management*

1) The heir who sufficiently proves his or her right to inherit at the time of acceptance of the inheritance shall have the right to use and administer the assets of the estate and to represent the estate, unless the probate court orders otherwise. If this applies to several persons, they shall exercise this right jointly unless they agree otherwise.

2) Acts of administration and representation prior to the submission of declarations of accession to the estate as a whole as well as all disposals of objects from the estate's assets shall require the approval of the probate court if they are not part of the ordinary business operations. The approval shall be refused if the act would obviously be disadvantageous for the estate.

3) If, according to the file situation, an inventory is to be expected, assets whose sale is not part of the ordinary course of business may only be sold after they have been included in an inventory (partial inventory).

§ 811

*b) Securing or satisfying creditors*

The court shall not provide for the security or satisfaction of the testator's creditors beyond what they themselves require. However, the creditors are not obliged to wait for a declaration of acceptance of inheritance. They may bring their claims against the estate and request that a curator be appointed to represent them, against whom they may execute their claims.

§ 812

*c) Separation of the estate from the assets of the heir*

If a creditor of the estate, a legatee or a beneficiary of a compulsory portion is concerned that he or she may run the risk of his or her claim being prejudiced by the commingling of the estate with the assets of the heir, he or she may, before the inheritance takes place, demand that the estate be separated from the assets of the heir, that it be held in custody by the court, or that the estate be transferred to a third party.

General Civil Code

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or administered by a trustee of the estate, his claim to it shall be noted and adjusted. In such a case, however, the heir shall no longer be liable to him from his own assets, even though he would have unconditionally declared himself heir.

## d) Convening the creditors of the estate

## § 813

The heir or the appointed trustee of the estate shall be at liberty, for the purpose of ascertaining the status of the debt, to request the issuance of an edict summoning all creditors to file and present their claims for a period of time appropriate to the circumstances, and to hold off on the satisfaction of the creditors until the period of time has elapsed.

## § 814

## Effect of the convocation

The effect of this court summons is that the creditors who have not reported within the specified time limit are not entitled to any further claim against the estate, if it has been exhausted by the payment of the claims filed, insofar as they are entitled to a lien.

## § 815

*or the omission of the same*

If the heir neglects to take the precaution of calling the court as granted to him, or if he immediately satisfies some of the creditors who register without taking into account the rights of the others, and if some creditors remain unpaid due to insufficiency of the estate, he shall be liable to them with all his property, notwithstanding the conditional declaration of acceptance of the inheritance, to the extent that they would have received the payment if

the estate would have been used to satisfy the creditors according to the legal order.

## e) Expulsion on the fulfillment of the last will

## § 816

## either by the executor of the will

If the testator has appointed an executor of his last will, it depends on his arbitrariness to take this business upon himself. If he has over-

If the heir has been deprived of his inheritance, he is obliged either to carry out the orders of the heir himself as a ruler or to pursue the defaulting heir to carry them out.

*or the heir*

§ 817

If no executor of the last will has been appointed or if the appointed one does not submit to the business, it is directly incumbent on the heir to fulfill the will of the testator as far as possible or to ensure its fulfillment and to prove himself to the court about it. In respect of certain legatees, he/she shall merely state that he/she has informed them of the bequest that has accrued to them (§ 688).

§ 818

The political ordinances shall contain special provisions on the taxes to be paid by the heir before he can receive the inheritance and, if the deceased has been charged against the state treasury, on the taxes to be paid by the heir.

§ 819

*When to answer the inheritance*

As soon as the court has recognized the rightful heir on the submitted declaration of acceptance of the inheritance and the heir has fulfilled the obligations, the inheritance shall be transferred to him and the proceedings shall be closed. Incidentally, in order to obtain the transfer of ownership of immovable property, the heir must comply with the provisions of § 436.

*Liability of joint heirs*

§ 820

Several heirs who have accepted a joint inheritance without the legal benefit of the inventory shall be liable to all creditors and legatees, even after the inheritance, all for one and one for all. Among themselves, however, they are obliged to contribute in proportion to their inheritance shares.

§ 821

If the joint heirs have made use of the legal benefit of the inventory, they shall be liable to the inheritance creditors and legatees in accordance with § 550 before the inheritance. After the inheritance has taken place, each individual shall be liable for the assets which do not exceed the estate,

burdens only in proportion to his share of the inheritance.

#### § 822

Security funds of the creditors of the heir

1) Prior to the inheritance, creditors of the heir may only execute on the individual parts of the estate over which the heir has been given free disposal by the probate court.

2) In order to secure claims against an heir, temporary injunctions may be issued in favor of the heir's creditors in respect of the inherited property accruing to him/her prior to the inheritance, if the prerequisites specified in Art. 274 EO are met. Depending on the purpose to be achieved, the necessary means of security (Art. 274 and 277 EO) may be ordered by means of the temporary injunction.

#### § 823

Inheritance lawsuits

Even after the inheritance has been received, the possessor can be sued for assignment or division of the inheritance by the person who claims to have a better or equal right to the inheritance. The ownership of individual inheritance items is not pursued by means of an action for inheritance, but by means of an action for ownership.

#### § 824

Effect of the same

If the defendant is held to have ceded the estate in whole or in part, the claims for restitution of the fruits received by the owner or for reimbursement of the expenses incurred by him in the estate shall be judged according to the principles established with respect to the owner in good or bad faith (Art. 517 and 519 of the Code of Civil Procedure). A third owner in good faith is not responsible to anyone for the inherited property acquired in the meantime.

16. Main section

From the community of property and other rights in rem

§§ 825 to 858 Revoked

2nd division

From the personal property rights

17. Main

section

From contracts and legal transactions in general

§ 859

*Reason of personal property rights*

The personal property rights by virtue of which one person is bound to another for performance are based directly on a law or on a legal transaction or on damage suffered.

*Award*

§ 860

The promise of a reward for an achievement or success (award), which is not addressed to specific persons, shall become binding through the public announcement. An invitation to tender for a prize shall be valid only if a deadline for the submission of applications is specified in the announcement.

§ 860a

Until the performance has been completed, the invitation to tender may be revoked in the same form in which it was published or in an equally effective form or by special notice, unless otherwise expressly waived in the publication or by fixing a time limit. However, the revocation shall be ineffective against the person who has performed the service with regard to the award if he shows that the revocation was not known to him at that time through no fault of his own.

§ 860b

If the work has been performed by more than one person, the reward shall be due to the person who first performed the work and, in the case of simultaneous performance, to all of them in equal shares, unless a different intention appears from the award.

*Conclusion of the contract*

§ 861

Whoever declares that he will transfer his right to someone else, i.e. that he will allow him to do something, give him something, do something for him or refrain from doing something for his sake, makes a promise, but if the other party validly accepts the promise, a contract comes into existence through the concurring will of both parties. As long as the negotiations last and the promise has not been made or accepted either in advance or afterwards, no contract comes into existence.



General Civil Code

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## § 862

The promise (application) must be accepted within the period determined by the applicant. In the absence of such a time limit, an application made to a person present or by telephone from person to person must be accepted immediately, and an application otherwise made to an absent person must be accepted at the latest until the time at which the applicant, assuming that his application has been received in time, may expect the reply to be received if it is sent in due time and in due form; otherwise, the application shall lapse. The application may not be withdrawn before the expiry of the acceptance period. It shall also not expire if one party dies or becomes incapable of acting during the acceptance period, unless a different will of the applicant is evident from the circumstances.

## § 862a

Acceptance shall be deemed to have been made in due time if the declaration has reached the applicant within the acceptance period. Despite its delay, however, the contract shall be deemed to have been concluded if the applicant should have realized that the declaration of acceptance was sent in time and nevertheless fails to notify the other party of its withdrawal without undue delay.

*Classification of contracts*

## § 863

- 1) One can declare his will not only expressly by words and generally accepted signs, but also tacitly by such actions which, with consideration of all circumstances, leave no reasonable reason to doubt it.
- 2) With regard to the meaning and effect of acts and omissions, consideration shall be given to the customs and practices applicable in fair dealings.

## § 864

- 1) If an express declaration of acceptance is not to be expected according to the nature of the transaction or customary practice, the contract shall be concluded if the request has actually been complied with within the period specified for this purpose or within a period reasonable under the circumstances.
- 2) The keeping, use or consumption of an item that has been sent to the recipient without the recipient's instigation shall not be deemed to be acceptance of a purchase order.

contract. The consignee is not obliged to keep or return the item; he may dispose of it. If, however, it must become apparent to him under the circumstances that the item has reached him by mistake, he must inform the sender within a reasonable period of time or return the item to the sender.

§ 864a

Clauses of unusual content in pre-formulated terms and conditions used by one party to the contract shall not become part of the contract if they cause a significant disproportion of the contractual rights and obligations and the other party to the contract cannot be expected to accept them, even in view of the circumstances, in particular in view of their external appearance.

unless one party to the contract has specifically pointed this out to the other party.

Requirements of a valid contract

*1. Ability of the persons*

§ 865

Retrieved

§ 866

Retrieved

§ 867

What is required for the validity of a contract with a municipality under the special care of the public administration (§ 27) or its individual members and deputies is to be inferred from the constitution of the same and the political laws (§ 290).

§ 868

Retrieved

*2. True consent*

§ 869

Consent to a contract must be declared freely, sincerely, definitely and intelligibly. If the declaration is incomprehensible, quite indefinite, or if the acceptance is made under conditions other than those under which the promise was made, no contract is formed. Whoever uses unclear expressions or undertakes a sham action in order to benefit another, shall be deemed to have satisfied the law.

General Civil Code

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## § 870

- 1) Anyone who has been induced by the other party to enter into a contract by trickery or by unjust and well-founded fear is not bound to keep it.
- 2) Whether the fear was well-founded must be judged from the magnitude and probability of the danger and from the condition of the body and mind of the person threatened.

## § 871

If one party was in error as to the content of the declaration made by him or received by the other party, which relates to the main matter or an essential quality thereof, to which the intention was particularly directed and declared, no liability shall arise for him if the error was caused by the other party or should have been obvious to him from the circumstances or was still clarified in time.

## § 872

If, however, the error relates neither to the main subject matter nor to an essential quality of the same, but to an incidental circumstance, the contract shall still remain valid insofar as both parties have consented to the main subject matter and have not declared the incidental circumstance to be a preferential intention; only the misled party shall be paid the appropriate compensation by the author of the error.

## § 873

The same principles apply to the mistake in the person of the person to whom a promise has been made, insofar as without the mistake the contract would either not have been made at all or not in such a way.

## § 874

In any case, the person who has brought about a contract by cunning or unjust fear must make satisfaction for the adverse consequences.

## § 875

If one of the contracting parties has been induced to enter into a contract or to make an erroneous declaration by a third party through cunning or through unjustified and well-founded fear, the contract shall be valid. Only in the event that the other party participates in the act of the third party shall the contract be valid.

or obviously had to know of the same, Sections 870 to 874 shall apply.

## § 876

The above provisions (Sections 869 to 875) shall apply mutatis mutandis to other declarations of intent which are to be made to another person.

§ 877

On the other hand, anyone who demands the cancellation of a contract for lack of consent must also return everything that he has received for his benefit from such a contract.

*3. Possibility and permissibility*

§ 878

What is virtually impossible cannot be the subject of a valid contract. If the possible and the impossible are stipulated at the same time, the contract shall remain valid in the former part, if it does not appear otherwise from the contract that no point can be separated from the other. Whoever knew or should have known of the impossibility at the time of the conclusion of the contract shall compensate the other party, if the same does not apply to the latter, for the damage he has suffered by relying on the validity of the contract.

§ 879

- 1) A contract that violates a legal prohibition or is contrary to good morals is void.
- 2) In particular, the following contracts are void:
  1. When something is conditioned for the negotiation of a marriage contract;
  2. when a legal friend redeems to himself a dispute entrusted to him, in whole or in part, or makes himself promise a certain part of the amount awarded to the party;
  3. if an inheritance or legacy, which one hopes to receive from a third person, is disposed of while the third person is still alive;
  4. When someone takes advantage of another's carelessness, predicament, weakness of mind, inexperience, or excitement of mind by means that he promises or allows a third party to promise or grant him a consideration for a service, the asset value of which is conspicuously disproportionate to the value of the service.
- 3) A clause contained in pre-formulated terms and conditions which does not specify one of the main services to be provided by both parties shall be null and void in any case if, taking into account all circumstances of the case, it causes a significant imbalance in the contractual rights and obligations to the detriment of one party to the contract.

General Civil Code

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## § 880

If the subject matter of a contract is withdrawn from circulation before it is transferred, it is the same as if the contract had not been concluded.

## § 880a

If a person has promised another a performance of a third party, this shall be deemed to be a promise of his use with the third party; but if he has admitted success, he shall be liable for full satisfaction if the performance of the third party fails.

*Contracts in favor of third parties*

## § 881

- 1) If a person has been promised performance to a third party, he may demand that performance be made to the third party.
- 2) Whether and at what point in time the third party also directly acquires the right to demand performance from the promisor is to be judged from the agreement and the nature and purpose of the contract. In case of doubt, the third party acquires this right if the performance is mainly intended to benefit him.
- 3) The right to the benefits promised by the transferee in favor of a third party in the event of an assignment of property shall, in the absence of any other agreement, be deemed to have been acquired by the third party upon the transfer of the property.

## § 882

- 1) If the third party rejects the right acquired under the contract, the right shall be deemed not to have been acquired.
- 2) The promisor is also entitled to objections from the contract against the third party.

*Form of the contracts*

## § 883

A contract may be made orally or in writing, in or out of court, with or without witnesses. This difference in form makes no difference, except in cases specified by law, as to the binding force.

## § 884

If the parties have reserved the use of a certain form for a contract, it shall be presumed that they will not be bound by it until this form has been fulfilled.

want

§ 885

If the formal deed has not yet been drawn up, but a memorandum on the main points has been drawn up and signed by the parties (punctuation), such a memorandum already establishes the rights and obligations expressed therein.

§ 886

A contract for which the law or the will of the parties requires writing shall be concluded by the signature of the parties or, if they do not know how to write or are incapable of doing so because of infirmity, by burial of their court-certified hand sign or burial of the hand sign before two witnesses, one of whom shall sign the name of the party. The written conclusion of the contract shall be replaced by judicial notarization. The reproduction of the handwritten signature by mechanical means is sufficient only where it is customary in business transactions.

§ 887

Retrieved

*Joint liability or authorization*

§ 888

If two or more persons promise someone the same right to a thing or accept it from him, both the claim and the debt are divided according to the principles of community of ownership.

§ 889

Apart from the cases determined in the law, each of several co-debtors of a divisible thing is liable only for his share, and likewise, of several co-owners of a divisible thing, each must be content with his due share.

§ 890

If, on the other hand, it concerns indivisible property, a creditor, if he is the only one, may demand such property from any co-debtor. If, however, there are several creditors and only one debtor, the latter is not obliged to surrender the thing to a single co-creditor without security; he may insist on the agreement of all co-creditors or demand the judicial custody of the thing.

Correality

General Civil Code

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## § 891

If several persons promise one and the same whole to the undivided hand in such a way that one for all and all for one expressly unite, then each individual person is liable for the whole. It then depends on the creditor whether he wants to claim the whole from all or from some co-debtors or according to shares chosen by him or whether he wants to claim it from only one. Even after an action has been brought, if he refrains from it, this choice is reserved to him; and if he is satisfied only in part by one or the other co-debtor, he may claim the arrears from the others.

## § 892

If, on the other hand, one has promised the same whole to several persons, and if these have been expressly authorized to claim it jointly, the debtor must pay the whole to the creditor who first asks him for it.

## § 893

As soon as a co-debtor has paid the creditor in full, the latter may not claim anything more from the other co-debtors, and as soon as a co-debtor has been satisfied in full by the debtor, the other co-debtors have no further claim.

## § 894

A co-debtor cannot cause any disadvantage to the others by entering into more onerous terms with the creditor, and the indulgence or exemption which a co-debtor obtains for his person does not accrue to the others.

## § 895

The extent to which, out of several co-creditors to whom the same whole has been pledged in full, the one who has received the whole claim for himself is liable to the other creditors must be determined from the particular legal relationships existing between the co-creditors. If no such relationship exists, one is not accountable to the other.

## § 896

A co-debtor who has discharged the entire debt out of his own shall be entitled, even if no assignment of rights has taken place, to claim compensation from the others, namely, if there is no other special relationship between them, from the other debtors.

shall be claimed in equal shares. If one of them was incapable of fulfilling his obligation, or if he is incapable of fulfilling his obligation, such a defaulted share must also be assumed by all co-obligated persons. The discharge received by a co-obligor cannot be detrimental to the others in claiming compensation (§ 894).

Collateral clauses in contracts

*1. Conditions*

§ 897

With regard to the conditions of contracts, the same rules shall apply in general which have been established with regard to the conditions attached to the declarations of the last will and testament.

§ 898

Appointments under such conditions, which are considered not buried in a last will and testament, are invalid.

§ 899

If the condition prescribed in a contract has already been met before the contract, it need only be repeated after the contract if it consists in an act of the person who is to acquire the right and can be retrieved by him.

§ 900

A right granted subject to a condition precedent shall also pass to the heirs.

§ 901

*2. Reason for movement*

If the parties have expressly made the reason for or the ultimate purpose of their consent a condition, the reason for or the ultimate purpose shall be deemed to be another condition. Moreover, such expressions have no influence on the validity of contracts for valuable consideration. In the case of contracts without consideration, however, the rules given in the case of the last orders shall be applied.

*3. Time, place and manner of fulfillment*

§ 902



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## General Civil Code

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- 1) Unless otherwise stipulated, a time limit determined by contract or by law shall be calculated in such a way that, in the case of a time limit determined by days, the day in which the event from which the time limit begins to run occurs shall not be counted.
- 2) The end of a period determined by weeks, months or years falls on that day of the last week or month which, according to its designation or number, corresponds to the day of the event with which the running of the period begins, but if this day is missing in the last month, on the last day of this month.
- 3) Half a month means 15 days, and the middle of a month means the 15th of that month.

### § 903

A right, the acquisition of which is bound to a certain day, is acquired at the beginning of that day. The legal consequences of the non-fulfillment of a binding obligation or of a default shall not occur until the expiry of the last day of the term. If the last day for the submission of a declaration or for a service falls on a Sunday or a day equivalent thereto (Art. 1 FAHG), the next following working day shall take its place, unless otherwise agreed.

### § 904

If no certain time has been determined for the performance of the contract, it may be demanded immediately, namely without unnecessary delay.

If the obligor has reserved the time of performance to his own discretion, he must either wait for his death and apply to the heirs or, if the obligation is merely personal and not hereditary, have the time of performance fixed by the judge in accordance with equity. The latter shall also take place if the obligor has promised performance according to possibility or convenience. Moreover, the rules given above (§§ 704 to 706) with regard to the time provisions attached to the last orders must also be applied here.

### § 905

1) If the place of performance cannot be determined either from the agreement or from the nature or purpose of the transaction, performance shall be effected at the place where the debtor was domiciled at the time the contract was concluded, or, if the liability is incurred in the course of the debtor's trade or business, at the place where the debtor was domiciled at the time the contract was concluded.

of the debtor, at the place of establishment. The place of performance is decisive for the measure and the weight.

2) It does not follow from the assumption of the costs of shipment by the debtor alone that the place to which the shipment is to be made shall be deemed to be the place of performance for the debtor.

§ 905a

If an item is owed that is only determined by its type, it shall be provided in average type and quality.

§ 906

If the promise can be fulfilled in more than one way, the obligor has the choice; however, he cannot deviate from the choice once made on his own.

§ 907

If a contract is expressly concluded with the reservation of choice and the same is frustrated by the accidental loss of one or more items, the party entitled to the choice shall not be bound by the contract. If, however, the obligor is at fault, he shall be liable to the beneficiary for the frustration of the election.

§ 907a

1) A monetary debt shall be discharged at the creditor's domicile or place of business by handing over the amount of money there or by transferring it to a bank account designated by the creditor. If, after the claim has arisen, the creditor's domicile or place of business or his bank connection has changed, the creditor shall bear any resulting increase in the risk and costs of performance.

2) If a monetary debt is fulfilled by bank transfer, the debtor shall issue the transfer order in such a timely manner that the amount owed is credited to the creditor's account when it becomes due. If the due date is not determined in advance, but the due date is only triggered by the provision of the consideration, invoicing, request for payment or a similar circumstance, the debtor shall issue the transfer order without undue delay after the occurrence of the circumstance relevant for the due date. The debtor shall bear the risk for the delay or failure to credit the creditor's account, unless the cause thereof lies with the creditor's banking institution.

§ 907b

General Civil Code

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1) If a monetary debt expressed in foreign currency is to be paid domestically, payment may be made in domestic currency unless payment in foreign currency has been expressly stipulated.

2) The conversion shall be made at the exchange rate prevailing at the time of payment at the place of payment. If the debtor delays payment, the creditor has the choice between the exchange rate applicable at maturity and the exchange rate applicable at the time of payment.

## § 908

## 4. Money

What is given in advance at the conclusion of a contract is, except in the case of a special agreement, to be regarded only as a sign of the conclusion or as a guarantee for the fulfillment of the contract, and is called a deposit. If the contract is not performed due to the fault of one party, the innocent party may keep the deposit he received or double the amount of the deposit he gave.

reclaim. If, however, it is not satisfied with this, it may insist on performance or, if this is no longer possible, on replacement.

## 5. Redemption money

## § 909

If, when concluding a contract, an amount is determined which one or the other party must pay in the event that it wishes to withdraw from the contract prior to performance, the contract shall be concluded against a penalty. In this case, either the contract must be fulfilled or the penalty must be paid. Whoever has fulfilled the contract even only in part or has accepted what has been performed by the other even only in part for fulfillment, can no longer withdraw even against payment of the penalty.

## § 910

If a deposit is given and at the same time the right of withdrawal is stipulated without stipulation of a special repayment, the deposit shall take the place of the repayment. In case of rescission, the giver loses the deposit or the receiver restores the double amount.

## § 911

Anyone who is prevented from fulfilling the contract not by mere chance, but through his own fault, must also pay the repentance fee.

*6. Ancillary fees*

§ 912

In addition to the principal debt, the creditor is sometimes entitled to claim incidental charges from his debtor. They consist of the increase and the fruits of the principal, of the certain or the delaying interest or of the compensation of the damage caused or of what the other party owes for the fact that the obligation has not been duly fulfilled, finally of the amount which one party has stipulated for this case.

§ 913

The extent to which the right to the accrual or to the fruits is connected with a right in rem is determined in the 1st and 4th main parts of Part 2. Because of a merely personal right, the entitled person has no claim to additional charges. The extent to which the creditor has a right to these may be inferred partly from the special types and provisions of the contracts, partly from the main part on the right to damages and satisfaction.

Rules of interpretation for contracts

§ 914

When interpreting contracts, it is not necessary to adhere to the literal meaning of the expression, but to inquire into the intention of the parties and to understand the contract as it corresponds to the practice of fair dealing.

§ 915

In the case of unilaterally binding contracts, it is assumed in case of doubt that the obligor intended to impose the lesser rather than the heavier burden on himself; in the case of bilaterally binding contracts, an ambiguous expression is declared to be to the disadvantage of the one who made use of it (§ 869).

§ 916

- 1) A declaration of intent which is made to another person with the latter's consent is null and void. If another transaction is to be concluded as a result, it must be judged according to its true nature.
- 2) A third party who has acquired rights in reliance on the declaration may not raise the defense of a sham transaction.

General provisions on contracts and transactions for consideration

§ 917

General Civil Code

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In the case of a contract against payment, either things are exchanged for things or acts, including omissions, are exchanged for acts.

The same is true for the other, which is the same for the other.

## § 918

1) If a contract against payment is not performed by one party either at the proper time, at the proper place or in the required manner, the other party may either demand performance and compensation for the delay or declare rescission of the contract, setting a reasonable deadline for performance.

2) If the performance is divisible for both parties, the withdrawal can only be declared with regard to the individual or all outstanding partial performances due to delay of a partial performance.

## § 919

If performance is stipulated at a fixed time or within a fixed period in the case of other withdrawal, the party entitled to withdraw must, if he wishes to insist on performance, notify the other party without delay after the expiry of the time; if he fails to do so, he may not insist on performance at a later date. The same applies if the nature of the transaction or the purpose of the performance known to the obligor indicates that the delayed performance or, in the case of a delay in partial performance, the remaining performances are of no interest to the recipient.

## § 920

If performance is frustrated through the fault of the obligor or through an accident for which he is responsible, the other party may either claim damages for non-performance or withdraw from the contract. In the event of partial default, the other party shall be entitled to rescind the contract if the nature of the transaction or the purpose of the performance known to the obligor indicates that partial performance is of no interest to him.

## § 921

Withdrawal from the contract shall not affect the right to compensation for damage caused by culpable non-performance. The remuneration already received shall be returned or compensated in such a way that neither party profits from the other party's damage.

## § 922

*Warranty*

1) Anyone who provides another with an item in return for payment warrants that it complies with the contract. He is therefore liable for ensuring that the item has the agreed or usually assumed properties, that it corresponds to his description, a sample or a model and that it can be used in accordance with the nature of the transaction or the agreement made.

2) Whether the item complies with the contract shall also be assessed on the basis of what the transferee may expect from the public statements made about it by the transferor or the manufacturer, in particular in advertising and in the information attached to the item. This also applies to public statements made by a person who has imported the item into the European Economic Area or who designates himself as the manufacturer by affixing his name, trademark or other mark to the item. However, such public statements shall not be binding on the transferor if he neither knew nor could have known them, if they were corrected when the contract was concluded or if they could not have influenced the conclusion of the contract.

Warranty cases

§ 923

Whoever therefore attributes to the thing properties which it does not have and which were expressly or by virtue of the nature of the transaction tacitly stipulated, whoever conceals unusual defects or encumbrances of the same, whoever sells a thing which no longer exists or a foreign thing as his own, whoever falsely pretends that the thing is fit for a certain use or that it is also free from the usual defects and encumbrances, shall be liable for this if the contradiction comes to light.

§ 924

Presumption of defectiveness

The transferor warrants for defects existing at the time of transfer. This shall be presumed until proven otherwise if the defect becomes apparent within six months after handover.

The presumption shall not apply if it is inconsistent with the nature of the item or defect.

§§ 925 to 927 Revoked

§ 928

If the defects of an object catch the eye or if the defects on the object are

If the defect or encumbrances can be seen from the public books, there shall be no warranty except in the case of fraudulent concealment of the defect or an express promise that the item is free from all defects and encumbrances. Debts and arrears which are liable on the object must always be represented.

§ 929

A person who knowingly takes possession of another person's item is no more entitled to a warranty than a person who has expressly waived it.

§ 930

If things are handed over in lump sum, i.e. as they stand and lie, without number, measure and weight, the transferor shall not be liable for the defects discovered in them, except in the case that a condition wrongly specified by him or required by the recipient is missing.

§ 931

Warranty condition

If the transferee wishes to make use of the warranty on account of a claim made by a third party on the object, he must give notice of the dispute to his predecessor. If he fails to do so, he shall not lose the right to indemnification, but his predecessor shall be entitled to oppose him to all objections which have not been raised against the third party and thereby to be released from indemnification to the extent that it is recognized that these objections, if they had been properly exercised, would have caused a different decision against the third party.

§ 932

*Rights under the warranty*

- 1) Due to a defect, the transferee may demand improvement (rectification or addition of what is missing), replacement of the item, a reasonable reduction of the remuneration (price reduction) or cancellation of the contract (redhibition).
- 2) Initially, the transferee may only demand the improvement or replacement of the item, unless the improvement or replacement is impossible or would involve a disproportionately high effort for the transferor compared to the other remedy. Whether this is the case shall also depend on the value of the defect-free item, the severity of the defect and the inconvenience associated with the other remedy for the transferee.

3) The improvement or replacement shall be effected within a reasonable period of time and with the least possible inconvenience to the transferee, taking into account the nature of the item and the purpose pursued with it.

4) If both the improvement and the replacement are impossible or involve a disproportionately high effort for the transferor, the transferee shall be entitled to a price reduction or, if the defect is not minor, to rescission. The same shall apply if the transferor refuses to improve or replace the goods or does not do so within a reasonable period of time, if these remedies would cause considerable inconvenience to the transferee or if they are unreasonable for him for good reasons attributable to the transferor.

§ 933

Limitation

1) The right to warranty must be asserted in court within three years in the case of immovable goods and within two years in the case of movable goods. The period shall commence on the day of delivery of the item, but in the case of defects of title only on the day on which the defect becomes known to the transferee. The parties may agree to shorten or extend this period.

2) In any case, the transferee shall be entitled to assert the claim by way of a defense if he notifies the transferor of the defect within the time limit.

§ 933a

*Damages*

1) If the transferor is responsible for the defect, the transferee may also claim damages.

2) Due to the defect itself, the transferee may also initially only demand improvement or replacement as compensation. However, he may demand compensation if both the improvement and the replacement are impossible or would involve a disproportionately high effort for the transferor. The same shall apply if the transferor refuses to carry out the improvement or replacement or fails to do so within a reasonable period of time, if these remedies would involve considerable inconvenience for the transferee or if they are unreasonable for the transferee for good reasons attributable to the person of the transferor.

3) After the expiry of ten years from the handover of the item, the customer shall be responsible for a replacement.



General Civil Code

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The transferee shall have the burden of proving that the transferor was at fault for the defect itself and for any further damage caused by the defect.

## § 933b

*Special recourse*

1) If a businessman has given a warranty to a consumer, he may claim the warranty from his foreman, if the latter is also a businessman, even after expiry of the time limits of Section 933. The same shall apply to earlier transferors in relation to their predecessors if they themselves have provided warranty to their successors on account of the warranty rights of the last purchaser. The claim is limited to the amount of their own expenses.

2) Claims according to para. 1 must be asserted in court within two months after fulfillment of the own warranty obligation. The liability of a party obliged to take recourse shall in any case become statute-barred five years after the performance of its obligation. The period shall be suspended for the duration of the legal dispute by a notice of dispute.

## Indemnification due to shortening over half

## § 934

If, in the case of bilaterally binding transactions, one party has not received from the other party even half of what he has given him, the law grants the injured party the right to demand cancellation and restoration to the previous status. The other party, however, has the right to maintain the transaction by being prepared to compensate for the loss up to the fair market value. The disproportion of the value is determined according to the time of the concluded transaction.

## § 935

This remedy shall not be available if a person has expressly waived it or has declared his intention to take the thing for an extraordinary value out of special preference, if, although he knew the true value, he nevertheless agreed to the disproportionate value, furthermore, if it may be assumed from the relationship of the persons that they intended to conclude a contract which was a mixture of a gratuitous and a gratuitous contract, if the actual value can no longer be ascertained, finally, if the thing has been auctioned by the court.

## § 936

From the appointment of a future contract

An agreement to conclude a contract in the future shall only be binding if both the time of conclusion and the essentials of the contract have been determined and the circumstances have not been changed in the meantime in such a way that the purpose expressly determined or apparent from the circumstances is frustrated or the confidence of one or the other party is lost. In general, the execution of such promises must be insisted upon at the latest within one year after the stipulated point in time; otherwise the right is extinguished.

§ 937

From the waiver of objections

General, indefinite waivers of objections to the validity of a contract are without effect.

18. Main Part Of Donations

§ 938

Donation

A contract whereby a thing is given to someone free of charge is called a gift.

§ 939

To what extent a renunciation is a gift

Whoever renounces a hoped-for or actually accrued or doubtful right without properly assigning it to another or relinquishing it to the obligee with the latter's consent is not to be considered a gift giver.

*Rewarding gift*

§ 940

It does not change the nature of the gift if it was made out of gratitude or in consideration of the merits of the donee or as a special reward to him; only he must not have had a right of action on it beforehand.

§ 941

If the donee has had a right of action for the reward, either because it was already stipulated between the parties or prescribed by law, the transaction ceases to be a gift and is deemed to be a contract for valuable consideration.

View.

§ 942

Reciprocal gifts

If gifts are previously conditioned in such a way that the donor must be given again, no true gift arises in its entirety, but only in respect of the excess value.

§ 943

Form of the donation contract

The recipient of a gift does not have the right to sue on the basis of a mere oral gift contract concluded without actual delivery. This right must be established by a written document.

§ 944

and measure of a donation

An unrestricted owner may also give away all his present property, subject to the provisions of the law. However, a contract by which future property is given away shall exist only to the extent that it does not exceed half of such property.

§ 945

To what extent the giver is liable for the gift

A person who knowingly makes a gift of another's property and conceals this fact from the gift recipient is liable for the adverse consequences.

§ 946

Irrevocability of gifts As a rule, gift contracts

may not be revoked.

Exceptions

§ 947

1. *Because of paucity*

If the giver of the gift subsequently becomes so poor that he lacks the necessary maintenance, he shall be entitled to claim annually from the gifted amount the legal interest, insofar as the gifted object or its value still exists and he lacks the necessary maintenance, from the donee, if the latter is not otherwise in equally poor circumstances himself.

Out of several gift takers, the earlier one is connected only insofar as the contributions of the later ones are not sufficient for maintenance.

2. Ingratitude

§ 948

If the donee is guilty of gross ingratitude against his benefactor, the gift may be revoked. Gross ingratitude is understood to mean an injury to body, honor, freedom or property that is of such a nature that the violator can be proceeded against ex officio or at the request of the violated person in accordance with the criminal law.

§ 949

The ingratitude makes the ingrate a dishonest possessor for his person and gives even the heir of the injured party, insofar as the latter has not forgiven the ingratitude and there is still something of the gift in nature or value, a right of action for revocation even against the heir of the infringer.

§ 950

3. Reduction of the owed maintenance

A person who owes someone maintenance cannot infringe his right by making a gift to a third party. The person shortened in such a way is entitled to sue the donee for the supplement of what the giver is now no longer able to provide. In the case of several donees, the above provision (§ 947) shall apply.

4. of the compulsory part

§ 951

1) If gifts are taken into account when determining the compulsory portion (§ 785), but the estate is insufficient to cover it, the person entitled to the reduced compulsory portion may demand that the donee surrender the gift to cover the shortfall. The donee may avert the surrender by paying the shortfall.

2) If the donee himself is entitled to a compulsory portion, he shall be liable to the other person only to the extent that, as a result of the gift, he would receive more than the compulsory portion due to him if the gifts were included.

3) Among several donees, the earlier donee is liable only to the extent that the later donee is not obliged or not able to surrender. Simultaneous donees are proportionately liable.

General Civil Code

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## § 952

If the donee no longer possesses the thing given or its value, he shall be liable only to the extent that he has dishonestly left it out of his possession.

## § 953

*5. the creditor*

Under the same restriction (§ 952) also those gifts may be reclaimed by which the creditors already existing at the time of the donation have been reduced. This right extends to creditors whose claims are younger than the donation.

only if the donee of a deceitful consent can be transferred.

## § 954

*6. because of children born after*

If children are born to a childless donor after a gift contract has been concluded, neither he nor the children born after him shall have the right to revoke the gift. However, in case of need, he or the child born after him may assert against the donee as well as against his heirs the above-mentioned right to the legal interest of the amount donated (§ 947).

## § 955

*What gifts do not pass to heirs*

If the donor has assured the donee of support within a certain period of time, the heirs shall have neither a right nor an obligation to do so, unless the gift contract expressly provides otherwise.

## § 956

*Donation on death*

A gift, the fulfillment of which is to take place only after the death of the donor, shall be valid as a legacy, provided that the prescribed formalities are observed. It shall be regarded as a contract only if the donee has accepted it, the donor has expressly given up the right to revoke it, and a written instrument to that effect has been delivered to the donee.

From the custody agreement Custody  
agreement

§ 957

If a person takes over the care of another person's property, a contract of care is created.

to take over the custody of another person's property that has not yet been handed over makes the promising party binding; however, it is not yet a custody agreement.

§ 958

By the contract of safekeeping, the transferee acquires neither ownership, nor possession, nor right of use; he is the mere owner with the duty to protect the thing entrusted to him from damage.

§ 959

When to enter into a loan or lending agreement

If the depositary is permitted to use the object at his request or by voluntary offer of the depositor, in the first case the contract ceases to be a contract of safe custody immediately after the permission, in the second case, however, from the moment the offer has been accepted or the deposited object has actually been used; in the case of consumable objects it is changed into a loan contract, in the case of non-consumable objects into a loan contract, and the rights and obligations connected therewith come into effect.

§ 960

*or into a power of attorney.*

Both movable and immovable property may be entrusted. If, however, the transferee is at the same time entrusted with another business relating to the entrusted property, he shall be regarded as the holder of the power.

Duties and rights of the custodian

§ 961

The main duty of the custodian is: to carefully preserve the thing entrusted to him for the specified period of time, and to return it to the depositor at the end of this period in the same condition in which he took it over, and with all accretions.

§ 962

General Civil Code

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The bailee must return the thing to the depositor on demand even before the expiry of the time and may only claim compensation for any damage caused to him. He may not, however, return the thing entrusted to him earlier, unless an unforeseen circumstance has prevented him from keeping the thing with certainty or without his own disadvantage.

## § 963

If the period of safe custody has neither been expressly determined nor can it otherwise be assumed from the circumstances, the safe custody may be terminated at will.

## § 964

The bailee shall be liable to the depositor for the damage caused by his failure to exercise his obligatory care, but not for accident, even if he could have saved the entrusted, though more valuable, thing by sacrificing his own.

## § 965

If, however, the depositor has made use of the deposited property, has given it into the custody of a third party without necessity and without the depositor's permission, or has delayed the restitution, and if the property suffers damage to which it would not have been subjected had it been deposited with the depositor, the depositor may not plead an accident and the damage shall be imputed to him.

## § 966

Retrieved

## § 967

and the depositor

The depositor shall be obliged to compensate the bailee for any damage culpably caused and for the costs incurred in preserving the deposited property or in increasing its continuing usefulness. If, in an emergency, the bailee has sacrificed his own property in order to save the deposited property, he may claim reasonable compensation. The mutual claims of the bailee and depositor

However, the damage to movable property can only be claimed within 30 days from the date of return.

## § 968

Sequester

If a thing claimed is given into custody by the disputing parties or by the court, the custodian is called the sequestrum. The rights and liabilities of the sequestrum shall be judged in accordance with the principles laid down herein.

§ 969

Whether the custodian is due a wage

A wage can only be demanded for the storage if it has been explicitly or implicitly stipulated according to the state of the custodian.

*Guest recording*

§ 970

1) Innkeepers who accommodate strangers shall be liable as custodians for the property brought in by the guests they have accommodated, unless they can prove that the damage was neither caused by them or one of their staff nor by strangers leaving or entering the house. If the damage was caused by the fault of the damaged party, the judge shall decide according to the circumstances whether and to what extent compensation is due.

2) Items are deemed to have been brought in if they have been handed over to the landlord or one of his employees or if they have been brought to a place instructed or designated by the landlord or one of his employees. Likewise, entrepreneurs who keep stables and storage rooms shall be liable for the animals and vehicles parked on their premises and the items on them.

3) The owners of bathing establishments shall be treated in the same way as landlords with regard to the items usually brought in by bathers.

4) The liability pursuant to paras. 1 and 3 shall be limited to the maximum amount of 2,000 Swiss francs, unless the items have been specially handed over to the Contractor for safekeeping or the

Liability refers to vehicles, animals or things on them, which are employed by entrepreneurs, who keep storage rooms and stables (par. 2).

§ 970a

Refusal of liability by notice is without legal effect. For valuables, money and securities, the innkeeper is liable only up to the amount of 1,000 euros.



General Civil Code

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Franconia, unless he has taken over these things in knowledge of their condition for safekeeping or the damage is caused by himself or his people.

§ 970b

The claim for compensation from the accommodation expires if the damaged party does not notify the innkeeper without delay after becoming aware of the damage. This does not apply, however, if the items were taken over by the host for safekeeping.

§ 970c

The persons referred to in § 970 shall have the right to retain the property brought in to secure their claims arising from the accommodation and catering as well as their expenses for the guests.

20. Main part of the loan agreement

§ 971

Loan contract

If a non-consumable thing is given to someone only for free use for a certain period of time, a contract of loan arises. A contract whereby a person promises to lend a thing to another without handing it over is binding, but not yet a contract of loan.

Rights and obligations of the borrower

§ 972

*1. with regard to the use*

The borrower acquires the right to make ordinary or more specific use of the item. After the lapse of time, he is obliged to return the same thing.

2. the deferral

§ 973

If no time for return has been fixed, but the intention of use has been determined, the borrower is obliged not to hesitate with the use and to return the thing as soon as possible.

§ 974

If neither the duration nor the intention of the use has been determined, the following arises

is not a true contract, but a non-binding borrowing (precarium), and the lender can reclaim the borrowed thing at will.

§ 975

In the event of a dispute over the duration of use, the borrower must prove the right to the longer use.

§ 976

Although the thing lent becomes indispensable to the lender himself before the lapse of time and before the end of use, he has no right to take it back earlier without an express agreement.

§ 977

As a rule, the borrower is entitled to return the borrowed item even before the specified time; however, if the earlier return is burdensome for the lender, it cannot take place against his will.

3. The damage

§ 978

If the borrower uses the borrowed item in a different way than agreed upon, or allows a third party to use it on his own authority, he shall be liable to the lender, who shall also be entitled to reclaim the item immediately.

§ 979

If the borrowed thing is damaged or destroyed, the borrower must compensate not only for the damage initially caused by his fault, but also for the accidental damage caused by a wrongful act, in the same way as the custodian of a thing (§ 965).

§ 980

The fact that the borrower pays the value of a lost fiefdom does not give him the right to keep it for himself against the will of the owner if the latter is willing to return the value received.

§ 981

4. the maintenance costs

The costs associated with the normal use of the equipment must be borne by the user. The extraordinary maintenance costs

If the lender cannot or does not want to take care of the matter himself, he shall advance the costs in the meantime, but they shall be paid to him in the same way as to a bona fide owner.

#### § 982

##### Limitation of mutual actions

If the lender does not complain about the misuse or excessive wear and tear within 30 days after the return of the item, or if the borrower has not reported the extraordinary costs incurred on the item within the same period of time after the return, the claim shall be extinguished.

#### 21. Main part From the loan agreement

#### § 983

##### Loan

If someone is given consumable things under the condition that he may dispose of them at will, but after a certain time he is to return as many of the same kind and quality, a loan contract arises. It is not to be confused with the likewise binding contract (§ 936) to give a loan in the future.

#### § 984

##### Types of the same

A loan is given either in money or in other consumable things, and without or against interest. In the latter case, it is also called an interest contract.

##### Money loan

#### § 985

A money loan can have as its object sounding coin or paper money or public promissory bills (bonds).

##### *a) in sounding coin or paper money*

#### § 986

The extent to which a loan may be concluded in bearer form at all, and the currency (value date) in which such a loan or a loan in paper money is to be repaid, shall be determined by the special provisions existing in this respect.

§ 987

If a lender has agreed to payment in the particular coin denomination given by him, the payment must be made in that same coin denomination.

§ 988

Legal changes in the coinage without altering its intrinsic value shall be for the account of the lender. He shall receive payment in the specific coin denomination given, regardless of whether its external value has been increased or decreased in the meantime. If, however, the intrinsic value is changed, the payment shall be made in proportion to the intrinsic value which the given coin had at the time of the loan.

§ 989

If at the time of repayment such coins are not in circulation in the state, the debtor must pay the creditor with initially similar coins.

The lender shall be entitled to satisfy the loan with such number and type of coins that the lender receives the intrinsic value of what he has given at the time of the loan.

b) in promissory bills

§ 990

In public promissory bills, loans can be validly concluded in such a way that the repayment of the debt is either made with a public promissory bill that is absolutely identical to the one lent, or the amount is repaid according to the value that the promissory bill had at the time of the loan.

§ 991

If a private promissory bill or goods have been given instead of money, the debtor is only obliged either to return the promissory bill or the goods received undamaged or to compensate the creditor for the damage to be provided by the latter.

§ 992

c) Loan in other consumable items

In the case of loans which are not concluded for money but for other consumable objects, if only the restitution in the same kind, quality and quantity has been agreed upon, it makes no difference if they have increased or decreased in value in the meantime.

General Civil Code

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Interest

§§ 993 to 998 Revoked

§ 999

Interest on money loans is payable in the same currency (value date) as the principal itself.

§ 1000

1) Interest, which has been agreed upon without determining the amount or which is due by law, shall be paid at the rate of five percent per annum, unless otherwise provided.

2) The creditor of a monetary claim may claim compound interest if the parties have expressly agreed so. Otherwise, if interest due is claimed, he may claim compound interest from the date of the pendency of the dispute. If no agreement has been reached on the amount of compound interest, five per cent per year shall also be payable.

3) If the parties have not agreed on the period for payment of interest, it shall be paid upon repayment of the principal or, if the contract has been concluded for several years, annually.

§ 1001

*Form of the promissory bill*

In order for a promissory bill on a loan agreement to be complete proof, the actual lender or creditor as well as the actual borrower or debtor, the object and amount of the loan and, if it is given in money, the class of the same, as well as all conditions relating to the payment of the principal debt as well as to the interest to be paid, if any, must be specified honestly and clearly therein. The external form of a deed of debt necessary for its evidential value shall be determined by the rules of court.

22. Principal

Part of Power of Attorney and Other Types of Management

Power of attorney agreement

§ 1002

A contract by which a person undertakes to perform a task assigned to him in the name of another person is called a power of attorney contract.

§ 1003

Persons who have been publicly appointed to take care of certain business are obliged to declare expressly to the commissioning party without hesitation whether they accept the same or not; otherwise they remain liable to the commissioning party for the disadvantage caused thereby.

§ 1004

Classification of the power of attorney as gratuitous or gratuitous

If a reward is granted for the performance of another's business, either expressly or implicitly, according to the status of the principal, the contract is considered to be one of the contracts for consideration, but also one of the contracts without consideration.

§ 1005

oral or written

Power of attorney agreements may be concluded orally or in writing. The document issued by the grantor of power is called a power of attorney.

§ 1006

General or special

There are general and special powers of attorney, depending on whether someone is entrusted with the management of all or only some business. The special powers of attorney may have as their object only judicial or only extrajudicial business in general, or they may have as their object individual matters of one kind or another.

unlimited or limited

§ 1007

Powers of attorney are granted either with unlimited or with limited freedom to act. By the former, the holder of the power is authorized to manage the business according to his best knowledge and conscience; by the latter, however, the limits as to how far and the manner in which he shall conduct the same are prescribed for him.

§ 1008

The following transactions: if, in the name of another, property is to be sold or taken over in return for payment; bonds or loans are to be concluded; money or money's worth is to be raised; lawsuits are to be brought; oaths are to be administered, accepted or postponed, or settlements are to be reached; require a special, on

These types of transactions. However, if an inheritance is to be accepted or renounced unconditionally, partnership agreements are to be established, gifts are to be made or rights are to be relinquished free of charge, a special power of attorney issued for the individual transaction is necessary. General, even unlimited powers of attorney are only sufficient in these cases if the nature of the transaction is expressed in the power of attorney.

*Rights and liabilities of the holder of the right*

§ 1009

The holder of the power shall be obliged to carry out the transaction diligently and honestly in accordance with his promise and the power of attorney received, and to leave all benefits arising from the transaction to the grantor of the power. Although he has a limited power of attorney, he is entitled to use all means which are necessarily connected with the nature of the business or which are in accordance with the declared intention of the principal. However, if he exceeds the limits of the power of attorney, he shall be liable for the consequences.

§ 1009a

1) If the holder of the power is a bank, an investment firm or an asset management company, he may assume, except in the case of independent investment advice and portfolio management, that the grantor of the power has waived his right to the surrender of any fees, commissions or benefits not offered in monetary form (benefits) received or to be received from third parties and to the assertion of claims for damages under civil law in respect of such benefits, provided that:

- a) the holder of the power of attorney has properly fulfilled its disclosure obligations prior to the management of the business; and
- b) the grantor of power has the transaction executed after disclosure has been made.

2) The holder of the power shall be obliged to inform the grantor of the power of the legal consequences referred to in paragraph 1, e.g. in the general or other pre-formulated terms and conditions.

3) Smaller non-monetary benefits which may improve the quality of service for the client and which, by their size and nature, do not give rise to the assumption that they impair compliance with the duty of the bank, investment firm or asset management company to act in the best interests of its clients, may in any case be retained by the principal, provided that they have been disclosed to the client in an unambiguous manner.

§ 1010

If the holder of the power of attorney entrusts the business to a third party without necessity, he alone shall be liable for the success. If, however, the appointment of a deputy is expressly permitted in the power of attorney or is unavoidable due to the circumstances, he shall only be liable for any fault committed in the selection of the person.

§ 1011

If a transaction is assigned to several authorized representatives at the same time, the cooperation of all of them is necessary for the validity of the transaction and the obligation of the principal, unless one or more of them have been expressly granted full authorization in the power of attorney.

§ 1012

The holder of the power shall be obliged to compensate the grantor of the power for the damage caused by his fault and to submit the accounts arising from the transaction as often as the latter requests it.

§ 1013

Except as provided for in § 1004, holders of power shall not be entitled to claim a reward for their efforts. They are not allowed to accept gifts from a third party without the will of the grantor of power with regard to the administration of the business. Those received shall be collected to the poor relief fund.

of the perpetrator of violence

§ 1014

The grantor of the power is obliged to compensate the holder of the power for all expenses made necessary or useful for the performance of the business, even in the case of unsuccessful success, and, upon request, to pay him a reasonable advance to cover his cash expenses; he must also compensate for all damage caused by his fault or connected with the performance of the order.

§ 1015

If the holder of the power of attorney suffers only accidental damage in the course of management, he may, in the event that he undertook to manage the business free of charge, claim such an amount as would have been due to him in the event of a paid contract as remuneration for the effort according to the highest estimated value.

§ 1016



General Civil Code

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If the holder of the power exceeds the limits of his authority, the person exercising the power shall be bound only to the extent that he approves the transaction or receives the benefit resulting from the transaction.

*in consideration of a third party*

## § 1017

In so far as the holder of the power of attorney represents the grantor of the power of attorney, he may acquire rights and impose obligations on him. If, therefore, he has concluded a contract with a third party within the limits of the open power of attorney, the rights and liabilities thus established shall accrue to the grantor of the power and to the third party, but not to the third party.

but the holder of the power of attorney. The secret power of attorney granted to the holder of the power of attorney does not affect the rights of the third party.

## § 1018

Even in the event that the grantor of the power has established such a holder of the power who is incapable of connecting himself, the transactions concluded within the limits of the power of attorney shall be binding both for the grantor of the power and for the third party.

## § 1019

Retrieved

## § 1020

*Termination of the contract by the revocation*

The grantor of the power shall be free to revoke it at will; however, he shall not only compensate the holder of the power for the expenses incurred in the meantime and the damage otherwise suffered, but also pay a part of the reward commensurate with the effort. This shall also take place if the completion of the transaction has been prevented by chance.

## § 1021

the denunciation

The ruler may also terminate the power of attorney he has accepted. If, however, he terminates it before completion of the business assigned to him in particular or started by virtue of the general power of attorney, he must compensate for all damage resulting therefrom, unless an unforeseen and unavoidable obstacle has occurred.

Death

§ 1022

As a rule, the power of attorney is terminated both by the death of the grantor and the holder of the power of attorney. However, if the commenced business cannot be interrupted without obvious disadvantage to the heirs, or

If the power of attorney itself extends to the death of the grantor of the power, the holder of the power has the right and the duty to complete the transaction.

§ 1023

The powers of attorney issued and assumed by a body (community) are cancelled by the extinction of the community.

§ 1024

*or insolvency proceedings*

If insolvency proceedings are opened against the principal's assets, the principal's acts of representation shall not be legally effective as of the announcement of the opening of insolvency proceedings. The opening of insolvency proceedings against the principal's assets shall terminate the principal's power of attorney.

The extent to which the liability is continuing

§ 1025

If the power of attorney is revoked, terminated or cancelled by the death of the principal or holder of the power of attorney, the business which cannot be delayed must be continued until the principal or his heirs have made or could reasonably have made another disposition.

§ 1026

Also, contracts concluded with a third party who was unaware of the revocation of the power of attorney through no fault of his own shall remain binding, and the grantor of the power of attorney may recover for his damage only from the holder of the power of attorney who concealed the revocation.

Tacit authorization of the service persons

§ 1027

The provisions contained in this main part shall also apply to the owners of a plot, vessel, store or other trades, which the administration may entrust to a factor, skipper, shopkeeper

General Civil Code

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or entrust them to other business agents.

## § 1028

The rights of such managing directors are to be judged in particular from the document of their appointment, which among businessmen is the duly announced authority of the signature (company name).

## § 1029

If the power of attorney has not been given in writing, its scope shall be judged from the subject matter and the nature of the transaction. Whoever has entrusted another with an administration is presumed to have also granted him the power to do everything that the administration itself requires and that is usually connected with it (§ 1009).

## § 1030

If the owner of a business or trade allows his servant or apprentice to sell goods in or out of the store, they are presumed to be authorized to receive payment and to issue receipts for it.

## § 1031

The authority to sell goods on behalf of the owner, however, does not extend to the right to purchase goods on his behalf; nor may carters draw the value of the goods entrusted to them, nor borrow money on them, unless it has been expressly stipulated in waybills.

## § 1032

Employers and heads of families are not obliged to pay for what is taken by their servants or other household members on their behalf. In such cases, the borrower must pay for the order given.

## § 1033

If, however, there is a proper ledger between the borrower and the borrower, in which the borrowed items are recorded

the presumption is that the bearer of this book is authorized to take the goods on Borg.

## § 1034

## Judicial and legal power of attorney

The right of guardians and trustees to manage the affairs of their fostered

The authority to administer the child shall be based on the order of the court by which they are appointed. The father and the husband are authorized by law to represent the child and the wife. The provisions on this are contained in the appropriate places.

§ 1035

Management without order

A person who has not received authority either by express or implied contract, by the court, or by law may not, as a rule, interfere in another's business. If he had presumed to do so, he shall be liable for all the consequences.

§ 1036

*in case of need*

Whoever, although unappointed, takes care of another's business in order to avert imminent damage, the person whose business he has taken care of shall owe him compensation for the necessary and expedient expenses incurred, even if the effort has remained fruitless through no fault of his own (§ 403).

or for the benefit of the other

§ 1037

Anyone who wishes to take over another person's business solely for the benefit of the other person shall apply for the other person's consent. If the managing director has failed to comply with this provision but has conducted the business at his own expense for the clear, predominant benefit of the other person, he must be reimbursed by the latter for the costs incurred.

§ 1038

If, however, the predominant advantage is not clear or if the managing director has independently made such important changes in another's property that the property becomes useless to the other person for the purpose for which he has used it up to now, the latter shall not be obliged to pay any compensation; rather, he may demand that the managing director restore the property to its previous state at his own expense or, if this is not possible, grant him full satisfaction.

§ 1039

Anyone who has taken on another's business without a mandate must continue it until completion and, like an authorized representative, keep an accurate account of it.

General Civil Code

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§ 1040

against the will of the other

If someone, against the validly declared will of the owner, presumes to carry out a foreign transaction or prevents the legally authorized representative from carrying out the transaction by such interference, he shall not only be responsible for the resulting damage and lost profit, but he shall also lose the expense incurred, insofar as it cannot be taken back in nature.

*Use of one thing for the benefit of another*

§ 1041

If a thing has been used for the benefit of another without management, the owner may claim it in kind or, if this can no longer be done, the value it had at the time of use, although the benefit has subsequently been frustrated.

§ 1042

A person who incurs an expense on behalf of another that the latter would have had to incur himself under the law has the right to claim compensation.

§ 1043

If someone has sacrificed his property in an emergency in order to avert greater harm to himself and others, all must pay him, who took advantage of it, proportionate compensation. The more detailed application of this provision to maritime hazards is a matter for the maritime laws.

§ 1044

The distribution of war damages is determined by the political authorities according to special regulations.

23. Main part  
Of the exchange contract  
exchange

§ 1045

Exchange is a contract whereby one thing is given in exchange for another thing. The actual transfer is not necessary for the establishment, but only for the fulfillment of the exchange contract and the acquisition of ownership.

§ 1046

Money is not an object of the contract of exchange; but gold and silver can be exchanged as a commodity, and even as coins, in so far as they are to be exchanged only for other coins, namely gold for silver, smaller for larger pieces.

§ 1047

Rights and obligations of the exchangers

The exchanging parties are obliged by virtue of the contract to hand over and take free possession of the exchanged items in accordance with the agreement, with their components and with all appurtenances, at the right time, at the right place and in the same condition in which they were at the time of the conclusion of the contract.

§ 1048

especially in view of the danger

If a time is stipulated at which the handing over is to take place and in the meantime either the exchanged certain thing is put out of circulation by prohibition or is accidentally destroyed completely or nevertheless over the half of the value, then the exchange is not to be regarded as closed.

§ 1049

Other deteriorations of the object and burdens occurring by chance in the meantime shall be for the account of the owner. If, however, things have been handled in lump sums, the transferee shall bear the accidental loss of individual pieces if the whole has not otherwise been changed by more than half in value.

and the uses before the transfer

§ 1050

The owner shall be entitled to the benefits of the exchanged thing until the agreed time of transfer. From that time on, they, together with the accrual, are due to the transferee, even though the thing has not yet been handed over.

§ 1051

If no time has been stipulated for the handing over of the particular thing, and no fault is attributable to either party, the above provisions on risk and use (§§ 1048 to 1050) shall apply to the time of handing over itself, unless the parties have stipulated otherwise.

§ 1052

General Civil Code

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Whoever wishes to insist on the transfer must have fulfilled his obligation or be prepared to fulfill it. The party obligated to advance performance may also refuse performance until the counter-performance has been effected or secured if this is endangered by the other party's poor financial circumstances of which he need not have been aware at the time the contract was concluded.

## 24. The main part of the purchase contract

## § 1053

## Purchase contract

By the contract of sale, a thing is transferred to another for a certain sum of money. It belongs, like the exchange, to the titles to acquire a property. The acquisition takes place only by the delivery of the object of purchase. Until the transfer, the seller retains the right of ownership.

## § 1054

## Requirements of the purchase contract

How the consent of the buyer and seller must be, and what things may be bought and sold, this is determined according to the rules of contracts in general. The purchase price must be in cash and may not be indefinite or unlawful.

*The purchase price must be*

## § 1055

## a) be made out of hard cash

If a thing is sold partly for money and partly for another thing, the contract is counted as a purchase or exchange, depending on whether the monetary value is more or less than the fair market value of the given thing, and as a purchase if the value of the thing is the same.

*b) determined*

## § 1056

The buyer and the seller may also leave the determination of the price to a third person. If the third party does not fix the price within the stipulated period or if, in the event that no period has been stipulated, one party wishes to withdraw from the contract before the price has been fixed, the contract of sale shall be deemed not to have been concluded.

## § 1057

If the determination of the price is left to several persons, the majority of the votes shall decide. If the votes are so different that the price is not even determined by a real majority of the votes, the purchase shall be deemed not to have been made.

§ 1058

The value agreed upon in an earlier sale may also serve to determine the price. If the ordinary market price is used as a basis, the average market price of the place and time where and in which the contract must be performed is assumed.

c) not be unlawful

§ 1059

If there is a tax on goods, the higher price is unlawful, and the buyer may claim indemnity from the police authority for any violation, however slight.

§ 1060

Apart from this case, the purchase can be contested by the buyer as well as the seller only on the grounds of violation of more than half (§§ 934, 935). This appeal also takes place if the pronouncement of the purchase price has been left to a third party.

§ 1061

*Duties of the seller*

The seller is obligated to carefully safeguard the object until the time of handover and to hand it over to the buyer in accordance with the same provisions that were established above for the exchange (§ 1047).

*and the buyer*

§ 1062

The buyer, on the other hand, is obliged to take over the item immediately or at the agreed time, but at the same time to pay the purchase price in cash; otherwise the seller is entitled to refuse to hand over the item.

§ 1063

If the seller hands over the thing to the buyer without receiving the purchase money, the thing is sold on Borg, and the ownership of it immediately passes to the buyer.



General Civil Code

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## § 1064

## Risk and benefit of the object of purchase

With regard to the risk and benefits of a thing purchased but not yet transferred, the same provisions apply as were given for the exchange contract (§§ 1048 to 1051).

## § 1065

## Purchase of a hoped thing

If things that are yet to be bought are purchased, the instructions given in the main piece of daring transactions are to be applied.

## § 1066

## General rule

In all cases arising in a contract of sale which are not expressly decided in the law, the provisions laid down in the main sections of contracts in general and of the contract of exchange in particular shall apply.

## § 1067

## Special types or ancillary contracts of a purchase agreement

Special types or ancillary contracts of a sales contract are: the reservation of repurchase, resale, pre-purchase; the sale on trial; the sale with reservation of a better buyer and the sales order.

## Sale with reservation of repurchase

## § 1068

The right to redeem a sold thing is called the right of re-purchase. If this right is granted to the seller at all and without further stipulation, then on one side the object of sale is returned in an undiminished condition, but on the other side the purchase money paid is returned, and the benefits derived by both sides from the money and the object in the meantime remain cancelled against each other.

## § 1069

If the buyer has improved the purchased item from his own or has incurred extraordinary costs for its preservation, he shall be entitled to compensation like a bona fide owner; however, he shall also be liable for it if the value has been changed or the return has been thwarted through his fault.

§ 1070

The reservation of the right to repurchase shall only apply to immovable property and shall only apply to the seller for his lifetime. He may not transfer his right to his heirs or to another person. If the right is recorded in the public books, the thing may also be claimed from a third party and the latter shall be treated according to the nature of his bona fide or bona fide possession.

§ 1071

Purchase with reservation of resale

The same restrictions apply to the right of the buyer to sell the item back to the seller and to

the provisions issued for repurchase shall apply to it. If, however, the condition of resale or repurchase has been disguised and actually used to conceal a lien or a borrowing transaction, the provisions of § 916 shall apply.

Reservation of the right of first refusal

§ 1072

Whoever sells a thing with the condition that the buyer, if he wants to sell such again, should offer him the redemption, he has the right of first refusal.

§ 1073

The right of first refusal is usually a personal right. In respect of immovable property, it may be converted into a right in rem by registration in the public books.

§ 1074

Nor can the right of first refusal be assigned to a third party or transferred to the heirs of the beneficiary.

§ 1075

The beneficiary must actually redeem movable objects within 24 hours, immovable objects within 30 days after the offer has been made. After this period, the right of first refusal expires. Art. 66a SR remains reserved.

§ 1076

The right of first refusal shall have no other effect in the event of a judicial sale of the property encumbered by such right than that the person entitled thereto, who has been entered in the public books, shall be summoned to the sale in particular.

must.

§ 1077

The person entitled to the redemption must, unless otherwise agreed, pay the full price offered by a third party. If, in addition to the usual purchase price, he can  
If the conditions offered are not fulfilled, and if they cannot be compensated by an appraisal value, the right of first refusal cannot be exercised.

§ 1078

The right of first refusal cannot be extended to other types of sale without a special agreement.

§ 1079

If the owner has not offered the redemption to the entitled person, he shall be liable to him for all damage. In the case of a right of first refusal in rem, the thing alienated may be claimed from the third party, and the latter shall be dealt with according to the nature of his possession in good faith or in bad faith.

Purchase to the test

§ 1080

The purchase on trial is concluded under the condition that the buyer approves the goods. The condition is, in case of doubt, a condition precedent; the buyer is not bound to the purchase before the approval, the seller ceases to be bound if the buyer does not approve by the end of the trial period.

§ 1081

If the item has already been handed over for the purpose of inspection or trial, silence on the part of the purchaser until after the trial period has expired shall be deemed approval.

§ 1082

If the probationary period has not been determined by agreement, it shall be assumed to be three days in the case of movable property, but one year in the case of immovable property.

*Sale with reservation of a better buyer*

§ 1083

If the purchase transaction is agreed with the reservation that the seller, if

If a better buyer comes forward within a certain period of time, the buyer is authorized to prefer the better buyer, then in the event that the object of sale has not been handed over, the validity of the contract shall be postponed until the condition is fulfilled.

§ 1084

If the object of sale has been handed over, the contract of sale shall be concluded; it shall, however, be dissolved again by the occurrence of the condition. In the absence of an express time provision, the period assumed at the time of the purchase shall be presumed.

§ 1085

Whether the new buyer would be better, the seller judges. He can prefer the second buyer, if the first one also wanted to pay more. When the contract is dissolved, the benefits of the thing and the money cancel each other out. With regard to improvements or aggravations, the buyer shall be treated as a bona fide owner.

Sell order

§ 1086

If a person transfers his movable property to another for sale for a certain price, with the condition that the transferee must either deliver the specified purchase money or return the property within a fixed time, the transferor is not entitled to reclaim the property before the expiry of the time; the transferee, however, must pay the specified purchase money after the expiry of the time.

§ 1087

The transferor shall remain the owner during the fixed period. The transferee shall be liable to him for any damage caused by his fault, and in the event of restitution of the thing he shall be reimbursed only such costs as are of benefit to the transferor.

§ 1088

If the thing is immovable or if the price or the term of payment is not determined, the transferee shall be deemed to be the holder of the right. In no case may the thing entrusted for sale be claimed from the third party who has taken it from the transferee in good faith (Section 367).

§ 1089

Even in the case of judicial sales, the information available through contracts,  
and the exchange and

## General Civil Code

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As a rule, the provisions of the contract of sale, in particular, shall apply, unless the law or the court order contains separate provisions.

25. Main Part Of Inventory Contracts

**From inventory contracts**

§ 1090

The following provisions apply to tenancy agreements (rental and lease agreements):

Section 1 Lease Agreement

1. Subsection General Provisions

*A. Concept and scope*

Art. 1

I. Term

By the lease agreement, the lessor undertakes to provide the lessee with a thing for use, and the lessee undertakes to pay the lessor a rent for it.

*II. Scope*

Art. 2

*1. Residential and commercial premises*

1) The provisions governing the rental of residential and commercial premises shall also apply to items which the lessor makes available to the lessee for use together with these premises. Such items include, in particular, movables, garages, car parks and parking spaces as well as gardens.

2) They do not apply to vacation homes rented for six months or less.

Art. 3

2. Provisions on protection against unauthorized rent and other unauthorized claims of the lessor.

1) The provisions on protection against unlawful rent and other unlawful claims of the landlord (Art. 55 et seq.) apply *mutatis mutandis* to non-agricultural leases and other contracts that essentially regulate the transfer of residential or commercial premises in return for payment.

2) They do not apply to the rent of luxury apartments with more than 150 m<sup>2</sup> of net living space and single-family houses with more than 200 m<sup>2</sup> of net living space.

Art. 4

*B. Tying transactions*

1) A tying transaction in connection with the lease of residential or commercial premises shall be void if the conclusion or continuation of the lease is made dependent thereon and the tenant thereby assumes an obligation towards the landlord or a third party that is not directly related to the use of the leased property.

2) A tying transaction within the meaning of para. 1 is in particular the obligation of the tenant to purchase the rental object, furniture or shares or to conclude an insurance contract.

#### Art. 5

##### C. Duration of the lease

- 1) The lease may be for a limited or unlimited period.
- 2) The tenancy is limited if it is to end without notice at the end of the agreed term.
- 3) The remaining leases are deemed to be of indefinite duration.

##### D. Duties of the lessor Art.

#### 6

##### *I. In general*

- 1) The Lessor is obliged to hand over the item at the agreed time in a condition suitable for the intended use and to maintain it in the same condition.
- 2) Deviating agreements to the detriment of the tenant are void if they are contained in:
  - a) pre-formulated general terms and conditions;
  - b) lease agreements for residential or commercial premises.

#### Art. 7

##### *II. Duty to provide information*

If a return protocol has been drawn up at the end of the previous tenancy, the landlord must present it in anonymous form to the new tenant for inspection at the latter's request when handing over the item.

#### Art. 8

##### III. Duties and charges

The Lessor shall bear the burdens and public charges connected with the object.

*E. Duties of the tenant*

I. Payment of rent and ancillary costs Art. 9

1. Rent

The rent is the consideration owed by the tenant to the landlord for the transfer of the thing.

2. *Service charges*

Art. 10

a) In general

- 1) Service charges are the payment for services rendered by the lessor or a third party related to the use of the object.
- 2) The tenant must pay the incidental expenses caused by him and usual, unless otherwise agreed.
- 3) The Government may regulate the details of incidental expenses by decree, in particular:
  - a) their accounting;
  - b) their chargeability;
  - c) the purchase of energy from an outsourced control center;
  - d) residential and commercial premises that are not rented out.

Art. 11

*b) Residential and commercial*

- 1) In the case of residential and commercial premises, service charges are the actual expenses incurred by the landlord for services connected with the use of the property, such as heating, hot water and similar operating costs, as well as for public charges arising from the use of the property.
- 2) The lessor must allow the lessee to inspect the receipts upon request. Art. 12

3. Payment dates

The tenant must pay the rent and any ancillary costs at the end of each month, but at the latest at the end of the rental period, if no other time is agreed.



is agreed.

#### Art. 13

##### 4. Tenant payment arrears

1) If the tenant is in arrears with the payment of due rent or ancillary costs after taking over the object, the landlord may set him a payment deadline in writing and threaten him that the tenancy will be terminated if the deadline expires without payment. The payment period shall be at least 14 days.

2) If the tenant does not pay within the set period, the landlord may terminate the lease without notice, in the case of residential and commercial premises with a notice period of at least 14 days to any date.

#### Art. 14

##### II. Collateral by the tenant

1) If the tenant of residential or commercial premises provides security in money or securities, the landlord must deposit it with a bank in a savings account or a deposit account in the name of the tenant.

2) When renting residential premises, the landlord may demand a maximum of three months' interest as security.

3) The bank may only release the security with the consent of both parties or on the basis of a final court decision. If the landlord has not asserted a claim against the tenant in court within one year of termination of the tenancy, the tenant may demand that the bank return the security.

#### Art. 15

##### *III. Care and consideration*

1) The lessee must use the thing carefully.

2) The tenant of an immovable thing must be considerate of householders and neighbors.

3) If the tenant continues to violate his duty of care or consideration despite written warning by the landlord, so that the landlord or the occupants of the house can no longer be expected to continue the tenancy, the landlord may terminate the tenancy without notice, in the case of residential and commercial premises with a notice period of at least 14 days to any date.

4) However, the landlord of residential or commercial premises may terminate the lease without notice if the tenant intentionally causes serious damage to the property.

Art. 16

IV. Reporting obligation

- 1) The tenant must notify the landlord of defects that he is not responsible for eliminating himself.
- 2) If the Lessee fails to report the damage, he shall be liable for the damage incurred by the Lessor as a result.

Art. 17

V. *Obligation to tolerate*

- 1) The tenant must tolerate work on the object if it is necessary to eliminate defects or to repair or prevent damage.
- 2) The tenant must allow the landlord to inspect the object after consultation with the tenant, insofar as this is necessary for the maintenance, sale or re-leasing.
- 3) The Lessor must notify the Lessee of work and inspections in good time and take the interests of the Lessee into account when carrying them out; any claims of the Lessee for a reduction of the rent (Art. 23) and for damages (Art. 24) remain reserved.

Art. 18

*F. Non-performance or defective performance of the contract at the time of handover of the item*

- 1) If the lessor does not hand over the object at the agreed time or with defects which exclude or substantially impair its suitability for the intended use, the lessee may proceed in accordance with Sections 918 to 921 on the non-performance of contracts.
- 2) If the lessee takes over the object despite these defects and insists on proper performance of the contract, he may only assert the claims to which he would be entitled if defects had arisen during the term of the lease (Art. 20 to 25).
- 3) The Lessee may also assert the claims under Articles 20 to 25 if the item has defects at the time of handover:
  - a) which reduce the suitability for the intended use, but neither exclude nor significantly impair it;
  - b) which the tenant would have to remove at his own expense during the lease term (Art. 19).

*G. Defects during the rental period*

Art. 19

### I. Obligation of the tenant to minor cleaning and repairs

The tenant must remedy at his own expense any defects that can be remedied by minor cleaning or repairs necessary for ordinary maintenance.

#### *II. Rights of the tenant*

##### Art. 20

###### *1. In general*

1) If defects occur in the item for which the Lessee is not responsible or which the Lessee is not required to remedy at his own expense, or if the Lessee is disturbed in the use of the item in accordance with the contract, the Lessee may demand that the Lessor remedy the defect:

- a) eliminates the defect;
- b) proportionately reduces the rent;
- c) pays compensation for damages.

2) The lessee of immovable property may also deposit the rent (Art. 25 et seq.).

###### 2. Elimination of the defect

##### Art. 21

###### a) Principle

If the landlord knows of a defect and does not remedy it within a reasonable period, the tenant may:

- a) terminate the contract without notice if the defect excludes or substantially impairs the fitness of an immovable item for the intended use or if the defect reduces the fitness of a movable item for the intended use;
- b) have the defect remedied at the expense of the lessor if the defect reduces the suitability of the item for the intended use, but does not significantly impair it.

##### Art. 22

###### b) Exception

The Lessee shall not be entitled to have the defect remedied if the Lessor provides a full replacement for the defective item within a reasonable period of time.

##### Art. 23

*3. Reduction of the rent*

If the suitability of the item for the intended use is impaired or reduced, the Lessee may demand that the Lessor reduce the rent accordingly from the time at which the Lessee became aware of the defect until the defect is remedied.

Art. 24

*4. Damages*

If the Tenant has suffered damage as a result of the defect, the Landlord must compensate him for it unless he proves that he is not at fault.

5. Deposit of the rent Art. 25

*a) Principle*

1) If the tenant of immovable property demands that the landlord remedy a defect, the tenant must set the landlord a reasonable deadline in writing and may threaten the landlord that, if the deadline expires unused, the tenant will take legal action to deposit any rent that may become due in the future. He must give the landlord written notice of the deposit.

2) Upon deposit, the rents shall be deemed to have been paid (section 1425).

Art. 26

*b) Surrender of the deposited rent*

1) Deposited rent shall accrue to the landlord if the tenant has not asserted his claims against the landlord with the court of deposit within four weeks of the due date of the first deposited rent.

2) The landlord may request the court of deposit to hand over the wrongfully deposited rent as soon as the tenant has given him notice of the deposit.

*H. Renewals and changes*

Art. 27

*I. By the landlord*

1) The landlord may only make renewals and changes to the object if they are reasonable for the tenant and if the lease has not been terminated.

2) The Lessor must take the interests of the Lessee into account when carrying out the work; any claims of the Lessee for a reduction of the rent (Art. 23) and for damages (Art. 24) shall remain reserved.

#### Art. 28

##### *II. by the tenant*

- 1) The Lessee may make renewals and changes to the item only if the Lessor has given its written consent.
- 2) If the lessor has agreed, he may demand the restoration of the former condition only if this has been agreed in writing.
- 3) If, at the end of the lease, the item has a significant added value due to the renewal or modification to which the Lessor has agreed, the Lessee may demand corresponding compensation for this; further claims for compensation agreed in writing and any agreed exclusion of compensation shall remain reserved. However, the tenant must claim the compensation in court within twelve months after termination of the tenancy at the latest, otherwise his claim is forfeited.

#### J. Change of ownership Art.

#### 29

##### I. Disposal of the thing

- 1) If the lessor sells the item after the lease agreement has been concluded, the lease shall pass to the purchaser along with ownership of the item.
- 2) However, the new owner may:
  - a) in the case of residential and commercial premises, terminate the tenancy with the statutory period of notice to the next statutory date if he/she asserts a personal need for him/herself, close relatives or in-laws;
  - b) in the case of another matter, terminate the lease with the statutory period of notice to the next statutory date, if the contract does not allow for earlier termination.
- 3) If the new owner terminates the contract earlier than the contract with the previous landlord would have allowed, the previous owner shall be liable to the tenant for all damages resulting therefrom.
- 4) The provisions on expropriation remain reserved.

#### Art. 30

##### *II. Granting of limited rights in rem*

The provisions on the alienation of the property shall apply *mutatis mutandis* if the lessor grants a limited right in rem to a third party and this is equivalent to a change of ownership.

Art. 31

III. Prior notice in the land register

- 1) When renting a plot of land, it can be agreed that the relationship will be recorded in the land register.
- 2) The effect of the priority notice is that any new owner must allow the tenant to use the property in accordance with the lease agreement.
- 3) In the event of a forced judicial sale, the tenancy, if it is recorded in the land register, is to be treated in the same way as an easement. If the new owner does not have to take over the tenancy, the tenant must give way to him after proper notice of termination.

Art. 32

*K. Sublease*

- 1) The tenant may sublet the thing in whole or in part with the consent of the landlord.
- 2) The lessee shall be liable to the lessor for ensuring that the sublessee does not use the item in a manner other than that for which he is permitted. The lessor may directly require the sublessee to do so.

Art. 33

*L. Transfer of the lease to a third party*

- 1) The tenant of business premises may transfer the lease to a third party with the written consent of the landlord.
- 2) If the landlord agrees, the third party shall enter into the tenancy in place of the tenant.
- 3) The tenant is released from his obligations towards the landlord. However, he shall be jointly and severally liable with the third party until the time when the tenancy ends or can be terminated in accordance with the contract or the law, but for a maximum of two years.

Art. 34

M. Early return of the case

- 1) If the Lessee returns the item without observing the notice period or deadline, he shall only be released from his obligations towards the Lessor,

if he proposes a new tenant reasonable for the landlord; the new tenant must be solvent and willing to take over the lease on the same terms.

2) Otherwise, he must pay the rent until the time when the lease ends or can be terminated according to the contract or the law.

3) The landlord must take into account what he:

a) in expenses and

b) by using the item for other purposes or has deliberately refrained from doing so.

#### Art. 35

##### *N. Offsetting*

The Lessor and the Lessee may not waive in advance the right to set off claims and debts arising from the lease.

#### O. Termination of the lease Art. 36

##### *I. Expiration of the agreed duration*

1) If the parties have expressly or tacitly agreed on a certain duration, the lease shall end without notice upon expiry of this duration.

2) If the parties tacitly continue the tenancy, it shall be deemed to be an indefinite tenancy.

##### *II. Periods and dates of notice Art.*

#### 37

##### *1. In general*

1) The parties may terminate the lease for an indefinite period of time in compliance with the statutory periods and dates, unless they have agreed on a longer period or a different date.

2) If the parties do not comply with the deadline or the date, the out-of-court termination shall apply to the next possible date. Section 563 of the Code of Civil Procedure shall apply to the judicial termination.

#### Art. 38

##### *2. Immovable property and movable structures*

In the case of rent of immovable property and fixtures the parties may

with three months' notice to the end of a month.

Art. 39

*3. Apartments*

In the case of renting apartments, the parties may terminate with three months' notice to the end of a month.

Art. 40

*4. Business premises*

In the case of rent of business premises, the parties may terminate the contract with six months' notice to the end of a month.

Art. 41

*5. Single room and parking spaces*

In the case of the rental of furnished and unfurnished single rooms as well as parking spaces or similar facilities rented out separately, the parties may terminate the contract with four weeks' notice to the end of a month.

Art. 42

*6. Movable property*

In the case of the lease of movable property, the parties may terminate the lease with three days' notice to any date.

*III. Extraordinary termination*

Art. 43

*1. For important reasons*

For important reasons that make the fulfillment of the contract unreasonable for them, the parties may terminate the lease without notice, in the case of residential and commercial premises with a notice period of at least 14 days to any date.

Art. 44

*2. Bankruptcy of the tenant*

1) If bankruptcy proceedings are instituted against the tenant's assets after the item has been taken over, the landlord of residential and commercial premises may demand security for future rent. He must set the insolvency administrator a reasonable deadline for this in writing.

2) If the lessor does not receive security within this period, he may terminate the lease without notice.



## Art. 45

## 3. Death of the tenant

- 1) If the Tenant dies, both his heirs and the Landlord shall be entitled to terminate the lease with the statutory period of notice to the next statutory date, subject to subsection 2.
- 2) In the case of the rental of residential premises, the rights and obligations of the tenancy shall pass to the spouse, registered partner, cohabiting partner, relatives in the direct line, including children by choice and siblings of the previous tenant, provided that these persons lived in the same household as the previous tenant until the latter's death and had a need to live there, and provided that these persons have not terminated the tenancy within the meaning of paragraph 1. A cohabitant within the meaning of this provision is a person who lived with the previous tenant until his death for at least three years in the apartment in an economically equivalent to a married household or who moved into the apartment together with the previous tenant at the time.

## Art. 46

4. *Movable property*

The tenant of a movable item that serves his private use and is rented out by the landlord in the course of his commercial activity may terminate the lease with a notice period of not more than 14 days to the end of a month. The lessor is not entitled to compensation for this.

IV. Form of termination for residential and commercial  
premises Art. 47

1. *In general*

- 1) Landlords and tenants of residential and commercial premises must give written notice of termination.
- 2) If the landlord does not terminate the contract by court order, the notice must contain the following minimum information:
  - a) the name of the leased property to which the termination refers;
  - b) the date on which the termination becomes effective.

## 2. Family home Art. 48

a) *Termination by the tenant*

- 1) If the leased property serves as the family home, one spouse may terminate the lease only with the express written consent of the other.
- 2) If the spouse is unable to obtain such consent or if it is refused without good cause, he or she may apply to the court.
- 3) The same rule applies mutatis mutandis to registered partnerships.

Art. 49

*b) Termination by the landlord*

The notice of termination by the Landlord and the setting of a payment deadline with threat of termination (Art. 13) shall be served separately on the Tenant and the Tenant's spouse or registered partner.

Art. 50

3. Invalidation of the termination

The termination shall be void if it does not comply with Articles 47 to 49.

*P. Return of the thing*

Art. 51

*1. In general*

- 1) The lessee must return the item in the condition resulting from its use in accordance with the contract.
- 2) Agreements in which the tenant undertakes in advance to pay compensation upon termination of the tenancy, which includes other than the compensation of the possible damage, are null and void.

Art. 52

*II. Checking the case and reporting to the tenant*

- 1) Upon return, the lessor must inspect the condition of the item and immediately notify the lessee of any defects for which the lessee is liable.
- 2) If the lessor fails to do so, he shall lose his claims, unless the defects were not recognizable during a normal inspection.
- 3) If the landlord discovers such defects later, he must report them to the tenant immediately. However, the landlord must file a claim in court within twelve months of the end of the tenancy at the latest, otherwise his claim is forfeited.

*Q. Retention right of the landlord*

## Art. 53

*I. Scope*

1) In order to secure the rent, the lessor of immovable property shall have the right of retention to the movable property brought in and belonging to the lessee or to the members of the lessee's family living in the same household as the lessee, unless such property is exempt from seizure. The right of retention shall expire if the items are removed before their retention description, unless this is done as a result of a court order and the lessor registers his right with the court within three days after the execution.

2) If the tenant moves out or things are taken away without the interest being paid or secured, the landlord may retain the things at his own risk, but he must request the retention notice within three days or hand over the things.

## Art. 54

*II. Third party things*

The landlord's right of retention under Art. 53 is already established by the introduction of movable property into the rented apartment, and can therefore also be asserted against those creditors of the tenant who have a lien on the introduced property.

before the lessor has filed a claim with the court for payment of the rent or has requested a description of the movable property.

*2. Subsection*

Protection against unlawful rent and other unlawful claims of the landlord in the rent of residential and commercial premises

*A. Unacceptable rent*

## Art. 55

*I. Rule*

1) Initial rents are inadmissible if this allows the landlord to benefit from a subjective hardship or a dominant market position and thus to obtain an unreasonable return from the rental property.

2) Rent increases, except in cases of indexation (Art. 57) or graduated rent (Art. 58), are inadmissible if they are associated with the achievement of an unreasonable return on the rented property.

## Art. 56

## II. Exceptions

An unreasonable income is not obtained if the rent:

- a) is in line with the rental rates customary in the locality or district for comparable residential and commercial premises, taking into account the location, the construction, the equipment, the condition of the rented property and the construction period;
- b) are due to cost increases or additional services provided by the lessor;
- c) For newer buildings, the gross return on investment is calculated on the basis of the investment costs;
- d) merely serves to safeguard the purchasing power of the risk-bearing capital.

### Art. 57

#### *B. Indexed rents*

The agreement that the rent follows an index is only valid if the national consumer price index is provided for as the index.

### Art. 58

#### *C. Staggered rents*

The agreement that the rent increases periodically by a certain amount is valid only if:

- a) the lease is concluded for at least three years;
- b) the rent is increased no more than once a year; and
- c) the amount of the increase is determined in francs.

### Art. 59

#### *D. Rent increases and other unilateral changes to the contract by the landlord*

1) The landlord may increase the rent at any time to the next possible termination date. The landlord must notify the tenant of the rent increase in writing at least 14 days before the start of the notice period and give reasons for the increase.

2) The notification shall have the following minimum content:

- a) the date on which the increase takes effect;
- b) a justification of the increase.

3) The rent increase is void if:

- a) the notification does not comply with par. 2;
- b) the landlord threatens or gives notice of termination with the notice.

4) Paragraphs 1 to 3 shall apply mutatis mutandis if the landlord intends to unilaterally amend the lease agreement to the detriment of the tenant, namely to reduce its existing services or to introduce new ancillary costs.

#### E. Contesting the rent Art. 60

##### *I. Request for reduction of initial rent*

The tenant may challenge the initial rent in court within four weeks of taking over the premises as inadmissible within the meaning of Art. 55 Para. 1 and demand its reduction, otherwise his claim shall be forfeited.

#### Art. 61

##### *II. Reduction request during the rental period*

1) The tenant may challenge the rent in court as inadmissible and demand that it be reduced to the next possible termination date if he has reason to believe that the landlord, due to a significant change in the basis of calculation, in particular due to a reduction in costs, is obtaining an unreasonable return from the rented property in accordance with Articles 55 and 56.

2) The tenant must submit the reduction request to the landlord in writing; the landlord must respond within four weeks. If the landlord does not comply or only partially complies with the request or does not respond within the deadline, the tenant may appeal to the court within four weeks, otherwise his claim is forfeited.

3) Para. 2 shall not apply if the tenant files a request for a reduction at the same time as contesting a rent increase.

#### Art. 62

##### III. Contestation of rent increases and other unilateral contract amendments

1) The tenant may appeal to the court against a rent increase within four weeks of being notified of it as inadmissible within the meaning of Articles 55 and 56.  
otherwise his claim is forfeited.

2) Paragraph 1 shall apply mutatis mutandis if the lessor otherwise unilaterally modifies the lease to the detriment of the lessee, namely reduces its previous services  
or introduces new ancillary costs.

#### Art. 63

##### *IV. Contestation of indexed rents*

Subject to contesting the initial rent, in the case of indexed rent, a party may only argue in court that the increase or decrease in rent demanded by the other party is not justified by any corresponding change in the index.

Art. 64

*V. Contestation of staggered rents*

Subject to contesting the initial rent, the tenant may not contest graduated rents.

Art. 65

F. Continued validity of the lease agreement during the rescission proceedings

The existing lease agreement shall continue to apply unchanged during the court proceedings.

3. Subsection

Protection against termination of lease of residential and commercial premises

A. Contestability of Termination

Art. 66

*1. In general*

The termination is contestable if it violates the principle of good faith pursuant to Art. 2 PGR.

Art. 67

II. Termination by the landlord

1) Termination by the landlord is especially contestable when it is pronounced:

- a) because the tenant asserts claims arising from the tenancy in good faith;
- b) because the landlord wants to enforce a unilateral amendment of the contract to the detriment of the tenant or an adjustment of the rent;
- c) solely to induce the tenant to purchase the rented apartment;
- d) during legal proceedings related to the tenancy, unless the tenant has initiated the proceedings improperly;
- e) due to changes in the family situation of the tenant, from which the landlord does not suffer any significant disadvantages.

- 2) Paragraph 1(d) is not applicable in the case of terminations:
- a) due to the landlord's own needs for himself, close relatives or in-laws;
  - b) due to arrears of payment of the tenant (Art. 13);
  - c) for serious breach of the tenant's duty of care and consideration (Art. 15 par. 3 and 4);
  - d) as a result of the alienation of the thing (Art. 29);
  - e) for important reasons (Art. 43);
  - f) due to bankruptcy of the tenant (Art. 36 IO).

*B. Extension of the lease*

Art. 68

I. Claim of the tenant

- 1) The tenant may request the extension of a fixed-term or indefinite lease if the termination of the lease would result in exceptional hardship for him or his family, which could not be justified by the interests of the landlord.
- 2) In weighing the interests, the court shall take into account in particular:
- a) the circumstances of the conclusion of the contract and the content of the contract;
  - b) the duration of the lease;
  - c) the personal, family and economic circumstances of the parties and their behavior;
  - d) any personal needs of the landlord for himself, close relatives or in-laws;
  - e) the conditions on the local market for residential and commercial premises.
- 3) If the tenant requests a second extension, the court shall also take into account whether the tenant has done everything that could reasonably be expected of it to avert the exceptional hardship.

Art. 69

*II. Exclusion of extension*

- 1) The extension is excluded in the case of terminations:
- a) due to arrears of payment of the tenant (Art. 13);

b) for serious breach of the tenant's duty of care and consideration (Art. 15 par. 3 and 4);

c) due to bankruptcy of the tenant (Art. 36 IO);

d) of a rental agreement which, in view of an imminent conversion or demolition project, was expressly concluded only for the limited period until the start of construction or until receipt of the necessary permit.

2) The extension is usually excluded if the landlord offers the tenant an equivalent substitute for the residential or commercial premises.

Art. 70

III. Duration of the extension

1) The lease may be extended for a maximum of one and a half years for residential and commercial premises. Within the maximum term, one or two extensions may be granted. The first extension may not exceed two thirds of the maximum term.

2) If the parties agree on an extension of the lease, they are not bound to any maximum term and the tenant may waive a second extension.

Art. 71

*IV. Continued validity of the lease*

The contract shall continue to apply unchanged during the extension; the statutory adjustment options remain reserved.

Art. 72

*V. Termination during the extension*

The tenant may terminate the lease as follows:

a) with a notice period of four weeks to the end of a month for extensions of up to one year;

b) in case of extension of more than one year, with three months' notice to the end of a month.

Art. 73

*C. Family apartment*

1) If the leased property serves as the family home, the tenant's spouse may also contest the termination, object to the court-ordered termination, request the extension of the lease, or contest the remaining



Exercise rights to which the tenant is entitled upon termination.

- 2) Agreements on extension are valid only if they are concluded with both spouses.
- 3) The same rule applies mutatis mutandis to registered partnerships.

#### Art. 74

#### D. Procedure

The proceedings on extrajudicial and judicial notices as well as on extension requests are governed by the provisions of the ZPO.

#### Art. 75

#### E. Sublease

- 1) This subsection applies to the sublease as long as the main tenancy is not terminated. The sublease may only be extended for the duration of the main tenancy.
- 2) If the main purpose of the sublease is to circumvent the provisions on protection against termination, the subtenant shall be granted protection against termination without regard to the main tenancy. If the main tenancy is terminated, the landlord shall enter into the contract with the subtenant instead of the tenant.

#### Art. 76

#### F. Compelling provisions

- 1) Lessee may waive any rights to which it is entitled under this subsection only if expressly provided.
- 2) Any agreements to the contrary shall be null and void.

#### Section 2 Lease

#### A. Definition and scope Art. 77

#### I. Term

By the lease agreement, the lessor undertakes to provide the lessee with a usable thing or a usable right for use and for the receipt of the fruits or yields, and the lessee undertakes to pay a rent for it.

#### II. Scope

#### Art. 78

#### 1. Residential and commercial

The provisions governing the lease of residential and commercial premises shall also apply to property which the lessor transfers to the lessee for use together with such premises.

Art. 79

2. Agricultural lease

Leases of agricultural businesses or land for agricultural use are governed by the General Civil Code (ABGB) except for the provisions on leases of residential and commercial premises.

Art. 80

*B. Inventory*

If the lease also includes equipment, livestock or supplies, the parties must prepare a joint inventory of these items signed by both parties and participate in a joint appraisal.

C. Duties of the lessor Art.

81

*I. Delivery of the thing*

- 1) The lessor is obligated to hand over the object at the agreed time in a condition suitable for the presupposed use and management.
- 2) If a return protocol has been drawn up at the end of the previous lease, the lessor must present it to the new lessee for inspection at the latter's request when handing over the property.

Art. 82

*II. Main repairs*

The lessor is obliged to carry out major repairs to the property that become necessary during the lease term at his own expense as soon as the lessee has informed him of their necessity.

Art. 83

*III. Duties and charges*

The lessor shall bear the burdens and public charges connected with the property.

D. Duties of the lessee

*I. Payment of the rent and incidental expenses*

## Art. 84

## 1. In general

- 1) The lessee must pay the rent and any ancillary costs at the end of a lease year, but at the latest at the end of the lease term, if no other date has been agreed.
- 2) Art. 10 shall apply to the ancillary costs.

## Art. 85

## 2. Tenant's arrears

- 1) If the lessee is in arrears with the payment of rent or ancillary costs after taking over the property, the lessor may set him a payment deadline of at least 14 days in writing and threaten him that the lease will be terminated if the deadline expires without payment.
- 2) If the lessee does not pay within the set period, the lessor may terminate the lease without notice, in the case of residential and business premises with a notice period of at least 14 days to any date.

## II. Care, consideration and maintenance

## Art. 86

1. *Care and consideration*

- 1) The lessee must manage the property carefully and in accordance with the contract, in particular to ensure sustainable profitability.
- 2) The tenant of immovable property must be considerate of householders and neighbors.

## Art. 87

2. *Ordinary maintenance*

- 1) The lessee must provide for the proper maintenance of the thing.
- 2) He must make the minor repairs and replace the equipment and tools of low value when they have become useless due to age or use.

## Art. 88

## 3. Breach of duty

- 1) If the lessee continues to violate his duty of care, consideration or maintenance despite written warning from the lessor, so that the lessor or the occupants of the house can no longer be reasonably expected to continue the lease,

the lessor may terminate the lease without notice, in the case of residential and business premises with a notice period of at least 14 days to any date.

2) However, the lessor of residential or commercial premises may terminate the lease without notice if the lessee intentionally causes serious damage to the property.

Art. 89

*III. Reporting obligation*

1) If major repairs are necessary or if a third party claims rights to the leased property, the lessee must notify the lessor immediately.

2) If the lessee fails to notify, he shall be liable for the damage suffered by the lessor as a result.

Art. 90

*IV. Obligation to tolerate*

1) The lessee must tolerate major repairs if they are necessary to eliminate defects or to repair or prevent damage.

2) The lessee must allow the lessor to inspect the property after consultation with the lessee, insofar as this is necessary for the maintenance, sale or re-lease.

3) The lessor must notify the lessee of work and inspections in good time and take the lessee's interests into account when carrying them out; any claims by the lessee for a reduction in the rent and for damages shall be governed by the tenancy law (Art. 23 and Art. 23).

24) *mutatis mutandis*.

Art. 91

*E. Rights of the lessee in case of non-performance of the contract and defects*

1) The tenancy law (Art. 18 and 20 to 25) shall apply *mutatis mutandis* if:

a) the lessor fails to hand over the thing at the agreed time or in a defective condition;

b) defects occur in the item for which the lessee is neither responsible nor has to remedy them at his own expense, or the lessee is disturbed in the use of the item in accordance with the contract.

2) Deviating agreements to the detriment of the lessee are void if they are contained in:

a) pre-formulated general terms and conditions;

b) Leases of residential and commercial premises.

F. Renewals and amendments Art.

92

I. By the lessor

- 1) The lessor may make renewals and changes to the object only if they are reasonable for the lessee and if the lease has not been terminated.
- 2) The lessor must take the interests of the lessee into account when carrying out the work; the tenancy law (Art. 23 and 24) shall apply *mutatis mutandis* to any claims of the lessee for a reduction of the rent and for damages.

Art. 93

II. *By the lessee*

- 1) The lessee needs the written consent of the lessor for:
  - a) Changes in customary management that may be of material significance beyond the lease term;
  - b) Renewals and changes to the item that go beyond ordinary maintenance.
- 2) If the lessor has agreed, he may demand restoration of the former condition only if this has been agreed in writing.
- 3) If the lessor has not agreed in writing to a change pursuant to subsection 1(a) and the lessee does not reverse it within a reasonable period of time, the lessor may terminate the lease without notice, in the case of residential and commercial premises with a notice period of at least 14 days to any date.

Art. 94

G. Change of ownership The

tenancy law (Art. 29 to 31) applies *mutatis mutandis* in the case of:

- a) Disposal of the leased property;
- b) Granting of limited rights in rem to the leased property;
- c) Registration of the lease in the land register.

Art. 95

H. *Sublease*

1) The lessee may sublease or rent the thing in whole or in part with the consent of the lessor.

2) The lessee shall be liable to the lessor for ensuring that the sublessee or the lessee does not use the property in a manner other than that for which he is permitted. The lessor may directly require sublessee and lessee to do so.

Art. 96

*J. Transfer of the lease to a third party*

Art. 33 shall apply mutatis mutandis to the transfer of the lease of business premises to a third party.

Art. 97

K. Early return of the case

1) If the lessee returns the object without observing the notice period or deadline, he shall only be released from his obligations to the lessor if he proposes a new lessee who is reasonable for the lessor; the new lessee must be solvent and willing to take over the lease on the same terms.

2) Otherwise, he must pay the rent until the time when the lease ends or can be terminated according to the contract or the law.

3) The lessor must take into account what he:

a) in expenses and

b) by using the item for other purposes or has deliberately refrained from doing so.

Art. 98

*L. Offsetting*

Art. 35 shall apply mutatis mutandis to the offsetting of claims and debts arising from the lease.

*M. Termination of the lease*

Art. 99

I. Expiration of the agreed duration

1) If the parties have expressly or tacitly agreed on a certain duration, the lease shall end without notice upon expiry of this duration.

2) If the parties tacitly continue the lease, it shall apply under the same conditions for a further year, unless otherwise agreed.

3) The parties may terminate the continued lease with the statutory notice period to the end of a lease year.

Art. 100

*II. Notice periods and dates*

1) The parties may terminate the lease for an indefinite period with six months' notice to the end of a month, unless otherwise stipulated by agreement and provided that the nature of the subject matter of the lease does not indicate any other intention on the part of the parties.

2) In the case of an indefinite lease of residential and commercial premises, the parties may terminate the lease with a notice period of at least six months to the end of a month. They may agree on a longer notice period and a different date.

3) If the parties do not comply with the deadline or the date, the out-of-court termination shall apply to the next possible date. Section 563 of the Code of Civil Procedure shall apply to the judicial termination.

III. Extraordinary termination Art.

101

1. For important reasons

For important reasons that make the fulfillment of the contract unreasonable for them, the parties may terminate the lease without notice, in the case of residential and commercial premises with a notice period of at least 14 days to any date.

Art. 102

2. Bankruptcy of the tenant

1) If bankruptcy proceedings are instituted against the lessee's assets after he has taken over the property, the lessor of residential and commercial premises may demand security for future rents. He must set the insolvency administrator a reasonable deadline for this in writing.

2) If the lessor does not receive security within this period, he may terminate the lease without notice.

Art. 103

*3. Death of the tenant*

If the lessee dies, Art. 45 shall apply mutatis

mutandis.

Art. 104

IV. Form of termination for residential and commercial premises

- 1) Landlords and tenants of residential and commercial premises must give written notice of termination.
- 2) If the lessor does not give notice of termination by court order, the notice of termination must have the following minimum content:
  - a) the designation of the subject matter of the lease to which the termination refers;
  - b) the date on which the termination becomes effective.
- 3) The termination is void if it does not meet these requirements.

N. Return of the item

Art. 105

*I. In general*

- 1) The lessee returns the thing and all inventory in the condition in which they are at the time of return.
- 2) The lessee may claim compensation for improvements if they have resulted from:
  - a) Efforts that go beyond due management;
  - b) Renewals or modifications to which the lessor has consented in writing.
- 3) The tenant must compensate for deterioration that could have been avoided by proper management.
- 4) Agreements in which the lessee undertakes in advance to pay compensation upon termination of the lease that includes other than the coverage of the possible damage are null and void.

Art. 106

*II. Examination of the case and notification to the lessee*

- 1) Upon return, the lessor must check the condition of the object and immediately report to the lessee any defects for which the lessee is responsible.
- 2) If the lessor fails to do so, he loses his claims, unless the defects were not recognizable during a normal inspection.
- 3) If the lessor discovers such defects later, he must report them to the lessee immediately. However, the lessor must file a claim in court no later than twelve months after termination of the lease, otherwise his claim is forfeited.



## Art. 107

## III. Replacement of items of the inventory

- 1) If the inventory was appraised at the time of transfer of the item, the lessee must return an inventory of the same type and appraised value at the end of the lease or compensate for the reduced value.
- 2) The lessee does not have to pay compensation for missing items if he proves that the loss is due to the lessor's fault or to force majeure.
- 3) The lessee may claim compensation for the added value resulting from his expenses and his work.

## Art. 108

*O. Retention right*

For rents have to the same extent and with the same effect the right of retention as the landlord for rent claims (Art. 53 and 54):

- a) Lessor of residential and commercial premises to the movable property brought by the lessee;
- b) The lessor of land shall be entitled to the movable property brought in by the lessee, as well as to the livestock, farm implements and fruit still present on the leased property.

## Art. 109

*P. Protection against termination of lease of residential and commercial premises*

- 1) The tenancy law (Art. 66 to 76) shall apply mutatis mutandis to the protection against termination of the lease of residential and commercial premises.
- 2) The provisions on the family home (Art. 73) are not applicable.

§§ 1091 to 1150 Revoked

## § 1090

The following provisions apply to tenancy agreements (rental and lease agreements):

## Section 1 Lease Agreement

## 1. Subsection General Provisions

*A. Concept and scope*

## Art. 1

I. Term

By the lease agreement, the lessor undertakes to provide the lessee with a thing for use, and the lessee undertakes to pay the lessor a rent for it.

*II. Scope*

Art. 2

*1. Residential and commercial*

- 1) The provisions governing the rental of residential and commercial premises shall also apply to items which the lessor makes available to the lessee for use together with these premises. Such items include, in particular, movables, garages, car parks and parking spaces as well as gardens.
- 2) They do not apply to vacation homes rented for six months or less.

Art. 3

2. Provisions on protection against unauthorized rent and other unauthorized claims of the lessor.

- 1) The provisions on protection against unlawful rent and other unlawful claims of the landlord (Art. 55 et seq.) apply *mutatis mutandis* to non-agricultural leases and other contracts that essentially regulate the transfer of residential or commercial premises in return for payment.
- 2) They do not apply to the rent of luxury apartments with more than 150 m<sup>2</sup> of net living space and single-family houses with more than 200 m<sup>2</sup> of net living space.

Art. 4

*B. Tying transactions*

- 1) A tying transaction in connection with the lease of residential or commercial premises shall be void if the conclusion or continuation of the lease is made dependent thereon and the tenant thereby assumes an obligation towards the landlord or a third party that is not directly related to the use of the leased property.
- 2) A tying transaction within the meaning of para. 1 is in particular the obligation of the tenant to purchase the rental object, furniture or shares or to conclude an insurance contract.

Art. 5

C. Duration of the lease

- 1) The lease may be for a limited or unlimited period.
- 2) The tenancy is limited if it is to end without notice at the end of the agreed period.
- 3) The remaining leases are deemed to be of indefinite duration.

#### D. Duties of the lessor Art.

6

##### *I. In general*

- 1) The Lessor is obliged to hand over the item at the agreed time in a condition suitable for the intended use and to maintain it in the same condition.
- 2) Deviating agreements to the detriment of the tenant are void if they are contained in:
  - a) pre-formulated general terms and conditions;
  - b) lease agreements for residential or commercial premises.

#### Art. 7

##### *II. Duty to provide information*

If a return protocol has been drawn up at the end of the previous tenancy, the landlord must present it in anonymous form to the new tenant for inspection at the latter's request when handing over the item.

#### Art. 8

### III. Duties and charges

The Lessor shall bear the burdens and public charges connected with the object.

#### *E. Duties of the tenant*

##### I. Payment of rent and ancillary costs Art. 9

###### 1. Rent

The rent is the consideration owed by the tenant to the landlord for the transfer of the thing.

###### *2. Service charges*

#### Art. 10

a) In general

- 1) Service charges are the payment for services rendered by the lessor or a third party related to the use of the object.
- 2) The tenant must pay the incidental expenses caused by him and usual, unless otherwise agreed.
- 3) The Government may regulate the details of incidental expenses by decree, in particular:
  - a) their accounting;
  - b) their chargeability;
  - c) the purchase of energy from an outsourced control center;
  - d) residential and commercial premises that are not rented out.

Art. 11

b) Residential and commercial

- 1) In the case of residential and commercial premises, service charges are the actual expenses incurred by the landlord for services connected with the use of the property, such as heating, hot water and similar operating costs, as well as for public charges arising from the use of the property.
- 2) The lessor must allow the lessee to inspect the receipts upon request. Art. 12

3. Payment dates

The tenant must pay the rent and any ancillary costs at the end of each month, but at the latest at the end of the rental period, if no other time has been agreed.

Art. 13

4. Tenant payment arrears

- 1) If the tenant is in arrears with the payment of due rent or ancillary costs after taking over the object, the landlord may set him a payment deadline in writing and threaten him that the tenancy will be terminated if the deadline expires without payment. The payment period shall be at least 14 days.
- 2) If the tenant does not pay within the set period, the landlord may terminate the lease without notice, in the case of residential and commercial premises with a notice period of at least 14 days to any date.

Art. 14

## II. Collateral by the tenant

- 1) If the tenant of residential or commercial premises provides security in money or securities, the landlord must deposit it with a bank in a savings account or a deposit account in the name of the tenant.
- 2) When renting residential premises, the landlord may demand a maximum of three months' interest as security.
- 3) The bank may only release the security with the consent of both parties or on the basis of a final court decision. If the landlord has not asserted a claim against the tenant in court within one year of termination of the tenancy, the tenant may demand that the bank return the security.

### Art. 15

#### *III. Care and consideration*

- 1) The lessee must use the thing carefully.
- 2) The tenant of an immovable thing must be considerate of householders and neighbors.
- 3) If the tenant continues to violate his duty of care or consideration despite written warning by the landlord, so that the landlord or the occupants of the house can no longer be expected to continue the tenancy, the landlord may terminate the tenancy without notice, in the case of residential and commercial premises with a notice period of at least 14 days to any date.
- 4) However, the landlord of residential or commercial premises may terminate the lease without notice if the tenant intentionally causes serious damage to the property.

### Art. 16

#### IV. Reporting obligation

- 1) The tenant must notify the landlord of defects that he is not responsible for eliminating himself.
- 2) If the Lessee fails to report the damage, he shall be liable for the damage incurred by the Lessor as a result.

### Art. 17

#### *V. Obligation to tolerate*

- 1) The tenant must tolerate work on the object if it is necessary to eliminate defects or to repair or prevent damage.

2) The tenant must allow the landlord to inspect the object after consultation with the tenant, insofar as this is necessary for the maintenance, sale or re-leasing.

3) The Lessor must notify the Lessee of work and inspections in good time and take the interests of the Lessee into account when carrying them out; any claims of the Lessee for a reduction of the rent (Art. 23) and for damages (Art. 24) remain reserved.

Art. 18

*F. Non-performance or defective performance of the contract at the time of handover of the item*

1) If the lessor does not hand over the object at the agreed time or with defects which exclude or substantially impair its suitability for the intended use, the lessee may proceed in accordance with Sections 918 to 921 on the non-performance of contracts.

2) If the lessee takes over the object despite these defects and insists on proper performance of the contract, he may only assert the claims to which he would be entitled if defects had arisen during the term of the lease (Art. 20 to 25).

3) The Lessee may also assert the claims under Articles 20 to 25 if the item has defects at the time of handover:

a) which reduce the suitability for the intended use, but neither exclude nor significantly impair it;

b) which the tenant would have to remove at his own expense during the lease term (Art. 19).

*G. Defects during the rental period*

Art. 19

I. Obligation of the tenant to minor cleaning and repairs

The tenant must remedy at his own expense any defects that can be remedied by minor cleaning or repairs necessary for ordinary maintenance.

*II. Rights of the tenant*

Art. 20

*1. In general*

1) If defects occur in the item for which the Lessee is not responsible or which the Lessee is not required to remedy at his own expense, or if the Lessee is disturbed in the use of the item in accordance with the contract, the Lessee may demand that the Lessor remedy the defect:

- a) eliminates the defect;
  - b) proportionately reduces the rent;
  - c) pays compensation for damages.
- 2) The lessee of immovable property may also deposit the rent (Art. 25 et seq.).

## 2. Elimination of the defect

### Art. 21

#### a) Principle

If the landlord knows of a defect and does not remedy it within a reasonable period, the tenant may:

- a) terminate the contract without notice if the defect excludes or substantially impairs the fitness of an immovable item for the intended use or if the defect reduces the fitness of a movable item for the intended use;
- b) have the defect remedied at the expense of the lessor if the defect reduces the suitability of the item for the intended use, but does not significantly impair it.

### Art. 22

#### b) Exception

The Lessee shall not be entitled to have the defect remedied if the Lessor provides a full replacement for the defective item within a reasonable period of time.

### Art. 23

#### 3. *Reduction of the rent*

If the suitability of the item for the intended use is impaired or reduced, the Lessee may demand that the Lessor reduce the rent accordingly from the time at which the Lessee became aware of the defect until the defect is remedied.

### Art. 24

#### 4. *Damages*

If the Tenant has suffered damage as a result of the defect, the Landlord must compensate him for it unless he proves that he is not at fault.

#### 5. *Deposit of the rent*

Art. 25

*a) Principle*

- 1) If the tenant of immovable property demands that the landlord remedy a defect, the tenant must set the landlord a reasonable deadline in writing and may threaten the landlord that, if the deadline expires unused, the tenant will take legal action to deposit any rent that may become due in the future. He must give the landlord written notice of the deposit.
- 2) Upon deposit, the rents shall be deemed to have been paid (section 1425).

Art. 26

*b) Surrender of the deposited rent*

- 1) Deposited rent shall accrue to the landlord if the tenant has not asserted his claims against the landlord with the court of deposit within four weeks of the due date of the first deposited rent.
- 2) The landlord may request the court of deposit to hand over the wrongfully deposited rent as soon as the tenant has given him notice of the deposit.

*H. Renewals and changes*

Art. 27

*i. By the landlord*

- 1) The landlord may only make renewals and changes to the object if they are reasonable for the tenant and if the lease has not been terminated.
- 2) The Lessor must take the interests of the Lessee into account when carrying out the work; any claims of the Lessee for a reduction of the rent (Art. 23) and for damages (Art. 24) shall remain reserved.

Art. 28

*ii. by the tenant*

- 1) The Lessee may make renewals and changes to the item only if the Lessor has given its written consent.
- 2) If the lessor has agreed, he may demand the restoration of the former condition only if this has been agreed in writing.
- 3) If, at the end of the lease, the item has a significant added value thanks to the renewal or modification to which the landlord has agreed,



the Tenant may demand corresponding compensation; further claims for compensation agreed in writing as well as an agreed exclusion of compensation shall remain reserved. However, the Tenant must claim the compensation in court within twelve months after termination of the tenancy at the latest, otherwise his claim shall be forfeited.

#### J. Change of ownership Art.

29

##### I. Disposal of the thing

- 1) If the lessor sells the item after the lease agreement has been concluded, the lease shall pass to the purchaser along with ownership of the item.
- 2) However, the new owner may:
  - a) in the case of residential and commercial premises, terminate the tenancy with the statutory period of notice to the next statutory date if he/she asserts a personal need for him/herself, close relatives or in-laws;
  - b) in the case of another matter, terminate the lease with the statutory period of notice to the next statutory date, if the contract does not allow for earlier termination.
- 3) If the new owner terminates the contract earlier than the contract with the previous landlord would have allowed, the previous owner shall be liable to the tenant for all damages resulting therefrom.
- 4) The provisions on expropriation remain reserved.

#### Art. 30

##### *II. Granting of limited rights in rem*

The provisions on the alienation of the property shall apply mutatis mutandis if the lessor grants a limited right in rem to a third party and this is equivalent to a change of ownership.

#### Art. 31

##### III. Prior notice in the land register

- 1) When renting a plot of land, it can be agreed that the relationship will be recorded in the land register.
- 2) The effect of the priority notice is that any new owner must allow the tenant to use the property in accordance with the lease agreement.
- 3) In the event of a compulsory judicial sale, the lease shall be terminated if

it is recorded in the land register, is to be treated in the same way as an easement. If the new owner does not have to take over the tenancy, the tenant must give way to him after proper notice of termination.

Art. 32

*K. Sublease*

- 1) The tenant may sublet the thing in whole or in part with the consent of the landlord.
- 2) The lessee shall be liable to the lessor for ensuring that the sublessee does not use the item in a manner other than that for which he is permitted. The lessor may directly require the sublessee to do so.

Art. 33

*L. Transfer of the lease to a third party*

- 1) The tenant of business premises may transfer the lease to a third party with the written consent of the landlord.
- 2) If the landlord agrees, the third party shall enter into the tenancy in place of the tenant.
- 3) The tenant is released from his obligations towards the landlord. However, he shall be jointly and severally liable with the third party until the time when the tenancy ends or can be terminated in accordance with the contract or the law, but for a maximum of two years.

Art. 34

*M. Early return of the case*

- 1) If the tenant returns the item without observing the notice period or deadline, he shall only be released from his obligations to the landlord if he proposes a new tenant who is reasonable for the landlord; the new tenant must be solvent and willing to take over the lease on the same terms.
- 2) Otherwise, he must pay the rent until the time when the lease ends or can be terminated according to the contract or the law.
- 3) The landlord must take into account what he:
  - a) in expenses and
  - b) by using the item for other purposes or has deliberately refrained from doing so.

Art. 35

*N. Offsetting*

The Lessor and the Lessee may not waive in advance the right to set off claims and debts arising from the lease.

## O. Termination of the lease Art. 36

*I. Expiration of the agreed duration*

- 1) If the parties have expressly or tacitly agreed on a certain duration, the lease shall end without notice upon expiry of this duration.
- 2) If the parties tacitly continue the tenancy, it shall be deemed to be an indefinite tenancy.

## II. Notice periods and dates Art.

## 37

*1. In general*

- 1) The parties may terminate the lease for an indefinite period of time in compliance with the statutory periods and dates, unless they have agreed on a longer period or a different date.
- 2) If the parties do not comply with the deadline or the date, the out-of-court termination shall apply to the next possible date. Section 563 of the Code of Civil Procedure shall apply to the judicial termination.

## Art. 38

*2. Immovable property and movable structures*

In the case of the lease of immovable property and buildings, the parties may terminate the lease with three months' notice to the end of a month.

## Art. 39

*3. Apartments*

In the case of renting apartments, the parties may terminate with three months' notice to the end of a month.

## Art. 40

## 4. Business premises

In the case of rent of business premises, the parties may terminate the contract with six months' notice to the end of a month.

## Art. 41

### 5. Single room and parking spaces

In the case of the rental of furnished and unfurnished single rooms as well as parking spaces or similar facilities rented out separately, the parties may terminate the contract with four weeks' notice to the end of a month.

#### Art. 42

### 6. Movable property

In the case of the lease of movable property, the parties may terminate the lease with three days' notice to any date.

#### III. Extraordinary termination

#### Art. 43

##### 1. For important reasons

For important reasons that make the fulfillment of the contract unreasonable for them, the parties may terminate the lease without notice, in the case of residential and commercial premises with a notice period of at least 14 days to any date.

#### Art. 44

##### 2. Bankruptcy of the tenant

1) If bankruptcy proceedings are instituted against the tenant's assets after the item has been taken over, the landlord of residential and commercial premises may demand security for future rent. He must set the insolvency administrator a reasonable deadline for this in writing.

2) If the lessor does not receive security within this period, he may terminate the lease without notice.

#### Art. 45

##### 3. Death of the tenant

1) If the Tenant dies, both his heirs and the Landlord shall be entitled to terminate the lease with the statutory period of notice to the next statutory date, subject to subsection 2.

2) In the case of the rental of residential premises, the rights and obligations of the tenancy shall pass to the spouse, registered partner, cohabiting partner, relatives in the direct line, including children by choice and siblings of the previous tenant, provided that they lived in the same household as the previous tenant until the latter's death and had a need to live there and that these persons have not terminated the tenancy within the meaning of paragraph 1. For the purposes of this provision, a cohabitant is a person who lived with the previous tenant until the latter's death.

has lived in the apartment for at least three years in a household set up in the same economic way as a marriage or has moved into the apartment together with the previous tenant at the time.

Art. 46

4. *Movable property*

The tenant of a movable item that serves his private use and is rented out by the landlord in the course of his commercial activity may terminate the lease with a notice period of not more than 14 days to the end of a month. The lessor is not entitled to compensation for this.

IV. Form of termination for residential and commercial  
premises Art. 47

1. *In general*

- 1) Landlords and tenants of residential and commercial premises must give written notice of termination.
- 2) If the landlord does not terminate the contract by court order, the notice must contain the following minimum information:
  - a) the name of the leased property to which the termination refers;
  - b) the date on which the termination becomes effective.

2. Family home Art. 48

a) *Termination by the tenant*

- 1) If the leased property serves as the family home, one spouse may terminate the lease only with the express written consent of the other.
- 2) If the spouse is unable to obtain such consent or if it is refused without good cause, he or she may apply to the court.
- 3) The same rule applies mutatis mutandis to registered partnerships.

Art. 49

b) *Termination by the landlord*

The notice of termination by the Landlord and the setting of a payment deadline with threat of termination (Art. 13) shall be served separately on the Tenant and the Tenant's spouse or registered partner.

Art. 50

3. Invalidity of the termination

The termination shall be void if it does not comply with Articles 47 to 49.

*P. Return of the thing*

Art. 51

*I. In general*

- 1) The lessee must return the item in the condition resulting from its use in accordance with the contract.
- 2) Agreements in which the tenant undertakes in advance to pay compensation upon termination of the tenancy that includes other than compensation for any damage are null and void.

Art. 52

*II. Checking the case and reporting to the tenant*

- 1) Upon return, the lessor must inspect the condition of the item and immediately notify the lessee of any defects for which the lessee is liable.
- 2) If the lessor fails to do so, he shall lose his claims, unless the defects were not recognizable during a normal inspection.
- 3) If the landlord discovers such defects later, he must report them to the tenant immediately. However, the landlord must file a claim in court within twelve months of the end of the tenancy at the latest, otherwise his claim is forfeited.

Q. Lessor's right of retention Art.

53

*I. Scope*

- 1) In order to secure the rent, the lessor of immovable property shall have the right of retention to the movable property brought in and belonging to the lessee or to the members of the lessee's family living in the same household as the lessee, unless such property is exempt from seizure. The right of retention shall expire if the items are removed before their retention description, unless this is done as a result of a court order and the lessor registers his right with the court within three days after the execution.
- 2) If the tenant moves out or if things are carried away without the interest being discharged or secured, the landlord may retain the things at his own risk, but he must ask for the retention notice within three days.

request or surrender the items.

#### Art. 54

##### II. Third party things

The landlord's right of retention under Art. 53 is already established by the introduction of movable property into the rented apartment, and can therefore also be asserted against those creditors of the tenant who have a lien on the introduced property.

before the lessor has filed a claim with the court for payment of the rent or has requested a description of the movable property.

#### 2. Subsection

Protection against unlawful rent and other unlawful claims of the landlord in the rent of residential and commercial premises

##### A. *Unacceptable rent*

#### Art. 55

##### I. Rule

1) Initial rents are inadmissible if this allows the landlord to benefit from a subjective hardship or a dominant market position and thus to obtain an unreasonable return from the rental property.

2) Rent increases, except in cases of indexation (Art. 57) or graduated rent (Art. 58), are inadmissible if they are associated with the achievement of an unreasonable return on the rented property.

#### Art. 56

##### II. Exceptions

An unreasonable income is not obtained if the rent:

a) is in line with the rental rates customary in the locality or district for comparable residential and commercial premises, taking into account the location, the construction, the equipment, the condition of the rented property and the construction period;

b) are due to cost increases or additional services provided by the lessor;

c) For newer buildings, the gross return on investment is calculated on the basis of the investment costs;

d) merely serves to safeguard the purchasing power of the risk-bearing capital.

#### Art. 57

*B. Indexed rents*

The agreement that the rent follows an index is only valid if the national consumer price index is provided for as the index.

Art. 58

*C. Staggered rents*

The agreement that the rent increases periodically by a certain amount is valid only if:

- a) the lease is concluded for at least three years;
- b) the rent is increased no more than once a year; and
- c) the amount of the increase is determined in francs.

Art. 59

*D. Rent increases and other unilateral changes to the contract by the landlord*

1) The landlord may increase the rent at any time to the next possible termination date. The landlord must notify the tenant of the rent increase in writing at least 14 days before the start of the notice period and give reasons for the increase.

2) The notification shall have the following minimum content:

- a) the date on which the increase takes effect;
- b) a justification of the increase.

3) The rent increase is void if:

- a) the notification does not comply with par. 2;
- b) the landlord threatens or gives notice of termination with the notice.

4) Paragraphs 1 to 3 shall apply *mutatis mutandis* if the landlord intends to unilaterally amend the lease agreement to the detriment of the tenant, namely to reduce its existing services or to introduce new ancillary costs.

E. Contesting the rent Art. 60

*I. Request for reduction of initial rent*

The tenant may challenge the initial rent in court within four weeks of taking possession of the premises as inadmissible within the meaning of Art. 55 Para. 1 and demand its reduction, otherwise his claim shall be forfeited.

Art. 61

*II. Reduction request during the rental period*



- 1) The tenant may challenge the rent in court as inadmissible and demand that it be reduced to the next possible termination date if he has reason to believe that the landlord, due to a significant change in the basis of calculation, in particular due to a reduction in costs, is obtaining an unreasonable return from the rented property in accordance with Articles 55 and 56.
- 2) The tenant must submit the reduction request to the landlord in writing; the landlord must respond within four weeks. If the landlord does not comply or only partially complies with the request or does not respond within the deadline, the tenant may appeal to the court within four weeks, otherwise his claim is forfeited.
- 3) Para. 2 shall not apply if the tenant files a request for a reduction at the same time as contesting a rent increase.

## Art. 62

## III. Contestation of rent increases and other unilateral contract amendments

- 1) The tenant may appeal to the court against a rent increase within four weeks of being notified of it as inadmissible within the meaning of Articles 55 and 56.  
otherwise his claim is forfeited.
- 2) Paragraph 1 shall apply *mutatis mutandis* if the lessor otherwise unilaterally modifies the lease to the detriment of the lessee, namely reduces its previous services  
or introduces new ancillary costs.

## Art. 63

*IV. Contestation of indexed rents*

Subject to contesting the initial rent, in the case of indexed rent, a party may only argue in court that the increase or decrease in rent demanded by the other party is not justified by any corresponding change in the index.

## Art. 64

*V. Contestation of staggered rents*

Subject to contesting the initial rent, the tenant may not contest graduated rents.

## Art. 65

F. Continued validity of the lease agreement during the rescission proceedings

The existing lease agreement shall continue to apply unchanged during the court proceedings.

### 3. Subsection

Protection against termination of lease of residential and commercial premises

#### A. Contestability of Termination

##### Art. 66

###### *I. In general*

The termination is contestable if it violates the principle of good faith pursuant to Art. 2 PGR.

##### Art. 67

#### II. Termination by the landlord

1) Termination by the landlord is especially contestable when it is pronounced:

- a) because the tenant asserts claims arising from the tenancy in good faith;
- b) because the landlord wants to enforce a unilateral amendment of the contract to the detriment of the tenant or an adjustment of the rent;
- c) solely to induce the tenant to purchase the rented apartment;
- d) during legal proceedings related to the tenancy, unless the tenant has initiated the proceedings improperly;
- e) due to changes in the family situation of the tenant, from which the landlord does not suffer any significant disadvantages.

2) Paragraph 1(d) is not applicable in the case of terminations:

- a) due to the landlord's own needs for himself, close relatives or in-laws;
- b) due to arrears of payment of the tenant (Art. 13);
- c) for serious breach of the tenant's duty of care and consideration (Art. 15 par. 3 and 4);
- d) as a result of the alienation of the thing (Art. 29);
- e) for important reasons (Art. 43);
- f) due to bankruptcy of the tenant (Art. 36 IO).

#### *B. Extension of the lease*

## Art. 68

## I. Claim of the tenant

- 1) The tenant may request the extension of a fixed-term or indefinite lease if the termination of the lease would result in exceptional hardship for him or his family, which could not be justified by the interests of the landlord.
- 2) In weighing the interests, the court shall take into account in particular:
  - a) the circumstances of the conclusion of the contract and the content of the contract;
  - b) the duration of the lease;
  - c) the personal, family and economic circumstances of the parties and their behavior;
  - d) any personal needs of the landlord for himself, close relatives or in-laws;
  - e) the conditions on the local market for residential and commercial premises.
- 3) If the tenant requests a second extension, the court shall also take into account whether the tenant has done everything that could reasonably be expected of it to avert the exceptional hardship.

## Art. 69

*II. Exclusion of extension*

- 1) The extension is excluded in the case of terminations:
  - a) due to arrears of payment of the tenant (Art. 13);
  - b) for serious breach of the tenant's duty of care and consideration (Art. 15 par. 3 and 4);
  - c) due to bankruptcy of the tenant (Art. 36 IO);
  - d) of a rental agreement which, in view of an imminent conversion or demolition project, was expressly concluded only for the limited period until the start of construction or until receipt of the necessary permit.
- 2) The extension is usually excluded if the landlord offers the tenant an equivalent substitute for the residential or commercial premises.

## Art. 70

## III. Duration of the extension

- 1) The lease may be extended for residential and commercial premises by a maximum of one and a half years.

years may be extended. Within the maximum period, one or two extensions may be granted. The first extension may not exceed two thirds of the maximum duration.

2) If the parties agree on an extension of the lease, they are not bound to any maximum term and the tenant may waive a second extension.

Art. 71

*IV. Continued validity of the lease*

The contract shall continue to apply unchanged during the extension; the statutory adjustment options remain reserved.

Art. 72

*V. Termination during the extension*

The tenant may terminate the lease as follows:

- a) with a notice period of four weeks to the end of a month for extensions of up to one year;
- b) in case of extension of more than one year, with three months' notice to the end of a month.

Art. 73

*C. Family apartment*

- 1) If the leased property serves as the family home, the tenant's spouse may also contest the termination, raise objections to the court-ordered termination, request the extension of the lease, or exercise the other rights to which the tenant is entitled upon termination.
- 2) Agreements on extension are valid only if they are concluded with both spouses.
- 3) The same rule applies *mutatis mutandis* to registered partnerships.

Art. 74

*D. Procedure*

The proceedings on extrajudicial and judicial notices as well as on extension requests are governed by the provisions of the ZPO.

Art. 75

*E. Sublease*

- 1) This subsection applies to a sublease so long as the master tenancy is

has not been dissolved. The sublease can only be extended for the duration of the main tenancy.

2) If the main purpose of the sublease is to circumvent the provisions on protection against termination, the subtenant shall be granted protection against termination without regard to the main tenancy. If the main tenancy is terminated, the landlord shall enter into the contract with the subtenant instead of the tenant.

#### Art. 76

##### *F. Compelling provisions*

1) Lessee may waive any rights to which it is entitled under this subsection only if expressly provided.

2) Any agreements to the contrary shall be null and void.

#### Section 2 Lease

##### A. Definition and scope Art. 77

###### I. Term

By the lease agreement, the lessor undertakes to provide the lessee with a usable thing or a usable right for use and for the receipt of the fruits or yields, and the lessee undertakes to pay a rent for it.

###### *II. Scope*

#### Art. 78

##### *1. Residential and commercial*

The provisions governing the lease of residential and commercial premises shall also apply to property which the lessor transfers to the lessee for use together with such premises.

#### Art. 79

##### 2. Agricultural lease

Leases of agricultural businesses or land for agricultural use are governed by the General Civil Code (ABGB) except for the provisions on leases of residential and commercial premises.

#### Art. 80

##### *B. Inventory*

If the lease also includes equipment, livestock or supplies, the parties must prepare a joint inventory of these items signed by both parties and participate in a joint appraisal.

C. Duties of the lessor Art.

81

*I. Delivery of the thing*

- 1) The lessor is obligated to hand over the object at the agreed time in a condition suitable for the presupposed use and management.
- 2) If a return protocol has been drawn up at the end of the previous lease, the lessor must present it to the new lessee for inspection at the latter's request when handing over the property.

Art. 82

*II. Main repairs*

The lessor is obliged to carry out major repairs to the property that become necessary during the lease term at his own expense as soon as the lessee has informed him of their necessity.

Art. 83

*III. Duties and charges*

The lessor shall bear the burdens and public charges connected with the property.

D. Duties of the lessee

*I. Payment of the rent and incidental expenses*

Art. 84

1. In general

- 1) The lessee must pay the rent and any ancillary costs at the end of a lease year, but at the latest at the end of the lease term, if no other date has been agreed.
- 2) Art. 10 shall apply to the ancillary costs.

Art. 85

2. Tenant's arrears

- 1) If, after taking over the thing, the lessee is in arrears with the payment of lease rent due

If the tenant is in arrears with payment of the rent or ancillary costs, the lessor may set him a written deadline for payment of at least 14 days and threaten him that the lease will be terminated if the deadline expires without payment.

2) If the lessee does not pay within the set period, the lessor may terminate the lease without notice, in the case of residential and business premises with a notice period of at least 14 days to any date.

## II. Care, consideration and maintenance

### Art. 86

#### *1. Care and consideration*

1) The lessee must manage the property carefully and in accordance with the contract, in particular to ensure sustainable profitability.

2) The tenant of immovable property must be considerate of householders and neighbors.

### Art. 87

#### *2. Ordinary maintenance*

1) The lessee must provide for the proper maintenance of the thing.

2) He must make the minor repairs and replace the equipment and tools of low value when they have become useless due to age or use.

### Art. 88

#### *3. Breach of duty*

1) If the tenant continues to violate his duty of care, consideration or maintenance despite written warning from the landlord, so that the landlord or the occupants of the house can no longer be reasonably expected to continue the lease, the landlord may terminate the lease without notice, in the case of residential and commercial premises with a notice period of at least 14 days to any date.

2) However, the lessor of residential or commercial premises may terminate the lease without notice if the lessee intentionally causes serious damage to the property.

### Art. 89

#### *III. Reporting obligation*

1) If major repairs are necessary or if a third party claims rights to the leased property, the lessee must notify the lessor immediately.

2) If the lessee fails to notify, he shall be liable for the damage suffered by the lessor as a result.

Art. 90

IV. Obligation to tolerate

1) The lessee must tolerate major repairs if they are necessary to eliminate defects or to repair or prevent damage.

2) The lessee must allow the lessor to inspect the property after consultation with the lessee, insofar as this is necessary for the maintenance, sale or re-lease.

3) The lessor must notify the lessee of work and inspections in good time and take the lessee's interests into account when carrying them out; any claims by the lessee for a reduction in the rent and for damages shall be governed by the tenancy law (Art. 23 and Art. 23).

24) *mutatis mutandis*.

Art. 91

*E. Rights of the lessee in case of non-performance of the contract and defects*

1) The tenancy law (Art. 18 and 20 to 25) shall apply *mutatis mutandis* if:

a) the lessor fails to hand over the thing at the agreed time or in a defective condition;

b) defects occur in the item for which the lessee is neither responsible nor has to remedy them at his own expense, or the lessee is disturbed in the use of the item in accordance with the contract.

2) Deviating agreements to the detriment of the lessee are void if they are contained in:

a) pre-formulated general terms and conditions;

b) Leases of residential and commercial premises.

F. Renewals and amendments Art.

92

I. By the lessor

1) The lessor may make renewals and changes to the object only if they are reasonable for the lessee and if the lease has not been terminated.

2) In carrying out the work, the lessor must take into account the interests of the



The tenancy law (Art. 23 and 24) shall apply mutatis mutandis to any claims of the tenant for a reduction of the rent and for damages.

Art. 93

*II. By the lessee*

- 1) The lessee needs the written consent of the lessor for:
  - a) Changes in customary management that may be of material significance beyond the lease term;
  - b) Renewals and changes to the item that go beyond ordinary maintenance.
- 2) If the lessor has agreed, he may demand restoration of the former condition only if this has been agreed in writing.
- 3) If the lessor has not agreed in writing to a change pursuant to subsection 1(a) and the lessee does not reverse it within a reasonable period of time, the lessor may terminate the lease without notice, in the case of residential and commercial premises with a notice period of at least 14 days to any date.

Art. 94

G. Change of ownership

The tenancy law (Art. 29 to 31) applies mutatis mutandis in the case of:

- a) Disposal of the leased property;
- b) Granting of limited rights in rem to the leased property;
- c) Registration of the lease in the land register.

Art. 95

*H. Sublease*

- 1) The lessee may sublease or rent the thing in whole or in part with the consent of the lessor.
- 2) The lessee shall be liable to the lessor for ensuring that the sublessee or the lessee does not use the property in a manner other than that for which he is permitted. The lessor may directly require sublessee and lessee to do so.

Art. 96

*J. Transfer of the lease to a third party*

For the transfer of the lease of business premises to a third party, Art. 33

mutatis

mutandis.

Art. 97

K. Early return of the case

- 1) If the lessee returns the object without observing the notice period or deadline, he shall only be released from his obligations to the lessor if he proposes a new lessee who is reasonable for the lessor; the new lessee must be solvent and willing to take over the lease on the same terms.
- 2) Otherwise, he must pay the rent until the time when the lease ends or can be terminated according to the contract or the law.
- 3) The lessor must take into account what he:
  - a) in expenses and
  - b) by using the item for other purposes or has deliberately refrained from doing so.

Art. 98

L. *Offsetting*

Art. 35 shall apply mutatis mutandis to the offsetting of claims and debts arising from the lease.

M. *Termination of the lease*

Art. 99

I. Expiration of the agreed duration

- 1) If the parties have expressly or tacitly agreed on a certain duration, the lease shall terminate without notice upon expiration of such duration.
- 2) If the parties tacitly continue the lease, it shall be valid for another year under the same conditions, unless otherwise agreed.
- 3) The parties may terminate the continued lease with the statutory notice period to the end of a lease year.

Art. 100

II. *Notice periods and dates*

- 1) The parties may terminate the lease for an indefinite period with six months' notice to the end of a month, unless otherwise stipulated by agreement and provided that the nature of the subject matter of the lease does not indicate any other intention on the part of the parties.

2) In the case of an indefinite lease of residential and commercial premises, the parties may terminate the lease by giving at least six months' notice to the end of a month. They may agree on a longer notice period and a different date.

3) If the parties do not comply with the deadline or the date, the out-of-court termination shall apply to the next possible date. Section 563 of the Code of Civil Procedure shall apply to the judicial termination.

### III. Extraordinary termination Art.

#### 101

#### 1. For important reasons

For important reasons that make the fulfillment of the contract unreasonable for them, the parties may terminate the lease without notice, in the case of residential and commercial premises with a notice period of at least 14 days to any date.

#### Art. 102

#### 2. Bankruptcy of the tenant

1) If bankruptcy proceedings are instituted against the lessee's assets after he has taken over the property, the lessor of residential and commercial premises may demand security for future rents. He must set the insolvency administrator a reasonable deadline for this in writing.

2) If the lessor does not receive security within this period, he may terminate the lease without notice.

#### Art. 103

#### 3. *Death of the tenant*

If the lessee dies, Art. 45 shall apply mutatis

mutandis.

#### Art. 104

### IV. Form of termination for residential and commercial premises

1) Landlords and tenants of residential and commercial premises must give written notice of termination.

2) If the lessor does not give notice of termination by court order, the notice of termination must have the following minimum content:

- a) the designation of the subject matter of the lease to which the termination refers;
  - b) the date on which the termination becomes effective.
- 3) The termination is void if it does not meet these requirements.

N. Return of the item

Art. 105

*I. In general*

- 1) The lessee returns the thing and all inventory in the condition in which they are at the time of return.
- 2) The lessee may claim compensation for improvements if they have resulted from:
  - a) Efforts that go beyond due management;
  - b) Renewals or modifications to which the lessor has consented in writing.
- 3) The tenant must compensate for deterioration that could have been avoided by proper management.
- 4) Agreements in which the lessee undertakes in advance to pay compensation upon termination of the lease that includes other than the coverage of the possible damage are null and void.

Art. 106

*II. Examination of the case and notification to the lessee*

- 1) Upon return, the lessor must check the condition of the object and immediately report to the lessee any defects for which the lessee is responsible.
- 2) If the lessor fails to do so, he loses his claims, unless the defects were not recognizable during a normal inspection.
- 3) If the lessor discovers such defects later, he must report them to the lessee immediately. However, the lessor must file a claim in court no later than twelve months after termination of the lease, otherwise his claim is forfeited.

Art. 107

III. Replacement of items of the inventory

- 1) If the inventory was appraised at the time of transfer of the item, the lessee must return an inventory of the same type and appraised value at the end of the lease or compensate for the reduced value.
- 2) The lessee does not have to pay compensation for missing items if he proves that the loss is due to the lessor's fault or to force majeure.

3) The lessee may claim compensation for the added value resulting from his expenses and his work.

Art. 108

*O. Retention right*

For rents have to the same extent and with the same effect the right of retention as the landlord for rent claims (Art. 53 and 54):

- a) Lessor of residential and commercial premises to the movable property brought by the lessee;
- b) The lessor of land shall be entitled to the movable property brought in by the lessee, as well as to the livestock, farm implements and fruit still present on the leased property.

Art. 109

*P. Protection against termination of lease of residential and commercial premises*

- 1) The tenancy law (Art. 66 to 76) shall apply mutatis mutandis to the protection against termination of the lease of residential and commercial premises.
- 2) The provisions on the family home (Art. 73) are not applicable.

§§ 1091 to 1150

Repealed

26. Main section

From contracts for services

1. *Contract for work*

§ 1151

1) If someone undertakes the production of a work in return for payment, a contract for work is created.

2) Insofar as this involves an agency (Section 1002), the provisions on the power of attorney agreement must also be observed.

§ 1152

If no remuneration is stipulated in the contract and if gratuitousness has not been agreed upon, an appropriate remuneration shall be deemed to be stipulated.

§ 1153

The Contractor is obliged to perform the work personally or to have it performed under his personal responsibility.

§ 1154

If the party who has undertaken to manufacture an item is to supply the material for it, the contract shall, in case of doubt, be deemed to be a contract of sale; if, however, the customer supplies the material, the contract shall, in case of doubt, be deemed to be a contract for work and services.

§ 1155

*Warranty*

In the event of defects in the work, the provisions applicable to contracts against payment in general (§§ 922 to 933b) shall apply.

§ 1156

1) If the work is not carried out, the Contractor shall be entitled to the agreed remuneration if he was prepared to carry out the work and was prevented from doing so by circumstances on the part of the Purchaser; however, he must take into account what he has saved as a result of the work not being carried out or what he has acquired or intentionally failed to acquire through other use. If, as a result of such circumstances, he has been shortened by loss of time in the execution of the work, he shall be entitled to appropriate compensation.

2) If the Contractor fails to cooperate as required for the execution of the Work, the Contractor shall also be entitled to set a reasonable period of time for the Contractor to do so, stating that if the period of time expires without results, the Contractor shall be entitled to terminate the Contract.

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## General Civil Code

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the contract is considered to be  
cancelled.

### § 1157

If the work is destroyed by mere chance before it is taken over, the contractor may not claim any remuneration. The loss of the material shall be borne by the party that provided it. However, if the work fails due to obvious unsuitability of the material provided by the customer or obviously incorrect instructions of the customer, the contractor shall be liable for the damage if he has not warned the customer.

### § 1158

As a rule, payment shall be made upon completion of the work. If, however, the work is carried out in certain sections or if there are expenses connected with it which the contractor has not taken upon himself, this shall be paid in full.

shall be entitled to demand a proportionate part of the remuneration and reimbursement of the expenses incurred in advance.

### § 1159

1) If the contract is based on a cost estimate with an express guarantee of its correctness, the Contractor may not demand an increase in the remuneration even if the estimated work is unforeseen in size or costly.

2) If an estimate without warranty is used as a basis and if a considerable overrun proves to be unavoidable, the Employer may withdraw from the contract subject to appropriate compensation for the work performed by the Contractor. As soon as such an overrun proves to be unavoidable, the Contractor shall notify the Purchaser thereof without delay, failing which the Purchaser shall lose any claim for the additional work.

### § 1159a

A contract for work on which the particular personal qualities of the contractor are important expires upon the death of the contractor and his heirs may only claim the price for the usable material prepared and a part of the remuneration commensurate with the value of the work performed. If the contractor dies, the heirs remain bound by the contract.

## *2. Publishing contract*

### § 1160

Through the publishing contract, the author of a literary or

The publisher is entitled to transfer the work of art or its legal successors (publisher) to a publisher for the purpose of publication, while the publisher is entitled to reproduce and distribute the work.

§ 1161

- 1) The rights of the author are transferred to the publisher to the extent and for as long as it is necessary for the execution of the contract.
- 2) The publisher is liable to the publisher for the fact that he was entitled to publish the work at the time of the conclusion of the contract and, if the work is protectable, that he had the copyright to it.
- 3) If the work was previously published in whole or in part by a third party or otherwise published with his knowledge, he shall inform the publisher thereof prior to the conclusion of the contract.

§ 1162

- 1) As long as the editions of the work to which the publisher is entitled are not sold out, the publisher may not otherwise dispose of the work in its entirety or of its individual parts to the detriment of the publisher.
- 2) The publisher may continue to publish newspaper articles and individual smaller essays in magazines at any time.
- 3) Contributions to collective works or larger contributions to journals may not be published by the publisher before three months have elapsed after the complete publication of the contribution.

§ 1163

- 1) If nothing has been determined about the number of editions, the publisher is entitled to only one edition.
- 2) The size of the print run shall be determined by the publisher, unless otherwise agreed, but at the publisher's request he shall print at least as many copies as are necessary for a proper turnover and shall not make any new impressions after the completion of the first printing.
- 3) If the right to publish has been transferred for several editions or for all editions, and the publisher fails to produce a new edition after the last one has gone out of print, the publisher may have the court set a deadline for him to produce a new edition, after the fruitless expiration of which the publisher forfeits his right.

§ 1164

- 1) The publisher is obliged to publish the work without abridgements, without additions and without



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## General Civil Code

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The publisher shall be responsible for the reproduction of the publication in an appropriate form, for proper publicity, and for the use of the usual means of distribution.

2) Price determination depends on the publisher's discretion, but he must not make sales more difficult by charging excessive prices.

### § 1165

1) The author retains the right to make corrections and improvements if they do not harm the publisher's interests or increase the publisher's responsibility, but is liable for unforeseen costs caused by them.

2) The publisher may not make a new edition or reprint without first giving the author the opportunity to make improvements.

### § 1166

1) If the special edition of several individual works by the same author has been entrusted to the publisher, this does not also give the publisher the right to organize a complete edition of these works.

2) Likewise, a publisher who has been entrusted with a complete edition of all works or of an entire genre of works by the same author does not have the right to organize special editions of the individual works.

### § 1167

Unless otherwise agreed with the publisher, the right to organize a translation of the work is reserved exclusively to the publisher.

### § 1168

1) A fee to the publisher shall be deemed to have been agreed if, according to the circumstances, the transfer of the work could only be expected in return for a fee.

2) The court determines the size of the latter based on the opinion of experts.

3) If the publisher has the right to make several editions, it shall be presumed that the same fee and other contractual conditions apply to each subsequent edition organized by him as to the first edition.

### § 1169

1) The fee is due as soon as the entire work is published or, if it is published in sections (volumes, booklets, sheets), as soon as the section is printed and can be issued.

- 2) If the fee is made dependent in whole or in part on the expected sales, the publisher is obligated to provide customary accounting and proof of sales.
- 3) In the absence of any other agreement, the publisher is entitled to the usual number of complimentary copies.

§ 1170

- 1) If the work perishes by accident after it has been delivered to the publisher, the publisher is nevertheless obligated to pay the fee.
- 2) If the author still possesses a second copy of the lost work, he shall leave it with the publisher, otherwise he shall be obliged to produce the work again if he can do so with little effort.
- 3) In both cases, he is entitled to appropriate compensation.

§ 1171

- 1) If the edition of the work already produced by the publisher perishes by accident in whole or in part before it has been distributed, the publisher is entitled to produce the lost copies anew at his own expense, without the publisher being entitled to claim a new fee for them.
- 2) The publisher is obliged to restore the lost copies if this can be done without unreasonably high costs.

§ 1172

- 1) The publishing contract expires if the author dies before completing the work or becomes incapable of completing it or is prevented from doing so through no fault of his own.
- 2) Exceptionally, if the whole or partial continuation of the contractual relationship appears possible and reasonable, the court may grant it and order the necessary.

3) Retrieved

§ 1173

- 1) If one or more authors take over the editing of a work according to a plan submitted to them by the publisher, they are only entitled to the conditional fee.
- 2) The copyright to the work belongs to the publisher.

**Employment contract**

## § 1173a

The following provisions apply to the employment contract:

## 1. Section

The individual employment contract

*A. Concept and origin*

## Art. 1

## I. Term

- 1) An individual employment contract obligates an employee to perform work in the service of the employer for a definite or indefinite period of time, and the employer obligates the employee to pay a wage calculated according to time periods (time wage) or according to the work performed (piecework wage).
- 2) An individual employment contract is also a contract by which an employee undertakes to perform regular work on an hourly, half-day or daily basis (part-time work) in the service of the employer.

## Art. 2

*II. Origin*

- 1) Unless otherwise provided by law, the individual employment contract shall not require any special form in order to be valid.
- 2) It shall also be deemed to have been concluded if the employer accepts work in his service on a temporary basis, the performance of which, according to the circumstances, can only be expected in return for wages.
- 3) If an employee performs work in good faith in the service of the employer on the basis of an employment contract which subsequently proves to be invalid, both parties shall perform the obligations arising from the employment relationship in the same manner as under a valid contract until the latter is terminated by one or the other on the grounds of invalidity of the contract.

## B. Duties of the employee Art.

## 3

## I. Personal duty to work

The employee shall perform the work assumed under the contract in his or her own person, unless otherwise agreed or evident from the circumstances.

Art. 4

*II. Duty of care and loyalty*

- 1) The employee shall perform the work assigned to him with due care and shall safeguard the legitimate interests of the employer in good faith.
- 2) He/she shall operate the employer's machines, tools, technical equipment and facilities as well as vehicles in a professional manner and handle them and the material provided to him/her for the performance of the work with care.
- 3) During the term of the employment relationship, the employee may not perform work for a third party in return for remuneration if he thereby violates his duty of loyalty, in particular if he competes with the employer.
- 4) During the employment relationship, the employee may not use or disclose to others facts that are to be kept secret, such as trade and business secrets, of which he gains knowledge in the service of the employer; even after termination of the employment relationship, he shall be bound to secrecy to the extent necessary to protect the legitimate interests of the employer.

Art. 5

*III. Accountability and duty to disclose*

- 1) The employee shall account to the employer for everything he receives from third parties in the course of his contractual work for the employer, such as, in particular, sums of money, and shall hand over everything to the employer immediately.
- 2) He must also immediately hand over to the employer everything he produces in the performance of his contractual duties.

Art. 6

*IV. Overtime work*

- 1) If it becomes necessary to work overtime in relation to the agreed or customary scope of work or as stipulated in a standard employment contract or collective employment contract, the employee is only obliged to do so to the extent that he/she is able to do so and can be expected to do so in good faith.
- 2) With the consent of the employee, the employer may compensate the overtime work within a reasonable period of time by time off of at least the same duration.
- 3) If the overtime work is not compensated by time off and nothing is an-

If the employer has agreed otherwise in writing or stipulated it in a standard employment contract or collective employment contract, the employer shall pay wages for the overtime work based on the standard wage plus a surcharge of at least one quarter.

#### Art. 7

##### V. Compliance with orders and instructions

- 1) The employer may issue general orders and give specific instructions concerning the performance of work and the conduct of employees in the enterprise or household.
- 2) The employee shall comply in good faith with the general instructions of the employer and with any special instructions given to him.

#### Art. 8

##### VI. Liability of the employee

- 1) The employee is responsible for the damage he/she intentionally or negligently causes to the employer.
- 2) The degree of care for which the employee is responsible shall be determined according to the individual employment relationship, taking into account the occupational risk, the level of education or expertise required for the work, and the skills and characteristics of the employee that the employer knew or should have known.

#### C. Duties of the employer

##### *I. Prohibition of discrimination*

#### Art. 8a

##### 1. Equal treatment of women and men

The employer may not discriminate against an employee on the basis of gender within the meaning of the Equal Treatment Act.

#### Art. 8b

##### *2. Equal treatment of part-time and full-time employees or of temporary and permanent employees*

The employer may not discriminate between a part-time employee and a comparable full-time employee or between a temporary employee and a comparable permanent employee.

unless objective reasons justify different treatment. Where appropriate, the pro rata temporis principle applies.

*la. Wage*

Art. 9

*1. Type and height in general*

- 1) The employer shall pay the employee the wage that is agreed or customary or determined by standard employment contract or collective employment contract.
- 2) If the employee lives in a household with the employer, maintenance in the house with room and board shall form part of the salary, unless otherwise agreed or customary.
- 3) In an employment relationship, a lower wage may not be agreed for the same or equivalent work than for an employee of the opposite sex because of the employee's sex. The agreement of a lower wage is not justified by the fact that special protective regulations apply because of the sex of the employee.

Art. 10

*2. Share of business result*

- 1) If the employee is contractually entitled to a share in the profit or in the turnover or otherwise in the business result, the result of the financial year shall be decisive for the calculation of the share, as it is to be determined in accordance with the statutory provisions and generally recognized commercial principles.
- 2) The employer shall provide the employee or, in the employee's place, a jointly appointed expert or an expert appointed by the court with the necessary information and shall allow the employee to inspect the business records to the extent necessary for verification.
- 3) If a share in the company's profits has been agreed, the employee must also be given a copy of the profit and loss account for the fiscal year upon request.

3. Commission

Art. 11

a) Origin

- 1) If the employee's commission is agreed on certain transactions, the claim to it arises when the transaction with the third party is validly concluded.
- 2) In the case of transactions with staggered performance as well as insurance contracts, it may be agreed in writing that the entitlement to commission on each installment arises upon its maturity or performance.
- 3) The entitlement to commission shall subsequently lapse if the transaction is not executed by the Employer through no fault of his own or if the third party fails to fulfill his obligations; in the event of only partial fulfillment, the commission shall be reduced proportionately.

#### Art. 12

##### b) Accounting

- 1) If the employee is not contractually obligated to prepare the commission statement, the employer shall provide him with a written statement for each due date, indicating the transactions subject to commission.
- 2) The employer shall provide the employee or, in the employee's place, a jointly appointed expert or an expert appointed by the court with the necessary information and shall allow the employee to inspect the books and vouchers relevant for the settlement, insofar as this is necessary for verification.

#### Art. 13

##### 4. Gratification

- 1) If the employer pays a special allowance in addition to the salary on certain occasions, such as Christmas or the end of the fiscal year, the employee is entitled to it if it has been agreed.
- 2) If the employment relationship ends before the occasion for payment of the special remuneration has arisen, the employee shall be entitled to a proportionate part thereof if it has been agreed.

#### II. Payment of the salary

#### Art. 14

##### 1. Payment terms and deadlines

- 1) Unless shorter periods or other dates have been agreed or are customary, and unless otherwise stipulated in the standard employment contract or collective employment contract, the employee shall be paid his wages at the end of each month.
- 2) Unless a shorter period is agreed upon or customary, the commission shall be payable at the end of each

However, if the execution of transactions requires more than half a year, the due date of the commission for these transactions may be postponed by written agreement.

3) The share of the business result is to be paid out as soon as this has been determined, but no later than six months after the end of the financial year.

4) The employer shall grant to the employee, in proportion to the work performed, the advance which the employee requires as a result of hardship and which the employer is reasonably able to grant.

#### Art. 15

##### 2. Wage retention

1) If it is agreed or customary or stipulated in a standard employment contract or collective employment contract, the employer may withhold part of the wage.

2) No more than one tenth of the wages due on a single payday may be withheld, and in total no more than the wages for one working week may be withheld; however, a higher withholding of wages may be provided for in a standard employment contract or collective bargaining agreement.

3) Unless otherwise agreed or customary or determined by standard employment contract or collective employment contract, the withheld wage shall be deemed security for the employer's claims arising from the employment relationship and not a conventional penalty.

#### Art. 16

##### 3. Wage protection

1) The monetary wage shall be paid to the employee in the legal currency within the working time, unless otherwise agreed or customary; the employee shall be given a written statement of account.

2) The employer may offset counterclaims against the wage claim only to the extent that the latter is attachable, but claims for compensation for damage caused intentionally may be offset without limitation.

3) Agreements on the use of wages in the interest of the employer are null and void.

#### III. Wages in the event of absence from work Art.

##### 17

###### *1. in the event of default of acceptance by the employer*



1) If the work cannot be performed due to the employer's fault or if the employer defaults on the acceptance of the work for other reasons, the employer shall remain obligated to pay the wages without the employee being obligated to make subsequent payments.

2) The employee must have credited to his wages what he has saved due to being prevented from performing his work or what he has acquired or deliberately refrained from acquiring through other work.

2. if the employee is prevented from  
working Art. 18

*a) Principle*

1) If the employee is prevented from performing his work through no fault of his own, for reasons that lie within his person, such as illness, accident, fulfillment of legal obligations or the exercise of a public office, the employer shall pay him the salary due for a limited period of time, together with appropriate compensation for lost wages in kind, provided that the employment relationship has lasted more than three months or has been entered into for more than three months.

2) If no longer periods are specified in an agreement, standard employment contract or collective employment contract, the employer shall be liable for the first period.

year of service to pay wages for three weeks and thereafter for a reasonable longer period, depending on the duration of the employment and the particular circumstances.

3) In case of pregnancy and confinement of the employee, the employer shall pay the wage to the same extent.

4) By written agreement, standard employment contract or collective employment contract, a provision deviating from the above provisions may be made if it is at least equivalent for the employee.

Art. 19

*b) Exceptions*

1) If an employee is compulsorily insured by law against the economic consequences of being prevented from working through no fault of his/her own, the employer shall not pay the salary if the insurance benefits due for the limited period cover at least four-fifths of the salary due for that period.

2) If the insurance benefits are less, the employer shall make up the difference

between these and four-fifths of the salary.

3) If the employee is compensated for the exercise of a public office, the employer shall not pay the salary if the compensation covers at least four fifths of the salary. Paragraph 2 shall apply mutatis mutandis.

Art. 20

IV. Assignment and pledging of wage receivables

The employee may validly assign or pledge future wage claims only to the extent that they are attachable; at the request of any party, the court shall determine the amount that is not attachable.

V. Piecework Art.

21

1. *Work assignment*

- 1) If, according to the contract, the employee has to perform piecework exclusively for one employer, the employer shall assign sufficient work.
- 2) If the employer is unable, through no fault of his own, to assign contractually agreed piecework, or if the circumstances of the business temporarily require the performance of temporary wage work, the employee may be assigned such work.
- 3) If the time wage is not determined by agreement, standard employment contract or collective employment contract, the employer shall pay the employee the previously earned average piecework wage.
- 4) If the employer is unable to assign sufficient piecework or temporary work, he shall nevertheless be obliged to pay the wages he would have been obliged to pay if he had assigned temporary work, in accordance with the provisions on default of acceptance.

Art. 22

2. Piecework wage

- 1) If the employee is contractually required to perform piecework, the employer shall inform the employee of the piecework rate prior to the start of the individual work.
- 2) If the Employer fails to make such disclosure, it shall pay wages at the rate established for like or similar work.

VI. Tools, materials and expenses Art.

23

*1. Tools and material*

- 1) Unless otherwise agreed or customary, the employer shall provide the employee with the equipment and materials required for the work.
- 2) If, with the consent of the employer, the employee himself provides equipment or material for the performance of the work, he shall be adequately compensated for this, unless otherwise agreed or customary.

*2. Expenses**Art. 24**a) in general*

- 1) The employer shall reimburse the employee for all expenses necessarily incurred in the performance of the work, including, in the case of work at places of employment other than the place of work, the expenses necessary for subsistence.
- 2) By written agreement, standard employment contract or collective employment contract, a fixed compensation, such as a daily allowance or a lump-sum weekly or monthly payment, may be set as reimbursement of expenses, which must, however, cover all necessary expenses incurred.
- 3) Agreements that the employee has to bear all or part of the necessary expenses himself are null and void.

*Art. 25**b) Motor vehicle*

- 1) If the employee, in agreement with the employer, uses a motor vehicle provided by the employer or by himself for his work, he shall be reimbursed for the usual expenses for its operation and maintenance in accordance with its use for work.
- 2) If the employee, in agreement with the employer, provides a motor vehicle himself/herself, he/she must also pay the public charges for the vehicle, the premiums for the liability insurance and a reasonable compensation for the wear and tear of the vehicle in accordance with the use for work.
- 3) If the employee, in agreement with the employer, regularly uses a motor vehicle for his work and is not compulsorily insured against accidents, the employer shall insure him at his own expense in an appropriate manner against accidents with the motor vehicle that may occur at work.

Art. 26

c) Maturity

- 1) On the basis of the employee's statement of account, the reimbursement of expenses shall be paid together with the salary, unless a shorter period has been agreed or is customary.
- 2) If the employee is required to make regular payments in order to fulfill his contractual obligations, he shall be paid an appropriate advance at certain intervals, but at least every month.

VII. Protection of the employee's personality Art.

27

1. in general

- 1) In the employment relationship, the employer must respect and protect the personality of the employee, show due consideration for the employee's health and ensure that morality is maintained. In particular, he must ensure that employees are not harassed or sexually harassed and that the victims are given of harassment or sexual harassment do not suffer any further disadvantages.
- 2) In order to protect the life, health and physical integrity of the employees, the employer shall take the measures which are necessary according to experience, applicable according to the state of the art and appropriate to the circumstances of the enterprise or household, insofar as this can be reasonably expected with regard to the individual employment relationship and the nature of the work performance.
- 2a) He/she shall not discriminate against an employee in response to a complaint of violation of rights related to the employment relationship or to the initiation of proceedings to enforce such rights. This shall also apply if the employee appears as a witness or as a respondent in such proceedings or supports such a complaint. If an employer violates the prohibition of discrimination, he must pay compensation to the employee concerned. The compensation shall be determined according to the circumstances of the individual case and shall not exceed two months' salary. Articles 46 to 48 shall remain unaffected.
- 3) Employees who are in an employment relationship of at least one month's duration or in a part-time employment relationship of at least eight hours' duration per week shall be informed by the employer of the terms and conditions applicable to the employment relationship within two months of commencement of the employment relationship;

If the employment relationship ends before the expiry of two months after its commencement, the information shall be provided before that time. This does not apply to employment relationships that do not require the employee to be informed due to their duration or nature or due to other special conditions that apply to the employment relationship, such as, in particular, in the case of irregular employment relationships or in the case of occasional work. The information of the employee shall be provided by handing over an employment contract or a document which ensures the information of the employee in a manner equivalent to an employment contract and shall extend in particular to a notice:

a) of the employer's personal data, registered office or place of residence;  
b) the time of the start of work, in the case of fixed-term employment contracts the duration of the contract, the daily or weekly working and rest times, the place of work and the work performance. Included in the notification of the work performance is a notification of the work  
employee's assigned title of office or function at the start of work, as well as notification of his or her rank;

c) the duration of free time and vacations;

d) of the notice periods or the procedure for determining them;

e) of any collective or standard labor agreements applicable to the employment relationship;

f) of wages (in cash and in kind), allowances, bonuses and special payments, if such additional wage components have been agreed upon, and the conditions for their payment.

4) Employees who are posted to a place of work in another country must, if their employment relationship is to be assessed under Liechtenstein law and exceeds a duration of at least one month, also be informed in writing by the employer of the following conditions prior to their posting:

a) about the period of work in the other state;

b) on the currency in which the wage is paid;

c) on the benefits, if any, in cash or in kind associated with the assignment to another state;

d) about the conditions of repatriation.

5) In the cases referred to in paras. 3 and 4, the employee shall be informed of changes in the conditions applicable to

The employer must inform the employee in writing within one month of the terms and conditions applicable to his employment relationship.

6) In the cases of par. 3 letters b, c and d, the obligation to inform the employee in writing may be fulfilled by a reference to the collective and standard employment agreements applicable to the employment relationship. In these cases, the obligation to inform the employee in writing of changes in accordance with Paragraph 5 does not apply.

Art. 28

*2. For house community*

1) If the employee lives in the same household as the employer, the employer shall provide sufficient food and proper accommodation.

2) If the employee is prevented from working due to illness or accident through no fault of his/her own, the employer shall, if the employee is not covered by compulsory insurance, provide care and medical

treatment for a limited period of time, for three weeks in the first year of service and for a reasonably longer period thereafter, depending on the duration of the employment and the particular circumstances.

3) In case of pregnancy and confinement of the employee, the employer shall provide the same benefits.

Art. 28a

*3. when processing personal data*

1) Subject to subsection 2, the employer may process personal data about the employee, including personal data about criminal convictions and criminal offenses, to the extent necessary for:

- a) the decision on the establishment of the employment relationship, in particular the suitability of the employee for the employment relationship;
- b) the performance or termination of the employment relationship; or
- c) the fulfillment of the rights and obligations arising from this Act.

2) The processing of special categories of personal data is permitted by way of derogation from Article 9(1) of Regulation (EU) 2016/679 if:

- a) it is necessary for the exercise of rights or the fulfillment of legal obligations arising from labor law, social security law and social protection law; and

b) there is no reason to assume that the data subject's legitimate interest in the exclusion of processing is overridden.

VIII. Free time, vacations and  
parental leave Art. 29

1. Free time

1) The employer shall grant the employee one and a half days off each week, usually Saturday afternoon and Sunday, or one and a half full working days where circumstances do not permit.

2) Under special circumstances and with the employee's consent, the employee may exceptionally be granted several consecutive days off or two half-days off instead of one day off.

3) In addition, the employee shall be granted the usual hours and days off and, after termination, the time required to find another job.

4) In determining time off, due consideration shall be given to the interests of both the employer and the employee.

5) In the event of illness or accident of family members living in the same household, the employee shall be granted time off in the amount of up to three days per case of care upon presentation of a medical certificate, provided that the immediate presence of the employee is urgently required and the care cannot be organized otherwise.

2. *Vacation*

Art. 30

a) *Vacation duration*

1) The employer shall grant the employee at least four weeks of leave each year of service, and at least five weeks of leave to employees up to the age of 20.

2) For an incomplete year of service, vacation shall be granted in accordance with the duration of the employment relationship in the year of service in question.

Art. 31

b) *Shortening*

1) If the employee is prevented from working for a total of more than one month during a year of service, the employer may reduce the vacation by one-twelfth for each full month of prevention.

2) If the absence does not exceed a total of one month in the year of service and is caused by reasons within the person of the employee, such as illness, accident, parental leave, fulfillment of legal obligations or the exercise of a public office, without any fault on the part of the employee, the vacation may not be reduced by the employer.

3) The employer may also not reduce vacation time if an employee is prevented from working for up to five months due to pregnancy and childbirth.

Art. 32

*c) Context and timing*

1) As a rule, vacations shall be granted contiguously and in the course of the relevant year of service, but no later than in the following year of service; in the case of juvenile employees, at least two weeks of vacation must be contiguous.

2) The employer determines the time of the vacation and must take into account the wishes of the employee to the extent that this is compatible with the interests of the company or household.

Art. 33

*d) Wage*

1) The employer shall pay the employee the entire salary due for the vacation and appropriate compensation for lost wages in kind.

2) Vacation may not be compensated by monetary benefits or other benefits during the term of employment.

3) If the employee performs paid work for a third party during vacation and the legitimate interests of the employer are thereby violated, the employer may refuse to pay the vacation pay and demand the return of vacation pay already paid.

Art. 34

*e) different regulation*

1) A standard employment contract or collective employment contract may contain provisions that deviate from the provisions of Art. 30, 31 and 32 Para. 1 if they are at least equivalent for the employees as a whole.

2) The special provisions on vacations in the case of apprenticeships and home employment relationships remain reserved.

3. Parental leave



## Art. 34a

*a) Duration*

1) If the employment relationship has lasted more than one year or has been entered into for more than one year, the employee shall be entitled to parental leave to the extent of four months, provided that he/she lives as a parent or foster parent with the child in the same household and that he/she mainly cares for the child himself/herself. This entitlement arises:

a) with the birth of a child and can be claimed until the child reaches the age of three; or

b) with the adoption in the place of the child or with a permanent foster child relationship and can be claimed until the child reaches the age of five. This applies *mutatis mutandis* to stepparents.

2) For the calculation of the duration of the employment relationship according to par. 1, successive fixed-term employment relationships with the same employer shall be added together.

## Art. 34b

*b) Taking parental leave*

1) The employee shall notify the employer of the beginning and end of parental leave within a period of at least three months.

2) For justified operational reasons, the employer has the right to require the employee to postpone parental leave. Legitimate business reasons are in particular:

a) seasonal work;

b) no replacement employee can be found within the specified period;

c) A significant number of employees apply for parental leave at the same time; or

d) The function of the employee is of strategic importance for the company.

3) In companies with less than 30 employees, the employer has the right to postpone parental leave in any case if the company's operations are affected.

4) The employee is entitled to take parental leave on a full-time, part-time, partial or hourly basis. The legitimate interests of the employer and the employee must be taken into account.

Art. 34c

*c) Return to work*

- 1) Following parental leave, the employee shall have the right to return to his/her former job or, if this is not possible, to be assigned to equivalent or similar work, under conditions no less favorable to the employee.
- 2) An employee may request to change his/her working hours after parental leave for a certain period to be determined by the employer in agreement with the employee. When considering and responding to such a request, the employer shall also take into account the legitimate interests of the employee.

IX. Other

obligations

Art. 35

*1. Deposit*

- 1) If the employee provides the employer with a security deposit to secure his obligations arising from the employment relationship, the employer shall keep the deposit separate from his assets and provide him with security for it.
- 2) The employer shall return the deposit at the latest upon termination of the employment relationship, unless the date of return is postponed by written agreement.
- 3) If the employer asserts claims arising from the employment relationship and these are disputed, he may retain the deposit to this extent until a decision is reached, but must deposit the retained amount in court at the employee's request.
- 4) In the event of the employer's bankruptcy, the employee may demand the return of the security deposit kept separate from the employer's assets, subject to the employer's claims arising from the employment relationship.

Art. 36

*2. Testimony*

- 1) The employee may at any time request a reference from the employer, which shall state the nature and duration of the employment relationship as well as the employee's performance and conduct.
- 2) Upon special request of the employee, the certificate shall be limited to information on the nature and duration of the employment relationship.

Art. 36a

### 3. Promotion and information for part-time and fixed-term employment relationships

1) The employer should, to the extent possible:

a) Consider requests from full-time employees to transfer to part-time employment;

b) Consider requests from part-time employees to transfer to full-time employment or to increase work hours;

c) provide employees with timely information on available jobs to facilitate the change from full-time to part-time employment and vice versa, and inform employee representatives about part-time work in the establishment or enterprise;

d) facilitate part-time employees' access to managerial activities and vocational training, and promote their career advancement and professional mobility.

2) The employer must inform temporary employees about vacant permanent positions in the company or enterprise. He shall also facilitate their access to vocational training wherever possible. The employer shall, as far as possible, inform the employee representatives about fixed-term employment relationships in the company.

#### Art. 36b

#### *4. Return to work during maternity leave*

Following maternity leave, the employee has the right to return to her previous job or, if this is not possible, to be assigned to equivalent work under conditions no less favorable to the employee. The employee shall also be entitled to benefit from any improvements in working conditions to which she would have been entitled during her absence.

#### D. Staff welfare Art.

#### 37

#### I. Duties of the employer

1) If the employer makes contributions to the staff welfare fund or if the employees make contributions thereto, the employer shall transfer such contributions and contributions to a foundation, a cooperative or an institution under public law.

2) If the employer's contributions and any contributions made by the employee for the benefit of the employer are used for health, accident, life and pension insurance, the employer shall pay the contributions.

If the employee uses an insurance policy with a licensed insurance company or with a recognized health insurance fund for his or her pension, disability or death insurance, the employer does not have to make the transfer in accordance with the above paragraph if the employee has an independent right of claim against the insurance carrier when the insured event occurs.

3) If the employee has to pay contributions to a staff welfare institution, the employer is obliged to pay at least the same contributions at the same time.

4) The employer shall provide the employee with the necessary information on the rights of claim to which he is entitled against a personnel welfare institution or an insurance carrier.

## II. Obligations of the staff welfare institution

### *1. Demand of the employee*

#### Art. 38

##### *a) for savings institutions*

1) If the employee has made contributions to a savings institution for retirement, survivors' or disability benefits and does not receive any benefits from the institution upon termination of employment, the employee shall have a claim against the institution corresponding at least to his contributions plus interest.

2) If contributions have been made by the employee and the employer or, by agreement, by the employer alone for five or more years, the employee's claim shall, in addition to his own contributions, correspond to a portion of the employer's contributions commensurate with the number of years of contributions, in both cases together with interest.

3) If contributions have been made for 20 or more years, the claim is equal to the total savings balance formed by the contributions of the employee and the employer, including interest.

4) If risk insurance is associated with the savings facility, the expenses incurred to cover the risk for the duration of the employment relationship shall be deducted from the employee's claim.

#### Art. 39

##### *b) for insurance institutions*

1) If the employee has made contributions to an insurance institution for retirement, survivors' or disability benefits and does not receive any benefits from the institution upon termination of the employment relationship, the employee shall have a claim against the institution that is at least equal to the contributions made by the employee,

less expenses to cover a risk for the duration of the employment relationship.

2) If contributions have been made by the employee and the employer or, by virtue of an agreement, by the employer alone for five or more years, the employee's claim shall correspond to a portion of the actuarial reserve calculated at the time of termination of employment commensurate with the number of years of contributions.

3) If contributions have been made for 25 or more years, the employee's claim is equal to the total actuarial reserve.

4) Retrieved

5) The employee benefit institution may, by regulations, make a different provision for determining the employee's claim, provided that it is at least equivalent for the employee.

Art. 40

*2. Fulfillment of the debt obligation*

Repealed

Art. 41

E. Rights to inventions and designs

1) Inventions and designs which the employee makes or helps to make in the course of his official duties and in fulfillment of his contractual obligations belong to the employer, irrespective of their protectability.

2) By written agreement, the employer may stipulate the acquisition of inventions and designs made by the employee in the course of his official duties but not in the course of his contractual duties.

3) The employee who makes an invention or design pursuant to paragraph 2 shall notify the employer thereof in writing; the employer shall notify the employee in writing within six months whether it intends to acquire the invention or design or release it to the employee.

4) If the invention or the design is not released to the employee, the employer shall pay him a special appropriate compensation; in determining this compensation, all circumstances shall be taken into account, such as, in particular, the economic value of the invention or the design,

the cooperation of the employer, the use of his auxiliary persons and operating facilities, as well as the expenses of the employee and his position in the company.

Art. 42

Repealed

*F. Transfer of the employment relationship*

Art. 43

I. Effects

1) If an enterprise, business or part of an enterprise or business is transferred by contract or merger, the employment relationship with all rights and obligations shall also be transferred from the transferor to the transferee, unless the employee objects to the transfer. No transfer shall take place with regard to rights to which the employee is entitled to benefits from company or external social security institutions outside the statutory obligation.

2) The transfer of an enterprise, business or part of an enterprise or business is the transfer of an economic unit which retains its identity, in the sense of an organized grouping of resources for the pursuit of a principal or secondary economic activity.

3) An enterprise or business is defined as a public or private entity that carries out an economic activity, whether or not for profit.

4) The transfer of a company, business or part of a company or business does not constitute grounds for termination by the seller or acquirer. Economic, technical or organizational reasons involving changes in the area of employment are reserved.

5) If the employment relationship has been terminated because the transfer results in a material change in the conditions applicable to it to the detriment of the employee, termination by the employer shall be presumed.

6) If a collective labor agreement is applicable to the employment relationship, the acquirer must comply with it for a period of one year, subject to early termination or notice of termination.

- 7) If the transfer is rejected, the employment relationship shall be terminated upon expiry of the statutory notice period; the acquirer of the business and the employee shall be obliged to fulfill the contract until then.
- 8) The previous employer and the acquirer of the business shall be jointly and severally liable for the employee's claims that have become due prior to the transfer and that will become due subsequently up to the date on which the employment relationship could be terminated ordinarily or will be terminated if the employee refuses the transfer.
- 9) Moreover, the employer is not entitled to transfer the rights arising from the employment relationship to a third party, unless otherwise agreed upon or evident from the circumstances.
- 10) If the enterprise, establishment or part of the enterprise or establishment does not retain its independence, the legal status and function of the representatives or the representation of the employees affected by the transfer, who were represented prior to the transfer, shall be preserved during the period required for the new formation or new appointment of the employee representative bodies.

#### Art. 43a

##### *II. Information and consultation*

- 1) If an enterprise, business or part of an enterprise or business is transferred, the employee representatives shall be informed and consulted about the transfer. The information shall be provided prior to the point in time at which the employees are directly affected by the transfer.
- 2) In the course of the information and consultation pursuant to para. 1, the employee representatives shall be informed in writing:
- a) the time or the planned time of the transition;
  - b) the reason for the transition;
  - c) the legal, economic and social consequences of the transition for employees.
- 3) If measures are planned with regard to the employees affected by a transition, the employee representatives must be informed of these measures. in a timely manner in order to reach an agreement, if possible.
- 4) In the absence of employee representation, the employees shall be notified in writing of the information pursuant to subsections 2 and 3.

5) The obligations provided for in this Article shall apply regardless of whether the decision leading to the transfer is made by the employer or by an entity controlling the employer.

6) In the case of violations of the duty to inform and consult, the objection that the violation is due to the fact that the information was not provided by a company controlling the employer shall not be taken into account.

Art. 43b

*III. Insolvency proceedings against the assets of the seller*

Art. 43 paras. 1 and 4 to 9 shall not apply to transfers of companies, businesses or parts of companies or businesses where bankruptcy or reorganization proceedings without self-administration or proceedings with the aim of liquidating the assets have been initiated against the transferor.

G. Termination of the employment relationship

*I. Temporary employment relationship*

Art. 44

*a) Principle*

- 1) A fixed-term employment relationship ends without notice.
- 2) If a fixed-term employment relationship is silently continued after expiry of the agreed duration, it shall be deemed to be an employment relationship for an indefinite period.
- 3) After ten years, either party may terminate a fixed-term employment contract concluded for a longer period at any time with six months' notice to the end of a month.

Art. 44a

*b) Successive fixed-term employment relationships*

- 1) A fixed-term employment relationship may be extended a maximum of three times up to a total duration of five years. In the event of a longer duration, it shall be deemed to be an unlimited employment relationship.
- 2) Paragraph 1 is not applicable to employment relationships entered into for the purpose of vocational training or within the framework of state-supported training, integration or retraining measures.

II. Permanent employment  
relationship Art. 45



*1. Termination in general*

- 1) An employment relationship for an indefinite period may be terminated by either party.
- 2) The terminating party must give reasons for the termination in writing if the other party so requests.

*2. Notice periods**Art. 45a**a) in general*

- 1) Different notice periods may not be set for the employer and the employee; in the event of a contradictory agreement, the longer period shall apply to both.
- 2) If the employer has terminated the employment relationship for economic reasons or has announced a corresponding intention, shorter notice periods may, however, be agreed for the employee by agreement, standard employment contract or collective employment contract.

*Art. 45b**b) during the probationary period*

- 1) The employment relationship may be terminated at any time during the probationary period with seven days' notice to the end of a working week; the first month of an employment relationship is deemed to be the probationary period.
- 2) Deviating agreements may be made by written agreement, standard employment contract or collective employment contract; however, the probationary period may be extended to a maximum of three months.
- 3) In the event of an effective shortening of the probationary period due to illness, accident or fulfillment of a statutory obligation not voluntarily assumed, the probationary period shall be extended accordingly.

*Art. 45c**c) After expiry of the probationary period*

- 1) The employment relationship may be terminated with one month's notice in the first year of service, with two months' notice in the second year up to and including the ninth year of service, and with three months' notice thereafter, each to the end of a month.
- 2) These periods may be modified by written agreement, standard employment contract or collective employment contract; however, they may only be reduced to less than one month by collective employment contract and only for the first year of service.

III. Protection against dismissal

1. Abusive termination

Art. 46

a) Principle

- 1) Termination of an employment relationship is abusive if one party gives notice:
  - a) because of a characteristic to which the other party is entitled by virtue of his or her personality, unless this characteristic is connected with the employment relationship or significantly impairs cooperation in the company;
  - b) because the other party is exercising a constitutional right, unless the exercise of the right violates an obligation arising from the employment relationship or substantially impairs cooperation within the company;
  - c) exclusively to thwart the accrual of claims of the other party arising from the employment relationship;
  - d) because the other party asserts claims arising from the employment relationship in good faith;
  - e) because the other party is fulfilling a legal obligation that has not been voluntarily assumed.
- 2) The termination of the employment relationship by the employer is further abusive if it is pronounced:
  - a) because the employee is or is not a member of an employee association or because he or she is lawfully engaged in union activity;
  - b) while the employee is an elected employee representative in a company institution or in an institution affiliated to the company and the employer cannot prove that it had reasonable cause to terminate the employment;
  - c) in disregard of the information, consultation and notification obligations within the meaning of Arts. 43a, 59b and 59c;
  - d) because the employee refuses to switch from full-time employment to part-time employment or vice versa. The right to terminate employment in the event of operational necessity is reserved;
  - e) because the employee, within the meaning of Art. 4 of the Participation Act, requests that a secret ballot be held to determine whether the majority of the voting workforce is in favor of employee representation.

## Art. 47

## b) Sanctions

- 1) The party who abusively terminates the employment relationship shall pay compensation to the other party.
- 2) The compensation shall be determined by the judge, taking into account all the circumstances, but may not exceed the amount corresponding to the employee's salary for six months. Claims for damages based on another legal title are reserved.
- 3) If the termination is abusive according to Art. 46 para. 2 letter c, the compensation may not exceed the employee's salary for two months.

## Art. 48

## c) Procedure

- 1) Anyone wishing to claim compensation on the basis of Articles 46 and 47 must lodge an objection in writing with the party giving notice of termination by the end of the notice period at the latest.
- 2) If the objection is valid and the parties do not agree on the continuation of the employment relationship, the party who has been terminated may assert its claim for compensation. If no action is brought within 180 days after termination of the employment relationship, the claim is forfeited.

## Art. 49

## 2. Untimely termination by the employer

- 1) After the end of the probationary period, the employer may not terminate the employment relationship:
  - a) while the employee is wholly or partially prevented from working through no fault of his own as a result of illness or accident, namely for 30 days in the first year of service, for 90 days from the second year of service and for 180 days from the sixth year of service;
  - b) during pregnancy and in the 16 weeks following the confinement of an employee.
- 2) Termination declared during one of the blocking periods stipulated in para. 1 shall be null and void; if, on the other hand, termination has been declared before the beginning of such a period, but the period of notice has not expired by then, its expiry shall be interrupted and shall not be continued until the end of the blocking period.

3) If an end date applies to the termination of the employment relationship, such as the end of a month or a working week, and this date does not coincide with the end of the continued notice period, the notice period shall be extended until the next following end date.

Art. 50 to 52 Discontinued

*IV. Termination without notice*

1. Requirements

Art. 53

*a) for important reasons*

1) For good cause, the employer, like the employee, may terminate the employment relationship without notice at any time; the employer must justify the termination without notice in writing if the other party so requests.

2) Good cause shall be deemed to be any circumstance the existence of which makes it unreasonable to expect the terminating party to continue the employment relationship in good faith.

3) The court shall decide on the existence of such circumstances at its discretion, but may not in any case recognize the employee's inability to perform work through no fault of his own as good cause.

Art. 54

*b) due to wage jeopardy*

1) If the employer becomes insolvent, the employee may terminate the employment relationship without notice if he is not provided with security for his claims arising from the employment relationship within a reasonable period of time.

2) Art. 38 para. 1 of the Insolvency Code remains reserved.

*2. Follow*

Art. 55

*a) in the event of justified dissolution*

1) If the important reason for terminating the employment relationship without notice is the conduct of one of the contracting parties in breach of the contract, this party shall

to pay full compensation, taking into account all claims arising from the employment relationship.

2) In other cases, the court shall determine the property consequences of the termination without notice at its discretion, taking into account all circumstances.

## Art. 56

*b) in the event of unjustified dismissal or refusal to start work*

- 1) If the employer dismisses the employee without notice and without good cause, the employee is entitled to compensation for what he would have earned if the employment relationship had been terminated in compliance with the notice period or by expiry of the specified contract period.
- 2) The employee must take into account what he has saved as a result of the termination of the employment relationship and what he has earned or intentionally refrained from earning through other work.
- 3) The judge may order the employer to pay the employee a compensation, which he shall determine at his own discretion, taking into account all the circumstances; however, this compensation may not exceed the employee's salary for six months.
- 4) If an employee is refused to take up an agreed job without good cause, he or she is entitled to compensation equal to one quarter of the salary for one month and to compensation for further damage.

## Art. 57

*c) in the event of unjustified non-attendance or departure from the workplace*

- 1) If the employee does not take up the job without good cause or leaves the job without notice, the employer is entitled to compensation equal to one quarter of the salary for one month; in addition, the employer is entitled to compensation for further damage.
- 2) If the employer has suffered no damage or less damage than the compensation provided for in the preceding paragraph, the court shall reduce it at its discretion.
- 3) If the right to compensation is not extinguished by offsetting, it must be enforced in court within 30 days of the employee not taking up or leaving the job; otherwise the claim is forfeited.

## V. Death of the employee or the employer Art.

## 58

## 1. Death of the employee

- 1) The employment relationship shall terminate upon the death of the employee.

2) However, the employer shall pay the salary for a further month and, after five years of service, for two further months, calculated from the date of death, if the employee leaves a spouse, registered partner or minor children or, in the absence of such heirs, other persons to whom he has fulfilled a support obligation.

Art. 59

*2. Death of the employer*

1) Upon the death of the employer, the employment relationship shall pass to the heirs; the provisions regarding the transfer of the employment relationship in the event of succession shall apply *mutatis mutandis*.

2) If the employment relationship was entered into essentially with regard to the person of the employee, it shall terminate upon the death of the employee; however, the employee may claim reasonable compensation for the damage suffered as a result of the premature termination of the employment relationship.

*Va. Mass layoffs*

Art. 59a

*1. Terms and scope*

1) Terminations are considered to be mass dismissals,

- a) planned by the employer in an establishment for one or more reasons unrelated to the person of the employees, and
- b) which, irrespective of the size of the company, affect at least 20 employees within 90 days.

2) Other types of termination of employment shall be deemed equivalent to termination within the meaning of paragraph 1 if they are

- a) are scheduled for one or more reasons unrelated to the employee's person,
- b) take place at the instigation of the employer, and
- c) affecting at least five employees.

Such dismissals shall be included in the calculation of the minimum number under subsection 1(b).

3) Art. 59b to 59c also apply:

- a) in cases of early termination of fixed-term employment;
- b) in cases where the decision on the planned mass dismissal is made by a company controlling the employer.

4) The right to dismiss without notice for good cause shall remain unaffected. Dismissals without notice shall not be included in the calculation of the minimum number pursuant to Para. 1.

#### Art. 59b

##### 2. Information and consultation

1) In order to give the employee representatives the opportunity to make counterproposals and, if possible, to reach an agreement on:

- a) the possibility of avoiding planned mass layoffs or reducing their number;
- b) the possibility of mitigating the consequences of planned mass redundancies through measures such as retraining,

the employer shall inform and consult the employee representatives in good time. Experts may be called in by both the employer and the employee representatives.

2) In the course of information and consultation within the meaning of subsection 1, the employer shall provide the employee representative body with all relevant information in good time. In particular, he shall inform the employee representative body in writing:

- a) the reasons for the planned mass dismissal;
- b) the number and categories of employees concerned and the reasons for their selection;
- c) the number of employees employed as a rule;
- d) the period of the planned mass redundancies;
- e) the procedure for determining severance payments (social plan).

#### Art. 59c

##### 3. Participation of the Office of National Economy

1) The employer shall notify the Office for National Economy of a planned mass dismissal and shall send a notification of the result of the information and consultation within the meaning of Art. 59b. This notification shall contain all the information referred to in Art. 59b, para. 2, as well as any other relevant information on the planned mass dismissal. A copy of the notification shall be sent to the employee representatives.

2) Unless otherwise stipulated by contract or by law, planned mass redundancies shall be implemented at the earliest 30 days after receipt of the notification.

notice within the meaning of para. 1 is effective. If there is a justified interest and the prospect of mitigating the consequences of the planned mass dismissal, the Office of Economic Affairs may extend this period to 60 days. It shall inform the employee representatives of the extension of the deadline.

3) The Office of Economic Affairs shall seek ways of mitigating the consequences of the planned mass dismissal within the period referred to in paragraph 2. It may consult the employer and the employee representatives.

Art. 59d Repealed

VI. Consequences of termination of employment

Art. 60

1. Maturity of receivables

1) Upon termination of the employment relationship, all claims arising from the employment relationship shall become due.

2) For commission claims on transactions that are fulfilled in whole or in part after the end of the employment relationship, the following provisions may apply

written agreement, but as a rule not more than six months, in the case of transactions with staggered performance not more than one year, and in the case of insurance contracts and transactions whose performance requires more than six months, not more than two years.

3) The claim to a share in the business result shall fall due in accordance with Art. 14 Para. 3.

Art. 61

2. Return obligations

1) At the time of termination of the employment relationship, each party to the contract shall surrender to the other party everything that it has received from the other party or from third parties for the latter's account for the duration of the employment relationship.

2) In particular, the employee must return vehicles and tickets and reimburse advances on wages or expenses to the extent that they exceed his claims.

3) The retention rights of the contracting parties shall remain reserved.

3. Severance pay

Art. 62

a) Requirements



1) If the employment relationship of an employee who is at least 50 years old ends after 20 or more years of service, the employer shall pay him a severance payment.

2) If the employee dies during the employment relationship, the compensation shall be paid to the surviving spouse, the surviving registered partner or the minor children or, in the absence of such heirs, to other persons to whom the employee has fulfilled a support obligation.

#### Art. 63

##### *b) Amount and maturity*

1) The amount of compensation may be determined by written agreement, standard employment contract or collective bargaining agreement, but may not exceed

not fall below the amount corresponding to the employee's salary for two months.

2) If the amount of compensation is not determined, it shall be fixed by the court in its discretion, taking into account all circumstances, but shall not exceed the amount corresponding to the employee's wages for eight months.

3) The compensation may be reduced or cancelled if the employment relationship is terminated by the employee without good cause or is terminated by the employer without notice for good cause, or if the employee would be placed in an emergency situation by the payment of the compensation.

4) Compensation is due upon termination of employment, but a later due date may be determined by written agreement, standard employment contract or collective bargaining agreement, or ordered by the court.

#### Art. 64

##### *c) Replacement services*

1) The employer shall not be required to pay compensation to the extent that an employee benefit institution is required to pay future pension benefits in excess of the contributions made by the employee, including interest in the case of savings institutions, after deduction of the expenses incurred to cover a risk for the duration of the employment relationship.

2) The employer shall also not be required to pay compensation to the extent that he bindingly assures the employee of future pension benefits or has them assured by a third party.

#### *VII. Non-competition*

Art. 65

*1. Requirements*

- 1) An employee who is capable of acting may give a written undertaking to the employer to refrain from any concurrent activity after the termination of the employment relationship, in particular neither to engage in any business for his own account which competes with that of the employer, nor to be active in such a business or to participate in it.
- 2) The non-competition clause is only binding if the employment relationship provides the employee with insight into the customer base or into manufacturing and business secrets and the use of this knowledge could significantly harm the employer.

Art. 66

*2. Restrictions*

- 1) The prohibition must be appropriately limited in terms of place, time and subject matter so that an unreasonable impediment to the employee's economic advancement is excluded; it may only exceed three years under special circumstances.
- 2) The court may limit an excessive non-competition clause at its discretion, taking into account all the circumstances; in doing so, it must give due consideration to any consideration given by the employer.

Art. 67

*3. Consequences of the violation*

- 1) If the employee violates the non-competition clause, he/she shall compensate the employer for any damage incurred.
- 2) If a contractual penalty is owed in the event of a breach of the prohibition and nothing else has been agreed, the employee may release himself from the prohibition by paying such penalty; however, he shall remain liable to pay compensation for any further damage.
- 3) If it is specifically agreed in writing, the employer may, in addition to the contractual penalty and compensation for further damage, demand the elimination of the condition contrary to the contract, provided that the violated or threatened interests of the employer and the conduct of the employee justify it.

Art. 68

*4. Omission*

- 1) The non-competition clause shall lapse if the employer demonstrably no longer has a material interest in maintaining it.

2) The prohibition shall also cease to apply if the employer terminates the employment relationship without the employee giving him reasonable cause to do so.

or if the latter dissolves it for a justifiable reason to be answered for by the employer.

#### Art. 69

##### H. Indispensability and limitation

1) For the duration of the employment relationship and for one month after its termination, the employee may not waive claims arising from mandatory statutory provisions or from mandatory provisions of a general employment contract.

2) Claims arising from the employment relationship shall become statute-barred after five years. Otherwise, the general provisions of the ABGB shall apply.

#### Art. 70

##### I. Reservation and civil law effects of public law

1) Reserved:

a) Regulations on the employment relationship under public law,

b) public law regulations on labor, vocational training and apprenticeship.

2) If an obligation under public law is imposed on the employer or the employee by regulations on work, vocational training and apprenticeship, the other party to the contract shall be entitled to claim performance under civil law if the obligation could be the subject matter of the individual employment contract.

#### Art. 71

##### K. Administration of justice

1) Disputes arising from the employment relationship shall be settled before the ordinary courts.

2) Associations with their registered office in Germany which, according to their articles of association, have the purpose of representing the interests of employees may, with the consent of the person complained against, represent that person in proceedings initiated by that person or participate as a third party in legal proceedings pursuant to Sections 17 et seq. of the Code of Civil Procedure.

3) Retrieved

4) The provisions on the settlement of collective disputes arising from collective bargaining agreements remain reserved.

2. Section Special Individual Employment Contracts

A. *The Apprenticeship Contract* Art. 72 to 77 Revoked

B. The commercial traveler contract

I. *Concept and origin*

Art. 78

1. *Term*

1) The commercial traveler contract obligates the commercial traveler to broker or conclude transactions of any kind outside the employer's business premises for the account of the owner of a commercial, manufacturing or other business conducted in a commercial manner in return for remuneration.

2) An employee who does not primarily perform a travel activity or who only occasionally or temporarily works for the employer, as well as a traveler who concludes transactions on his own account, are not considered to be commercial travelers.

Art. 79

2. *Origin and content*

1) The employment relationship shall be governed by a written contract, which shall contain, in particular, provisions on

- a) the duration and termination of the employment relationship,
- b) the powers of the commercial traveler,
- c) the remuneration and reimbursement of expenses,
- d) the applicable law and the place of jurisdiction if a contracting party is domiciled abroad.

2) If the employment relationship is not governed by a written contract, the content described in the preceding paragraph shall be determined by the statutory provisions and the customary working conditions.

3) The verbal agreement shall apply only to the determination of the beginning of the work, the type and area of travel and other provisions that are not in conflict with the law and the written contract.

II. Duties and Powers of the Commercial Traveler

Art. 80

1. *Special duties*

1) The commercial traveler shall treat the clientele in the manner prescribed by him

visit, unless a justified reason makes a change necessary; without the written consent of the employer, he may not broker or conclude transactions for his own account or for the account of a third party.

2) If the commercial traveler is authorized to conclude transactions, he must comply with the prices and other terms and conditions prescribed to him and must reserve the employer's consent for any changes.

3) The commercial traveler must regularly report on his travel activities, immediately transmit the orders received to the employer and inform him of significant facts concerning his clientele.

#### Art. 81

##### 2. Delcredere

1) Agreements that the commercial traveler is responsible for the payment or other fulfillment of the customer's obligations or is responsible for all or part of the costs of collecting claims are void.

2) If the commercial traveler has to conclude transactions with private customers, he may agree in writing to be liable for a maximum of one quarter of the loss incurred by the employer as a result of the non-fulfillment of the customers' obligations in the individual transaction, provided that a reasonable delcredere provision is agreed upon.

3) In the case of insurance contracts, the traveling insurance intermediary, reinsurance intermediary and insurance intermediary in secondary activity may undertake in writing to bear not more than half of the costs of collection of claims if a premium or its parts are not paid and he demands their collection by way of action or execution.

#### Art. 82

##### 3. Powers of attorney

1) Unless otherwise agreed in writing, the commercial traveler is only authorized to broker transactions.

2) If the commercial traveler is authorized to conclude transactions, his power of attorney extends to all legal acts which the execution of these transactions usually entails; however, he may not accept payments from customers or grant payment periods without special authorization.

##### 3) Retrieved

### III. Special obligations of the employer

Art. 83

*1. Field of activity*

1) If the traveling salesman is assigned a certain travel area or a certain clientele and nothing to the contrary has been agreed upon in writing, he shall be deemed to have been appointed to the exclusion of other persons; however, the employer shall remain authorized to transact business personally with the customers in the traveling salesman's area or clientele.

2) The employer may unilaterally change the contractual determination of the travel area or clientele if a justified reason makes a change necessary before the expiry of the notice period; however, in this case claims for compensation and the right of the commercial traveler to terminate the employment relationship for good cause remain reserved.

*2. Wage*

Art. 84

a) in general

1) The employer shall pay the commercial traveler wages consisting of a fixed salary with or without commission.

2) A written agreement that wages are to consist exclusively or primarily of a commission is valid if the commission results in reasonable compensation for the commercial traveler's work.

3) For a probationary period not exceeding two months, the salary may be freely determined by written agreement.

Art. 85

b) Commission

1) If the commercial traveler is exclusively assigned a certain travel area or a certain clientele, the agreed or customary provision is to be paid to him on all transactions concluded by him or his employer with customers in his area or clientele.

2) If the commercial traveler is not exclusively assigned a certain travel area or a certain clientele, the commission is to be paid to him only on the transactions he has arranged or concluded.

3) If the value of a transaction cannot be determined exactly at the time the commission is due, the commission shall first be paid on the minimum value estimated by the employer and the remainder at the latest when the transaction is executed.

## Art. 86

*c) if prevented from traveling*

- 1) If the commercial traveler is prevented from performing the travel activity through no fault of his own, and if the wage is nevertheless payable to him by virtue of the law or the contract, it shall be determined by the fixed salary and a reasonable compensation for the loss of the commission.
- 2) If the commission is less than one fifth of the wage, it may be agreed in writing that, if the commercial traveler is prevented from performing the travel activity through no fault of his own, compensation for the lost commission is not to be paid.
- 3) If the commercial traveler is prevented from traveling through no fault of his own and nevertheless receives full pay, he must, at the employer's request, perform work on the employer's premises, provided he is able to do so and it is reasonable to expect him to do so.

## Art. 87

## 3. Expenses

- 1) If the commercial traveler works for several employers at the same time and the distribution of the reimbursement of expenses is not regulated by a written agreement, each employer must reimburse an equal share of the costs.
- 2) Agreements that the reimbursement of expenses is to be included in whole or in part in the fixed salary or commission are void.

## Art. 88

## 4. Retention right

- 1) In order to secure the receivables due from the employment relationship, and in the event of the employer's inability to pay also the receivables not due, the commercial traveler is entitled to the right of retention to movable property and securities as well as to payments from customers which he has received on the basis of a power of attorney to collect.
- 2) The right of retention may not be exercised in respect of tickets, fares, customer directories and other documents.

*IV. Termination*

## Art. 89

## 1. Special termination

1) If the commission amounts to at least one fifth of the salary and is subject to considerable seasonal fluctuations, the employer may terminate the employment of the sales representative who has worked for him since the end of the last season during the season only at the end of the second month following the termination.

2) Under the same conditions, the commercial traveler may give notice to the employer who employed him until the end of the season until the beginning of the next one only to the end of the second month following the notice.

Art. 90

2. Special consequences

1) Upon termination of employment, the commission shall be paid to the commercial traveler on all transactions concluded or brokered by him, as well as on all orders received by the employer until termination, regardless of the time of their acceptance and execution.

2) At the time of termination of the employment relationship, the sales representative shall return the samples and models, price tariffs, customer lists and other documents made available to him for the travel activities; the right of retention shall remain reserved.

C. The home work contract

*1. Concept and origin*

Art. 91

1. Term

By the contract of home employment, the home worker undertakes to perform work for the employer in his home or in another workroom designated by him, either alone or with members of his family.

Art. 92

*2. Announcement of the working conditions*

1) Before any work is performed, the employer shall inform the homemaker of the conditions relevant to the performance of the work, namely the details of the work, unless they are regulated by generally applicable working conditions; the employer shall specify in writing the materials to be provided by the homemaker and the compensation to be paid for them, as well as the wages.

2) If the information about the wage and about the compensation for the material to be procured by the homemaker is not provided in writing before the work is issued, the usual working conditions shall apply to it.



## Art. 92a

*3. Time limit for the output of home work*

The employer may neither issue nor accept home work on Sundays and public holidays and before 6 a.m. and after 11 p.m.. The time limit for delivery of home work shall be set taking into account the performance capacity of the home worker so that he does not have to work more than eight hours a day and not on Sundays.

## II. Special obligations of the employee

## Art. 93

*1. Execution of the work*

- 1) The homemaker shall start the work in time, complete it by the agreed date and hand over the work product to the employer.
- 2) If the work is performed defectively due to the fault of the homemaker, the homemaker shall be obliged to improve the work product free of charge insofar as its defects can be remedied thereby.

## Art. 94

*2. Material and tools*

- 1) The homemaker is obliged to treat the material and equipment given to him by the employer with all due care, to account for their use and to return the rest of the material not used for work as well as the equipment received.
- 2) If, during the performance of the work, the homemaker discovers defects in the material handed over or in the equipment received, he shall immediately notify the Employer and await the latter's instructions before continuing the performance of the work.
- 3) If the homemaker has culpably spoiled material or equipment that was handed over to him, he shall be liable to the employer at most for the reimbursement of the cost price.

## III. Special obligations of the employer

## Art. 95

*1. Acceptance of the work product*

- 1) The employer must check the work product after delivery and notify the home worker of any defects within one week at the latest.

2) If the employer fails to notify the defects in due time, the work shall be deemed accepted.

## 2. Wage

### Art. 96

#### *a) Orientation of the salary*

1) If the homemaker is continuously in the service of the employer, the wage for the work performed shall be paid semimonthly or, with the consent of the homemaker, at the end of each month, in other cases upon delivery of the work product.

2) Each time wages are paid, the home worker shall be given a written statement indicating the reason for any deductions from wages.

### Art. 97

#### b) Wages in the event of being prevented from performing work

1) If the homemaker is continuously in the service of the employer, the latter shall be obliged to pay the wage in accordance with Articles 17 and 18 if he is in default of accepting the work or if the homemaker is prevented from performing the work for reasons for which he is not responsible.

2) In other cases, the employer is not obliged to pay wages in accordance with Articles 17 and 18.

### Art. 98

## 3. Vacation

1) If the homemaker is continuously in the service of the employer, the employer shall grant him vacations in accordance with Articles 30, 31, 32 and 33 and pay him wages based on the average wage for the year of service.

2) In other cases, the employer shall pay the homemaker as vacation pay in July of each year at least six percent of the previous twelve months' wages.

### Art. 99

## IV. Termination

1) If the home worker is given a trial job, the employment relationship shall be deemed to have been entered into on a trial basis for a definite period of time, unless otherwise agreed.

2) If the homemaker is continuously in the service of the employer, the employment relationship shall be deemed to be for an indefinite period, and in other cases for a definite period.

time received, unless otherwise agreed.

Art. 100

*D. Applicability of the general rules*

The general provisions on individual employment contracts shall apply in addition to the commercial travelers' contract and the home employment contract.

3. Section Collective Labor Agreement and Standard Labor Agreement

A. Collective labor agreement

*I. Concept, content, form and duration*

Art. 101

*1. Concept and content*

1) By means of a collective labor agreement, employers or their associations and employee associations jointly establish provisions on the conclusion, content and termination of the individual employment relationships of the participating employers and employees.

2) The collective labor agreement may also contain other provisions insofar as they concern the relationship between employers and employees or are limited to the establishment of such provisions.

3) The collective bargaining agreement may also regulate the rights and obligations of the contracting parties among themselves as well as the control and enforcement of the conditions set forth in the preceding paragraphs.

4) If several associations are involved in a collective bargaining agreement on the employer or employee side from the outset or due to the subsequent accession of an association with the consent of the contracting parties, they shall have the same rights and obligations in relation to each other; deviating agreements shall be null and void.

Art. 102

2. Freedom of organization of professional practice

1) Provisions of a collective bargaining agreement and agreements between the parties to the agreement that are intended to force employers or employees to join an association that is party to the agreement shall be null and void.

2) Provisions of a collective labor agreement and agreements between the parties thereto which exclude or restrict employees from a particular occupation or activity or from the training required for such occupation or activity shall be null and void.

3) Provisions and agreements within the meaning of the preceding paragraph are exceptionally valid if they are justified by overriding interests worthy of protection, especially for the protection of the safety and health of persons or the quality of work; however, the interest in keeping new professionals away is not considered worthy of protection.

Art. 103

3. Connection

1) Individual employers and individual employees in the service of participating employers may join the collective labor agreement with the consent of the contracting parties and shall be deemed to be participating employers and employees.

2) The collective bargaining agreement may regulate the affiliation in more detail. Unreasonable conditions of affiliation, in particular provisions on unreasonable contributions, may be declared null and void or limited to the permissible extent by the court; however, provisions or agreements on contributions in favor of an individual contracting party shall be null and void.

3) Provisions of a collective bargaining agreement and agreements between the parties to the agreement which are intended to force members of associations to join are null and void if participation in the collective bargaining agreement or the conclusion of an analogously similar agreement is not open to these associations.

Art. 104

4. Form and duration

1) The conclusion of a collective bargaining agreement, its amendment and termination by mutual agreement, the accession of a new party to the agreement and its termination must be in writing in order to be valid, as must the declaration of affiliation of individual employers and employees and the consent of the parties to the agreement in accordance with Art. 103 Para. 1 and the termination of the affiliation.

2) If the collective employment agreement has not been concluded for a definite period and does not provide otherwise, it may be terminated by either party with effect for all other parties at any time after the expiry of one year for a period of six months. This provision also applies *mutatis mutandis* to the affiliation.

II. Effects Art.

105

*1. on the participating employers and their employees*

1) The provisions of the collective bargaining agreement concerning the conclusion, content and termination of individual employment relationships shall apply directly to the participating employers and employees for the duration of the agreement and may not be waived unless the collective bargaining agreement provides otherwise. These provisions also apply directly to non-participating employees who are in the service of a participating employer, provided that the collective employment agreement so provides.

2) Agreements between participating employers and their employees that violate the indispensable provisions shall be null and void and shall be replaced by the provisions of the collective labor agreement; however, deviating agreements may be made in favor of the employees.

#### Art. 106

##### *2. among the contracting parties*

1) The contracting parties are obliged to ensure compliance with the collective bargaining agreement; to this end, associations have to call upon their co members and, if necessary, to use the statutory and legal means.

2) Each contracting party shall be obliged to maintain industrial peace and, in particular, to refrain from any industrial action in respect of matters governed by the collective bargaining agreement; the obligation to maintain peace shall apply without restriction only if this is expressly stipulated.

#### Art. 107

##### 3. comprehensive

1) In a collective labor agreement concluded between associations, the contracting parties may agree that they are jointly entitled to claim compliance with the agreement from the participating employers and employees insofar as the following items are concerned:

a) Conclusion, content and termination of the employment relationship, whereby the claim is only for determination;

b) Contributions to compensation funds and other institutions relating to the employment relationship, representation of employees in companies and maintenance of industrial peace;

c) Control, bonds, and penalties in respect of provisions under subparagraphs (a) and (b).

2) Agreements within the meaning of the preceding paragraph may be made,

if the Contracting Parties are expressly authorized to do so by the Articles of Association or by a resolution of the supreme body of the Association.

3) The provisions governing ordinary partnerships shall apply *mutatis mutandis* to the relationship between the contracting parties, unless the collective employment agreement provides otherwise.

Art. 108

III. Relationship to mandatory law

Mandatory law shall take precedence over the provisions of the collective labor agreement, but provisions deviating from this may be established for the benefit of the employees if nothing to the contrary results from mandatory law.

B. Standard employment

contract Art.

109

*I. Concept and content*

1) The standard employment contract establishes provisions on the conclusion, content and termination of individual types of employment relationships.

2) For the employment of agricultural workers and domestic workers, the government shall issue standard employment contracts which, in particular, regulate working hours and rest periods and the working conditions of female and juvenile workers.

3) Art. 108 applies *mutatis mutandis* to the standard employment contract.

Art. 110

II. Competence and procedure

1) The government is responsible for issuing the standard employment contract.

2) Prior to its enactment, the standard employment contract shall be published in an appropriate manner and a period shall be set within which anyone who can credibly demonstrate an interest may comment on it in writing; in addition, professional associations or non-profit associations that have an interest shall be heard.

3) The standard employment contract shall enter into force when it has been published in accordance with the provisions applicable to official publications.

4) The same procedure applies to the cancellation and amendment of a standard employment contract.

Art. 111

III. Effects

- 1) The provisions of the standard employment contract apply directly to the employment relationships subject to it, unless otherwise agreed.
- 2) The standard employment contract may provide that agreements which deviate from individual provisions thereof must be in writing in order to be valid.

#### IV. Minimum

wages Art.

111a

##### 1. Requirements

- 1) If, within an industry or occupation, the wages customary in the locality, occupation or industry are repeatedly undercut in an abusive manner and if there is no collective labor agreement with provisions on minimum wages that can be declared generally binding, the government may, at the request of the tripartite commission pursuant to Art. 111b, issue a temporary standard labor agreement providing for minimum wages in order to combat or prevent abuses.
- 2) The minimum wages must neither run counter to the overall interest nor impair the justified interests of other branches or sections of the population. They must take appropriate account of the minority interests of the industries or professions concerned, which are based on operational differences.

Art. 111b

##### 2. Tripartite Commission

- 1) The government sets up a tripartite commission composed of an equal number of employer and employee representatives and representatives of the state.
- 2) The employers' and employees' associations shall have a right of nomination with regard to the election of their representatives in accordance with subsection 1.
- 3) The Commission shall monitor the labor market. If it identifies abuses within the meaning of Art. 111a Para. 1, it shall, as a rule, seek direct communication with the employers concerned. If this succeeds within two months, it shall apply to the government for the enactment of a standard labor agreement that provides for minimum wages for the industries or occupations concerned.
- 4) If the labor market situation changes in the industries concerned, the tripartite commission shall apply to the government for the amendment or cancellation of the standard employment contract.
- 5) In order to perform the tasks assigned to them, the tripartite

Commission shall have the right to obtain information and to inspect all documents necessary for the conduct of the investigation. In case of dispute, the Office of National Economy shall decide.

Art. 111c

3. *Official Secrets*

1) The members of the tripartite commission are subject to official secrecy; in particular, they are obligated to maintain secrecy with respect to third parties concerning operational and private matters that come to their knowledge in this capacity.

2) The obligation to maintain confidentiality shall continue to apply even after the member has left the tripartite commission.

Art. 111d

4. *Effects*

1) The standard employment contract pursuant to Art. 111a shall also apply to employees who are only temporarily employed in its local area of application and to hired-out employees.

2) The standard employment contract pursuant to Art. 111a may not be deviated from to the disadvantage of the employee by agreement.

Art. 111e

5. *Associations' right of action*

Employers' and employees' associations are entitled to a judicial determination of whether an employer complies with the standard employment contract pursuant to Art. 111a.

4. Section Mandatory regulations

Art. 112

A. *Immutability to the disadvantage of the employer and the employee*

1) The following provisions may not be deviated from to the disadvantage of either the employer or the employee by agreement, standard employment contract or collective employment contract:

Art. 6 par. 1 (Overtime work)

Art. 14 Par. 4 (Advance payment)

Art. 16 Par. 2 (Offsetting against counterclaims)



Art. 20 (Assignment and pledging of wage claims) Art. 21 Par. 2 (Assignment of work)

Art. 33 par. 2 and 3 (Holiday pay)

Art. 37 paras. 1 and 2 (Allowances for staff welfare)

Art. 40 (Fulfillment of the debt obligation of the staff welfare institution) Art. 44 Par. 3 (Termination in case of long-term employment relationship) Art. 45 (Termination of employment relationship)

Art. 46 Par. 1 (Unfair Termination)

Art. 47 (Compensation in the event of unfair termination) Art. 48 (Enforcement of compensation)

Art. 53 par. 1 and 2 (Termination without notice for good cause) Art. 55 par. 1 (Consequences of justified termination)

Art. 57 (Consequences of unjustified failure to take up or leave employment) Art. 59a (Collective dismissals) Art. 59c Para. 1 (Duty to notify)

Art. 60 Par. 1 (Maturity or claims) Art. 61 (Obligations to return)

Art. 67, paras. 1 and 2 (Consequences of violating the non-competition clause) Art. 70, para. 2 (Civil law effects of public law) Art. 76 (Premature termination of the apprenticeship contract)

Art. 86 par. 3 (Inability to travel) Art. 89 (Special notice of termination) Art. 90 par. 2 (Obligations to return)

2) Agreements and provisions of standard employment contracts and collective employment contracts that deviate from the above provisions to the disadvantage of the employer or the employee shall be null and void.

#### Art. 113

##### B. Unchangeability to the disadvantage of the employee

1) The following provisions may not be deviated from to the disadvantage of the employee by agreement, standard employment contract or collective employment contract:

Art. 8 (Liability of the employee)

Art. 8a (Equal treatment of men and women)

Art. 8b (Equal treatment of part-time and full-time employees or of temporary and permanent employees)

Art. 9 para. 3 (Equal pay for men and women for equal work or work of equal value)

Art. 10 paras. 2 and 3 (share in net profit)

Art. 11 par. 1 and 2 (Origin of the right to commission)

Art. 12 (Commission settlement)

Art. 16 Par. 1 Sentence 2 (Payroll)

Art. 17 (Wages in the event of default of acceptance by the employer)

Art. 18 par. 1 and 3 (salary in the event of the employee's incapacity) Art. 19 (salary in the event of the employee's compulsory insurance) Art. 21 par. 1, 3 and 4 (piecework)

Art. 22 (piecework wages)

Art. 24 par. 1 (reimbursement of expenses in general) Art. 25 par. 1 (reimbursement of expenses for motor vehicles) Art. 26 par. 2 (advance payment for expenses)

Art. 27 (Protection of the personality of the employee in general) Art. 28 (Protection of the personality in case of domestic community)

Art. 28a (Protection of personality when processing personal data) Art. 29 par. 1, 2, 3 and 5 (Time off) Art. 30 (Duration of vacations)

Art. 31 par. 2 and 3 (reduction of vacations)

Art. 32 (Context and timing of vacation) Art. 33 Para. 1 (Vacation pay) Art. 34a (Duration of parental leave)

Art. 34b (Taking parental leave)

Art. 34c (job guarantee in case of parental leave) Art. 35 par. 1, 3 and 4 (bail)

Art. 36 (Certificate)

Art. 36a (Promotion and information for part-time and fixed-term employment)

Art. 36b (Job guarantee during maternity leave)

Art. 37, paras. 3 and 4 (Contribution and obligation to provide information in the case of staff welfare) Art. 38 (Employee's claim in the case of savings institutions)

Art. 39 (Employee's claims on insurance institutions) Art. 41, para. 4 (Remuneration for inventions)

Art. 43 (Effect)

Art. 43 Para. 8 (Liability in the event of transfer of employment) Art. 43a (Information and consultation)

Art. 43b (Insolvency proceedings on the assets of the transferor) Art. 44a (Successive fixed-term employment relationships) Art. 46 para. 2 (Abusive termination by the employer) Art. 49 (Termination untimely by the employer)

Art. 54 (Termination without notice due to threat to salary) Art. 56 Par. 1 (Consequences of unjustified dismissal) Art. 58 (Death of the employee)

Art. 59 (Death of the employer)

Art. 59d (Effectiveness of termination; vesting period) Art. 62 (Conditions for severance pay) Art. 64 (Compensation benefits)

Art. 65 Para. 1 (Conditions of the non-competition clause) Art. 66 Para. 1 (Limitation of the non-competition clause) Art. 68 (Cessation of the non-competition clause)

Art. 69 par. 1 (indispensability) Art. 75 (duties of the master teacher)

Art. 84 Para. 1 (Wages of the commercial traveler) Art. 85 Para. 3 (Payment of the provision)

Art. 86, para. 1 (Wages in case of inability to travel) Art. 88, para. 1 (Retention rights of commercial travelers)

Art. 90 Para. 1 (Commission on termination of employment) Art. 92a (Temporal limitation of the issue of home work) Art. 94 Para. 3 (Liability of the home worker)

Art. 95 (Acceptance of the employer's reference) Art. 96 (Payment of salary)

Art. 97 Para. 1 (Salary in the event of absence from work) Art. 98 (Vacation)

2) Agreements and provisions of standard employment contracts and collective employment contracts that deviate from the above provisions to the disadvantage of the employee shall be null and void.

4. *Performance for unauthorized purposes*

§ 1174

1) What a person has knowingly given for the purpose of performing an impossible or unlawful act cannot be reclaimed. The extent to which the tax authorities are entitled to confiscate it is determined by law. If, however, something has been given to prevent an unlawful act by the person who intended to commit this act, it may be reclaimed.

2) A loan given for the purpose of a prohibited game cannot be reclaimed.

27. Main section

From the contract on a community of goods

§§ 1175 to 1216 Revoked

28. Main section

From the marriage pacts and the claim to equipment

§ 1217

1) Marriage pacts are those contracts which are concluded with regard to the marital union over the property and which have as their object in particular the community of property, the administration and the enjoyment of one's own property and the widow's income.

2) Unless more extensive requirements are stipulated or exceptions are made in this main section, marriage documents must be in writing and the signatures must be notarized in order to be valid.

§§ 1218 and 1219

Retrieved

*Equipment*

§ 1220

If a child has no property of his or her own sufficient for an adequate endowment, parents and grandparents are obliged, in accordance with the order and principles according to which they are to provide for the maintenance of the children, to give the children or grandchildren an endowment when they marry or to contribute to it in a proportionate manner.

§ 1221

## General Civil Code

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If parents or grandparents plead their inability to provide an adequate endowment, the court must decide on this at the request of the person entitled to the endowment, but without a strict examination of the assets.

### § 1222

If a child has married without the knowledge or against the will of his parents, and the court finds the cause of disapproval justified, the parents, even in the event that they subsequently approve the marriage, are not guilty of giving him an endowment.

### § 1223

If the child has already received its endowment and lost it, even if through no fault of its own, it shall no longer be entitled to claim a new one even if it enters into another marriage.

### §§ 1224 to 1229 Revoked

#### 2. Abutments

### § 1230

Retrieved

### § 1231

Retrieved

### § 1232

#### 3. *Morning gift*

Retrieved

#### 4. Community of property

### § 1233

The marital union alone does not establish community of property between the spouses. For this purpose, a special contract is required, the validity of which requires a precise determination of the scope of the community of property in addition to the other legal requirements.

### § 1234

The community of property between spouses is usually understood only on death. It gives the spouse the right to half of what is mutually subject to community property after the death of the other.

spouse will still be present.

§ 1235

In the case of a community which relates to the whole property, all debts without exception are to be deducted before the division, but in the case of a community which has as its object only the present or only the future property, only those debts are to be deducted which have been used for the benefit of the common property.

§ 1236

If one of the spouses owns immovable property and the other spouse's right of community is entered in the public books, the latter shall acquire a right in rem by virtue of the entry in respect of half of the substance of the property, by virtue of which one of the spouses may dispose of that half.

However, he shall not be entitled to the benefits during the marriage as a result of the incorporation. After the death of the spouse, the surviving partner is immediately entitled to free ownership of his share. However, such incorporation cannot be to the detriment of creditors previously registered on the estate.

5. Management and usufruct of the original or acquired assets

§ 1237

1) If the spouses have not made a special agreement on the use of their property, each spouse shall retain his or her previous right of ownership, and on what each part acquires during the marriage and in whatever manner, the other spouse shall be entitled to the property.

receives, the other has no claim.

2) The special rights granted by law to a spouse during a legal marriage in the event of participation in the profession or business of the other spouse or in the event of the death of the other spouse, as well as in the event of annulment, separation or divorce of the marriage, shall be governed by the provisions of the law.

Para. 1 not affected.

§§ 1238 to 1241 Revoked

6. widow's salary

§ 1242

That which is determined for the maintenance of a wife in the event of widowhood is called widow's salary. This is due to the widow immediately after the death of the

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 General Civil Code
 

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man, and shall always be paid on three months' notice.

## § 1243

Only the determination of a widow's salary made inter vivos by contract is subject to the provisions on matrimonial pacts. The validity of a unilateral determination of the widow's salary by the husband is subject to the formalities established by law for testamentary dispositions.

## § 1244

If the widow marries, she loses the right to the widow's salary.

## § 1245

Retrieved

*Gifts between spouses and fiancés*

## § 1246

The validity or invalidity of gifts between spouses is judged according to the laws existing for gifts in general.

## § 1247

What a husband has given to his spouse in the way of jewelry, precious stones, and other valuables, shall in case of doubt be regarded as a gift rather than as a loan. If, however, one of the engaged parties promises or gives something to the other, or a third party to one or the other, with a view to the future marriage, the gift may be revoked if the marriage does not take place through no fault of the giver of the gift.

§§ 1248 to 1254 Discontinued Fruit grant

on death (right of advitality)

§§ 1255 to 1258 Revoked

## § 1259

Retrieved

*Separation of the property in the case*

1. of a bankruptcy

## § 1260

If bankruptcy proceedings are instituted against the husband's property during his lifetime, the spouse may not yet request the restitution of the marriage property.

The bankrupt shall not be entitled to demand the return of the assets, but only to demand security against the creditors in the event of the dissolution of the marriage. In addition, she shall be entitled to claim the enjoyment of the spousal support from the time of the opening of the bankruptcy proceedings, and if none is stipulated, the enjoyment of the marital property. However, this claim for one or the other benefit shall not be valid if it is proved that the spouse was the cause of the deterioration of the husband's property.

§ 1261

If the spouse and her assets go bankrupt, the marital pacts remain unchanged.

§ 1262

If a community of property has been agreed between the spouses, the same shall cease by the bankruptcy of one or the other spouse, and the property jointly held between them shall be divided as in the case of death.

§ 1263

2. a divorce or separation

1) In the event of divorce or separation, it depends on the agreement of the spouses whether they wish to continue any marriage pacts that may have been concluded or in what way they wish to amend them.

2) If the spouses do not reach an agreement, the court shall attempt to reach a settlement. If this is also not possible, the court shall, after hearing the parties, decide on the question of the continuation of the marriage pacts.

§ 1264

Retrieved

§ 1265

4. *Invalidation*

1) If a marriage is declared invalid, the marriage pacts shall also be dissolved, and the assets, insofar as they exist, shall revert to their previous status.

2) If the existence of an impediment to marriage was known to one party in advance and if he or she intentionally concealed it, this party at fault shall pay compensation to the party without fault (or with less fault).

§ 1266

Retrieved

29. Main part Of the contracts of happiness



## General Civil Code

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### Contracts of happiness

#### § 1267

A contract whereby the hope of an as yet uncertain benefit is promised and accepted is a contract of fortune. It belongs, depending on whether something is promised against it or not, to the gratuitous or gratuitous contracts.

#### § 1268

In the case of contracts of good fortune, the remedy for abridgement over half the value shall not apply.

### Types of happiness contracts

#### § 1269

Contracts of fortune are: the bet; the game and the lot; all contracts of sale and other contracts established over hoped-for rights or over future things as yet undetermined; furthermore, annuities; social security institutions; finally, insurance and bodily injury contracts.

#### 1. the bet

#### § 1270

If a certain price is agreed between the two parties about an event which is still unknown to both of them, for the party whose assertion corresponds to the success, a wager arises. If the winning party had knowledge of the outcome and concealed it from the other party, he is guilty of malice and the wager is invalid. The losing party, however, who knew the outcome beforehand, is to be regarded as a gift-giver.

#### § 1271

Bona fide and otherwise permitted bets are binding to the extent that the stipulated price has not merely been promised, but has actually been paid or deposited. The price cannot be claimed in court.

#### § 1272

#### 2. the game

Each game is a type of bet. The rights established for bets shall also apply to games. The political laws determine which games are forbidden at all or for particular classes, and how persons who engage in forbidden games, and those who abet them, are to be punished.

#### 3. Go

§ 1273

A lot drawn between private persons for a bet or a game shall be judged in accordance with the rules laid down for bets and games. However, if a division, election or dispute is to be decided by lot, the rights of the other contracts shall apply.

§ 1274

State lotteries are not to be judged by the nature of the bet and the game, but by the plans announced each time about it.

4. Hope Purchase

§ 1275

Whoever promises a proportionate price for a certain amount of future income concludes an ordinary contract of sale.

§ 1276

Whoever buys the future benefits of a thing in lump sum or whoever buys the hope of the same in a certain price, establishes a contract of luck; he bears the risk of the completely thwarted expectation; however, he is also entitled to all properly obtained benefits.

§ 1277

*especially of a Kux*

Retrieved

or an inheritance

§ 1278

1) The buyer of an inheritance which has been accepted by the seller or at least has accrued to him shall not only enter into the rights but also into the liabilities of the seller as heir, insofar as these are not merely personal. Therefore, if the purchase is not based on an inventory, the inheritance purchase is also a risky transaction.

2) In order to be valid, the inheritance purchase must be certified by a court protocol.

§ 1279

On things belonging to the seller not as heirs, but for another reason,  
z. e.g. as an advance legacy, as a fideicommiss, as a substitution, as a debt claim

## General Civil Code

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The purchaser of the inheritance shall have no claim to the inheritance rights to which he is entitled from the estate and to which he would have been entitled even without the right of inheritance. On the other hand, he shall receive everything that accrues to the estate itself, whether through the departure of a legatee or a co-heir or in any other way, insofar as the seller would have been entitled to it.

### § 1280

Everything which the heir receives from the right of inheritance, such as the fruits and claims received, shall be included in the estate; on the other hand, everything which he has spent from his estate on the application for the inheritance or on the estate shall be deducted from the estate. This includes the debts paid, the legacies already paid, duties and court fees and, unless expressly agreed otherwise, also the funeral expenses.

### § 1281

To the extent that the seller administered the estate prior to the transfer, he shall be liable to the buyer for it, as if he were another business agent.

### § 1282

The creditors of the inheritance and legatees, however, may claim satisfaction both from the purchaser of the inheritance and from the heir himself. Their rights, as well as those of the debtors of the inheritance, shall not be changed by the sale of the inheritance, and the transfer of the inheritance of one shall also apply to the other.

### § 1283

If the sale of the inheritance is based on an inventory, the seller shall be liable for the same. If the purchase was made without such an inventory, he shall be liable for the correctness of his right of inheritance as stated by him and for all damage caused to the purchaser through his fault.

## 5. Life annuity

### § 1284

If someone is promised a certain annual payment for the lifetime of a certain person for money or in exchange for something valued for money, it is a life annuity contract.

### § 1285

The duration of the life annuity may depend on the life of one or the other part or

also of a third party. In case of doubt, it is paid quarterly in advance and in all cases ends with the life of the person on whose head it is based.

§ 1286

Neither the creditors nor the children of the person who has secured an annuity shall be entitled to rescind the contract. However, the former are free to seek satisfaction from the annuities; the latter, however, to demand the deposit of an expendable part of the annuity in order to have the maintenance due to them according to the law insured thereon.

§ 1287

6. social utilities

The contract by which a common provident fund for the members, their spouses or orphans is established by means of a contribution shall be judged from the nature and purpose of such an institution, and from the conditions laid down for it.

7. Insurance contract

§ 1288

If a person takes upon himself the risk of damage that could befall another through no fault of his own and promises to compensate him for a certain price, an insurance contract is formed. The insurer is liable for the accidental damage, and the insured for the promised price.

§ 1289

The usual subject matter of this contract is goods carried by water or land. However, other items, e.g. houses and land, may also be insured against fire, water and other perils.

§ 1290

If the accidental damage for which the indemnity has been insured occurs, the insured must, if no insurmountable obstacle intervenes or if nothing else has been agreed upon, notify the insurer thereof within three days if they are in the same place, but otherwise within the period of time which has been determined for the announcement of the acceptance of a promise made by an absent person (§ 862). If

## General Civil Code

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If the Insurer fails to notify the Insured, if the Insured is unable to prove the accident or if the Insurer is able to prove that the damage was caused by the fault of the Insured, the Insured shall not be entitled to the insured amount.

### § 1291

If the Insured was already aware of the loss of the item or the Insurer was already aware of the risk-free condition of the item at the time of the conclusion of the contract, the contract is invalid.

### § 1292

#### Bodmereiand Seeassurances

The provisions relating to maritime insurance and the provisions relating to the Bodmeri contract are a subject of the Maritime Laws.

#### 30. Main section

##### About the rights of compensation and satisfaction

### § 1293

#### Pity

Damage means any disadvantage that has been inflicted on someone's property, rights or person. This is distinguished from the loss of profit that someone can expect in the ordinary course of events.

### § 1294

#### Sources of damage

The damage arises either from a wrongful act or omission of another or from a coincidence. The unlawful damage is inflicted either arbitrarily or involuntarily. The arbitrary damage, however, is based partly on a bad intention, if the damage was caused with knowledge and will, partly on an oversight, if it was caused by culpable ignorance or by lack of due attention or due diligence. Both are called fault.

#### From liability to damages

##### *1. From the damage due to fault*

### § 1295

1) Everyone shall be entitled to claim compensation from the damaging party for the damage caused to him by his fault; the damage may have been caused by the breach of a contractual obligation or without reference to a contract.

have been.

2) A person who intentionally causes damage in a manner contrary to good morals is also liable for it, but if this was done in the exercise of a right, only if the exercise of the right was obviously intended to harm the other person.

3) If a contractual obligation of the debtor to cease and desist has been breached and the debtor continues to act in breach of the contract notwithstanding an agreement, the creditor may sue for the elimination of the unlawful conduct (indulgence) and for the cessation of future unlawful conduct and, if at fault, for damages.

§ 1296

In case of doubt, it shall be presumed that the damage occurred without the fault of another party.

§ 1297

But it is also presumed that everyone who possesses the use of reason is capable of such a degree of diligence and attention as can be applied to ordinary abilities. Whoever omits this degree of diligence or attention in actions from which an abridgement of the rights of another arises is guilty of an oversight.

§ 1298

A person who claims that he was prevented from fulfilling his contractual or legal obligation through no fault of his own shall have the burden of proof.

in particular a) the experts

§ 1299

Whoever publicly professes an office, an art, a trade or a craft; or whoever without necessity voluntarily takes on a business, the conduct of which requires his own knowledge of art or a knowledge of a trade or craft that is not his own.

A person who requires ordinary diligence thereby shows that he is confident of the necessary diligence and the required, unusual knowledge; he must therefore represent the lack of the same. If, however, the person who entrusted him with the business knew or could have known with ordinary attention that he was inexperienced, the latter shall be charged with an oversight at the same time.

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General Civil Code

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§ 1300

An expert is also liable if he accidentally gives disadvantageous advice in matters of his art or science in return for a reward. Except in this case, an advisor is liable only for the damage he knowingly caused the other person by giving the advice.

or b) several participants

§ 1301

Several persons may be held responsible for an unlawfully inflicted damage if they have jointly contributed to it, directly or indirectly, by inducing, threatening, commanding, assisting, concealing, etc., or even only by omitting the special obligation to prevent the evil.

§ 1302

In such a case, if the damage is due to an oversight and the shares can be determined, each shall be responsible only for the damage caused by his oversight. If, however, the damage has been caused intentionally or if the shares of the individuals in the damage cannot be determined, all shall be liable for one and one for all; however, the one who has compensated for the damage shall have the right of restitution against the others.

§ 1303

The extent to which several co-debtors are liable merely for the failure to fulfill their obligation is to be judged from the nature of the contract.

§ 1304

If in the case of damage the damaged party is also at fault, he shall bear the damage proportionately with the damaging party and, if the proportion cannot be determined, in equal shares.

§ 1305

*2. from the use of the right*

Whoever exercises his right within the legal limits (§ 1295 para.

2) shall not be responsible for any disadvantage resulting therefrom for another person.

3. from a blameless or involuntary act

§ 1306

As a rule, a person shall not be liable to compensate for damage caused by no fault of his own or by an involuntary act.

§ 1306a

If a person causes damage in a state of emergency in order to avert an imminent danger to himself or others, the judge shall determine whether and to what extent the damage is to be compensated, taking into account whether the damaged party failed to avert the danger out of consideration for the danger threatening the other party, as well as the relationship of the extent of the damage to this danger, or finally the assets of the damaging party and the damaged party.

§ 1307

If a person has placed himself in a state of sensory confusion or in a state of distress through his own fault, the damage caused in this state shall also be attributed to his fault. The same shall apply to a third party who, through his fault, has caused this situation for the damaging party.

§ 1308

If a delusional or stupid person, or a minor, damages someone who, through some fault of his own, has given rise to this, he cannot claim compensation.

§ 1309

Except for this case, he shall be entitled to compensation from those persons to whom the damage may be attributed due to neglect of the care entrusted to them over such persons.

§ 1310

If the damaged party cannot obtain compensation in this way, the judge shall, taking into account the circumstance whether the damaged party, notwithstanding his usual lack of reason, is not nevertheless at fault in the particular case; or whether the damaged party has omitted to defend himself out of consideration for the damaged party; or finally, taking into account the assets of the damaged party and the damaged party; award the entire compensation or a fair part thereof.

4. by chance

§ 1311

Mere chance affects the person in whose property or person it occurs. If, however, someone has caused the coincidence through fault, he shall have a law that



## General Civil Code

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If a third party attempts to prevent accidental damage, transgresses the law, or interferes in another's business without justification, he shall be liable for all disadvantages that would not have occurred if he had not done so.

### § 1312

Whoever has rendered a service to someone in an emergency shall not be charged with the damage he has not prevented, unless he has prevented someone else, who would have rendered even more, from doing so through his fault. But even in this case he may set off the benefit safely procured against the damage caused.

#### 5. through external actions

As a rule, a person shall not be responsible for unlawful acts of others in which he has no part. Even in cases where the law prescribes the opposite, the right of restitution against the guilty party is reserved.

### § 1314

Whoever accepts a servant without a certificate or knowingly keeps in service or gives residence to a person dangerous by his physical or mental condition, shall be liable to the master of the house and the members of the house for compensation of the damage caused by the dangerous condition of such persons.

### § 1315

In general, a person who uses an incompetent or knowingly dangerous person to manage his affairs shall be liable for the damage he causes to a third party in this capacity.

### § 1316

Innkeepers who accommodate strangers, as well as the other persons referred to in § 970, and also carters, shall be liable for damage caused by their own servants or those assigned by them to property brought in or taken over by a guest or traveler in their house, establishment or vehicle.

### § 1317

The extent to which liability is assumed for damage in the case of public shipping companies is determined by the special regulations.

### § 1318

If someone is damaged by the falling of a dangerously hung or placed thing or by throwing or pouring from a dwelling, the person from whose dwelling was thrown or poured or the thing fell shall be liable for the damage.

§ 1319

*6. through a building*

If someone is injured or other damage is caused by the collapse or detachment of parts of a building or other work listed on a property, the owner of the building or work shall be liable for compensation if the event is the result of the defective condition of the work and he does not prove that he exercised all due care required to avert the risk.

§ 1320

*7. by an animal*

If someone is damaged by an animal, the person who drove, irritated or neglected to keep it is responsible. The person who keeps the animal is responsible if he does not prove that he had provided the necessary custody or supervision.

§ 1321

Retrieved

§ 1322

Retrieved

*Types of compensation*

§ 1323

1) In order to compensate for damage caused, everything must be restored to its previous state or, if this is not possible, the estimated value must be compensated. If the compensation relates only to the damage suffered, it is actually called indemnification, but if it also extends to the loss of profit and the repayment of the insult caused, it is called full satisfaction.

2) The provision of § 35 of the final section to the PGR remains reserved.

1) In the case of damage caused by malicious intent or conspicuous carelessness, the injured party is entitled to full satisfaction, but in other cases only to actual indemnification. Accordingly, in the

## General Civil Code

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In cases where the general term "compensation" is used in the law, it is necessary to decide what type of compensation is to be paid.

2) Where the seriousness of the injury and fault so requires, or where the damage has been caused by a tortious act, an action may be brought for the payment of a reasonable sum of money by way of satisfaction.

3) In addition to or instead of the payment of a sum of money, the judge may also award an appropriate type of satisfaction.

In particular

*1. for injuries on the body*

§ 1325

Anyone who injures someone's body shall pay the injured person's medical expenses, compensate him for lost earnings or, if the injured person becomes incapable of earning an income, also for lost earnings in the future, and, upon request, also pay him a pain and suffering allowance commensurate with the circumstances raised.

§ 1326

If the injured person has been disfigured by the maltreatment, this circumstance must be taken into account, especially if she is female, insofar as her better advancement may be prevented thereby.

§ 1327

If death results from a physical injury, not only must all expenses be paid, but anyone who has lost his provider as a result of the killing must be compensated for all that he would have lost as a result.

§ 1328

*1a. in sexual self-determination*

Whoever abuses someone by a criminal act or otherwise by deceit, threat or exploitation of a relationship of dependence or authority for coitus or otherwise for sexual acts, shall compensate him for the damage suffered and make full satisfaction.

§ 1328a

*1b. on the right to privacy*

1) Anyone who unlawfully and culpably invades a person's privacy or discloses or exploits circumstances from a person's privacy shall compensate the person for the damage caused thereby. In the event of significant violations

of privacy, e.g. if circumstances are exploited in a way that is likely to expose the person to the public, the claim for compensation also includes compensation for the personal impairment suffered.

2) Paragraph 1 shall not apply if a violation of privacy is to be assessed in accordance with special provisions. Responsibility for violations of privacy by the media shall be governed solely by the provisions of the Media Act.

§ 1329

2. on personal freedom

Whoever deprives someone of his liberty by forcible abduction, by private imprisonment or intentionally by unlawful arrest shall be obliged to restore the former liberty to the injured person and to pay full satisfaction. If he is no longer able to provide him with his freedom, he must compensate the survivors, as in the case of homicide.

§ 1330

3. on animals

1) In the case of animals kept in the home and not for property or profit, medical expenses may also be paid in the case of

reasonably be claimed as damages if they exceed the value of the animal.

2) In the event of injury or death of an animal kept in the domestic sphere and not for pecuniary or gainful purposes, the value of the special fondness which such animal had for its owner or his relatives may be made payable.

4. in the assets

§ 1331

If someone's property is damaged intentionally or by another's conspicuous carelessness, he is also entitled to claim the lost profit, and if the damage was caused by an act forbidden by a criminal law or by wantonness and gloating, the value of the special preference.

§ 1332

## General Civil Code

---

Damage caused by a lesser degree of negligence or carelessness shall be compensated according to the common value of the thing at the time of the damage.

*Especially due to the delay in payment. Legal interest and other damages.*

### § 1333829830

1) The damage caused by the debtor to his creditor by delaying the payment of a pecuniary claim shall be compensated by the statutory interest (section 1000, subsection 1).

### 2) Retrieved

3) In addition to the statutory interest, the creditor may also claim compensation for other damage caused by the debtor and incurred by him, in particular the necessary costs of appropriate out-of-court enforcement or recovery measures, provided that these are in reasonable proportion to the claim pursued.

### § 1334

A debtor shall be guilty of delay if he fails to observe the payment date determined by law or by contract. Unless the parties agree otherwise and unless otherwise provided by law, the debtor shall perform without unnecessary delay after the creditor has performed or, if the parties have agreed on such a procedure, after the creditor has accepted or verified the performance or, if the amount of the claim has not yet been determined, after receipt of the invoice or an equivalent request for payment. If the time of payment is not otherwise determined, the debtor shall bear the consequences of the delay in payment if he has not settled with the creditor after the day of the judicial or extrajudicial reminder.

### § 1335

If the creditor has allowed the interest to rise to the amount of the principal debt without a court reminder, the right to demand further interest from the principal shall expire, unless it concerns monetary claims against an entrepreneur from business transactions. However, interest may be demanded again from the date of the pendency of the dispute.

### § 1336834835

*Condition of the remuneration amount (penalty)*

1) The contracting parties may make a special agreement that in the event of a promise not being fulfilled at all, or not being fulfilled in a proper manner, or being fulfilled too late, a certain sum of money or other amount shall be paid instead of the disadvantage to be compensated (section 912). In the absence of a special agreement, the debtor does not acquire the right to exempt himself from performance by paying the compensation amount. If the contractual penalty was promised for non-compliance with the time or place of performance, it may be claimed in addition to performance.

2) In all cases, if the amount of compensation is proven to be excessive by the debtor, it shall be reduced by the judge, if necessary after consultation with experts.

#### § 1337

##### Liability of the heirs of the damaging party

The obligation to compensate the damage and the loss of profit or to pay the stipulated amount of remuneration shall be on the estate and shall pass to the heirs.

##### Remedies of compensation

#### § 1338

As a rule, the right to damages, like any other private right, must be brought before the ordinary judge. If the damaging party has at the same time violated a criminal law, he shall also be liable for the penalty imposed. In this case, however, the hearing of the claim for damages also belongs to the civil court, insofar as it is not assigned to the criminal court or the political authority by the criminal laws.

#### § 1339

Bodily injury, unlawful restraint of liberty, and indecency shall be investigated and punished according to the circumstances, either as offenses, misdemeanors, or infractions. The provisions in this regard are contained in the penal laws and in the laws regulating personal and corporate law.

#### § 1340

If the compensation can be determined directly, these authorities shall decide on it immediately in accordance with the provisions of this Part. If, however, the compensation for the damage cannot be determined directly, it shall be stated in the decision that the

## General Civil Code

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The court shall reserve the right to seek compensation for the damaged party by legal means. This way is also reserved to the damaged party in criminal cases and to the parties in other cases if they do not want to be satisfied with the determination of the compensation made by the criminal authority.

### § 1341

A complaint against the fault of a judge is lodged with the higher authority. The higher authority investigates and assesses the complaint *ex officio*.

### 3. Part

From the common provisions of the personal and property rights

#### 1. Main section

From attachment of rights and liabilities

### § 1342

Community provisions of the rights

Both personal rights and property rights, and obligations arising therefrom, can be uniformly fixed, changed and cancelled.

Types of attachment of a right

### § 1343

The legal types of securing a liability and attaching a right, by which a new right is granted to the beneficiary, are: the obligation of a third party for the debtor and the pledge.

*1. by obligation of a third party*

### § 1344

A third party may commit himself to the creditor on behalf of the debtor in three ways: first, if he assumes the debt as sole payer with the creditor's consent; then, if he joins the debt as co-debtor; finally, if he binds himself for the creditor's satisfaction in the event that the first debtor does not fulfill the debt.

### § 1345

If someone takes over the entire debt of another with the creditor's consent, this is not a consolidation but a modification of the obligation, which is dealt with in the following main section.

### § 1346

*a) As guarantor*

1) A person who undertakes to satisfy the creditor in the event that the first debtor does not fulfill the obligation is called a guarantor, and the agreement concluded between him and the creditor is called a contract of surety. Here the first debtor still remains the principal debtor, and the guarantor is added only as a subsequent debtor.

2) For the guarantee contract to be valid, the guarantor's declaration of commitment must be made in writing.

§ 1347

*b) As co-debtor*

If someone joins an obligation as a co-debtor without the condition benefiting the guarantors, a community of several co-debtors arises, the legal consequences of which are to be judged according to the provisions given in the main part of contracts in general (§§ 888 to 896).

§ 1348

Indemnitor

A person who promises to indemnify the guarantor in the event that the guarantor suffers damage as a result of his guarantee is called an indemnity guarantor.

§ 1349

Who can vouch

Third-party liabilities may be assumed by anyone, without distinction of sex, who is entitled to the free management of his property.

For which liabilities

§ 1350

A surety may be given not only for sums and things, but also for permitted acts and omissions in relation to the advantage or disadvantage which may arise from them for the secured party.

§ 1351

Liabilities that have never rightfully existed or have already been cancelled can neither be assumed nor reaffirmed.

§ 1352

Whoever vouches for a person who, by virtue of his or her personal capacity



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## General Civil Code

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The debtor who cannot be joined to the debtor, even if he was not aware of this property, is obliged as an undivided co-debtor (§ 896).

### Scope of the guarantee

#### § 1353

The guarantee cannot be extended further than the guarantor has expressly declared. A person who guarantees an interest-bearing capital is liable only for that interest which the creditor has not yet been entitled to collect.

#### § 1354

The guarantor may not make use of the objection whereby a debtor is entitled to demand the retention of a part of his property for his maintenance in accordance with the provisions of the law.

### Effect

#### § 1355

As a rule, the guarantor can only be sued if the principal debtor has not fulfilled his obligation in response to the creditor's judicial or extrajudicial reminder.

#### § 1356

The guarantor, however, even if he has expressly guaranteed only in the event that the principal debtor is unable to pay, may be sued first if insolvency proceedings have been instituted against the assets of the principal debtor or if the principal debtor is unknown at the time when payment is to be made and the creditor cannot be accused of any negligence.

#### § 1357

A person who has undertaken to act as guarantor and payer is liable as an undivided co-debtor for the entire debt; it depends on the creditor's discretion whether he wishes to sue the principal debtor first or the guarantor or both at the same time (§ 891).

#### § 1358

Whoever pays a debt of another for which he is liable personally or with certain property shall be subrogated to the rights of the creditor and shall be entitled to claim from the debtor compensation for the debt paid. To this end, the creditor is obliged to deliver to the payer all available legal remedies and means of security.

§ 1359

If several persons have provided surety for the same whole amount, each shall be liable for the whole amount. However, if one of them has

If the debtor has paid off the entire debt, he shall be entitled to restitution against the others in the same way as a co-debtor (section 896).

§ 1360

If a pledge is given to the creditor by the principal debtor or a third party before or at the time of performance of the guarantee, the creditor is still free to sue the guarantor in accordance with the regulations (§ 1355), but he is not entitled to dispose of the pledge to the detriment of the guarantor.

§ 1361

If the guarantor or payer has satisfied the creditor without agreeing with the principal debtor, the latter may object to everything he could have objected to against the creditor.

§ 1362

The guarantor may claim compensation from the indemnity guarantor only if the damage was not caused by the guarantor's own fault.

Types of cancellation of the guarantee

§ 1363

The guarantor's liability shall cease proportionately with the debtor's liability. If the guarantor has only committed himself for a certain period, he shall be liable only for that period. The discharge of a joint guarantor shall be valid against the creditor but not against the other joint guarantors (§ 896).

§ 1364

The lapse of time within which the debtor should have paid does not release the guarantor from his guarantee, even if the creditor has not insisted on satisfaction; only he is entitled to demand from the debtor, if he has given guarantee with his consent, that he provide him with security. The creditor is also responsible to the guarantor insofar as he suffers damage due to the latter's negligence in collecting the debt and recovering the compensation.

§ 1365

If there is a well-founded concern of insolvency against the debtor

## General Civil Code

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If the debtor is removed from the countries of inheritance for which this Code is prescribed, the guarantor shall have the right to demand that the debtor provide security for the guaranteed debt.

### § 1366

When the guaranteed transaction is finished, the settlement and the cancellation of the guarantee can be demanded.

### § 1367

If the contract of suretyship is not secured by mortgage or pledge, it shall expire within three years of the guarantor's death if the creditor has failed in the meantime to demand payment of the forfeited debt from the heir either in or out of court.

#### *II. By pledge agreement*

#### §§ 1368 to 1372 Revoked

In what way is usually to provide security

### § 1373

Anyone who is obliged to provide security must fulfill this obligation by means of a pledge or mortgage. Only in the event that he is unable to provide a pledge, suitable guarantors shall be accepted.

### § 1374

No one shall be obliged to pledge a thing which is to serve as security for a higher value than that determined by the appraisal, in the case of houses to half, in the case of land to two thirds, and in the case of movable property to two thirds. Anyone who has adequate assets and can be prosecuted in the province is a suitable guarantor.

## 2. Main section

From change of rights and liabilities

### § 1375

Change in rights and liabilities

It depends on the will of the creditor and the debtor to change their mutual arbitrary rights and liabilities. The change can be made without or with the involvement of a third person, either a new creditor or a new debtor.

1. by novation

§ 1376

The change without the involvement of a third person takes place when the legal ground or when the main subject of a claim is confused, consequently the old liability is transferred into a new one.

§ 1377

Such a change is called a novation contract. By virtue of this contract, the previous main obligation ceases and the new one begins at the same time.

§ 1378

The guarantee, pledge and other rights connected with the previous principal obligation shall expire as a result of the novation agreement, unless the participants have agreed otherwise by special agreement.

§ 1379

The more detailed provisions as to where, when and how an already existing obligation is to be fulfilled, and other ancillary provisions, whereby no change occurs with regard to the main subject matter or legal basis, are no more to be regarded as a new contract than the mere issuance of a new promissory bill or other document pertaining thereto. Such a change may also be made in

The court may not impose a new burden on a third party who has not been included in the ancillary provisions. In case of doubt, the old obligation shall not be considered dissolved as long as it can still exist together with the new one.

2. Comparison

§ 1380

A new contract by which disputed or doubtful rights are determined in such a way that each party mutually agrees to give, do or refrain from doing something is called a settlement. The settlement belongs to the bilateral binding contracts and is judged according to the same principles.

§ 1381

A person who grants an undisputed or doubtful right to the obligor free of charge with the obligor's consent makes a gift (Section 939).

Invalidity of a settlement with regard to the subject matter

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General Civil Code

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§ 1382

There are doubtful cases which may not be settled by a compromise. One of them is a dispute between spouses about the validity of their marriage. This can only be decided by the court determined by law.

§ 1383

No settlement may be made on the content of a final order before it is announced. The wager arising thereon shall be judged in accordance with the principles of contracts of fortune.

§ 1384

Settlements concerning violations of the law are valid only with respect to private satisfaction; the lawful investigation and punishment may be averted thereby only if the violations are of such a nature that the authority is instructed to act only at the request of the parties.

or other defects

§ 1385

An error can invalidate the settlement only insofar as it concerns the essence of the person or object.

§ 1386

A bona fide settlement cannot be challenged on the grounds of a breach in excess of one half.

§ 1387

Similarly, newly found documents, even if they discover the complete lack of a right on the part of one party, cannot invalidate a settlement entered into in good faith.

§ 1388

A manifest infringement of the invoice or an error committed in summing up or deducting during the conclusion of a settlement shall not be prejudicial to either of the contracting parties.

§ 1389

Scope of the comparison

A settlement that has been reached over a particular dispute shall not be

does not extend to other cases. Even general settlements covering all disputes are not applicable to rights which have been deliberately concealed or which the settling parties could not think of.

Effect in respect of ancillary liabilities

§ 1390

Guarantors and pledges who have been given as security for the entire right still in dispute shall also be liable for that part which has been determined by the settlement. However, the guarantor and a third pledgee who have not agreed to the settlement shall retain all objections against the creditor which could have been raised against the claim without the settlement.

§ 1391

The agreement whereby the parties appoint an arbitrator to decide the rights in dispute shall be determined by the Rules of Court.

3. Cession

§ 1392

If a claim is transferred from one person to another and is accepted by the latter, the change of the right arises with the addition of a new creditor. Such an act is called assignment (cession), and may be concluded with or without consideration.

§ 1393

*Objects of the cession*

All alienable rights are subject to assignment. Rights that are attached to the person, and consequently expire with him, cannot be assigned. Promissory bills in the name of the bearer are already assigned.

by the handover and do not require any other proof of assignment in addition to possession.

Effect

§ 1394

The rights of the transferee are the same as the rights of the transferor with respect to the transferred claim.

§ 1395

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## General Civil Code

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The contract of assignment creates a new liability only between the transferor (assignor) and the transferee of the claim (assignee), but not between the last debtor and the transferee (cessus). Therefore, as long as the transferee does not become known to him, the debtor is entitled to pay or otherwise settle with the first creditor.

### § 1396

The debtor can no longer do this as soon as the transferee has been made known to him; only he retains the right to raise his objections against the claim. If he has found the claim against the bona fide transferee to be correct, he shall be obliged to satisfy the latter as his creditor.

#### *Liability of the assignor*

### § 1397

A person who assigns a claim without consideration, i.e. gives it away, shall not be liable for it. However, if the assignment is made for a consideration, the transferor shall be liable to the transferee both for the correctness and for the collectability of the claim, but never for more than he has received from the transferee.

### § 1398

Insofar as the transferee was able to inform himself about the collectability of the claim from the public pledge books, he shall not be entitled to any compensation with regard to the uncollectability. Also for a claim which is at the time

The transferor shall not be liable for a claim which is recoverable at the time of the assignment and which has become irrecoverable by mere chance or through the fault of the transferee.

### § 1399

The transferee commits an oversight of this kind if he does not terminate the claim at the time when it can be terminated or if he does not collect it after the payment deadline has expired, if he looks after the debtor, if he fails to procure the still possible security in due time or if he fails to pursue the judicial execution.

#### 4. Instruction (Assignment)

### § 1400

The instruction to pay a third party's benefit obliges the recipient of the instruction (assignee) to collect the benefit from the assignee (assignee).

The instruction recipient is entitled to a direct claim against the instructed party only when the instructed party's declaration of acceptance of the instruction has reached him. The recipient of the instruction shall not have a direct claim against the person who has issued the instruction until he has received the declaration of acceptance of the instruction from the person who has issued the instruction.

§ 1401

1) Insofar as the person instructed already owes the person instructing the payment, he shall be obliged to comply with the instruction. If the instruction is intended to discharge a debt owed by the instructing party to the recipient who has accepted the instruction, the recipient is obliged to request the instructed party to perform.

2) If the recipient does not wish to make use of the instruction or if the instructed party refuses acceptance or performance, the recipient shall notify the instructing party thereof without delay.

3) Unless otherwise agreed, the debt is repaid only through performance.

§ 1402

If the instructed party has accepted the instruction vis-à-vis the recipient, he may only raise such objections against the latter,

which concern the validity of the acceptance or which result from the contents of the instruction or from his personal relations to the recipient.

§ 1403

1) As long as the person giving the instruction has not accepted it vis-à-vis the recipient, the person giving the instruction may revoke it. If there is no other legal basis between the instructing party and the instructed party, the legal relationship between them shall be governed by the provisions of the power of attorney agreement; however, the instruction shall not expire upon the death of the instructing party or the instructed party. The extent to which the cancellation of the instruction is also legally effective vis-à-vis the recipient shall be determined by the legal relationship existing between the latter and the instructing party.

2) The recipient's claim against the instructed party is subject to a three-year statute of limitations.

*5. assumption of debt*

§ 1404

A person who promises a debtor to effect performance for the creditor (assumption of performance) is liable to the debtor for the creditor not making a claim against him. The creditor has no direct right arising from this.



## General Civil Code

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### § 1405

A person who declares to a debtor that he will assume his debt (assumption of debt) takes the place of the debtor if the creditor consents. Until this consent is given or if it is refused, he is liable as in the case of assumption of performance (§ 1404). The creditor's consent may be declared either to the debtor or to the transferee.

### § 1406

- 1) Even without an agreement with the debtor, a third party may assume the debt by contract with the creditor.
- 2) In case of doubt, however, the assumption declared to the creditor shall be understood as a liability alongside the previous debtor, not in its place.

### § 1407

- 1) The liabilities of the transferee shall be the same as the liabilities of the previous debtor with respect to the debt taken over. The transferee may oppose the creditor with the objections arising from the legal relationship between the latter and the previous debtor.
- 2) The ancillary rights of the claim shall not be affected by the change of debtor. However, guarantors and pledges appointed by third parties shall only continue to be liable if the guarantor or pledgor has consented to the debtor's bill of exchange.

### § 1408

If, upon the sale of a property, the purchaser assumes a lien on it, this shall, in case of doubt, be deemed to be an assumption of the debt. The alienator may, after the transfer of the property has been completed, request the creditor in writing to accept the new debtor in his place, with the effect that the consent shall be deemed to have been given if it is not refused within six months. This effect must be expressly referred to in the request.

### § 1409

If the assignee refuses to pay such an assignment, which is at the same time an assignment, without reason, or if an assignee in general, after having promised the assignee payment, hesitates to do so, he shall be liable for the consequences. If, on the other hand, he has made the payment taken upon himself in the proper manner and in a larger amount than he owed to the assignee, he shall be entitled to compensation from the latter (§ 1014).

§ 1410

If the new debtor is agreed to take the place of the previous debtor in such a way that the annulled debt is replaced by an obligation of the new debtor on independent legal grounds or with a change in the main subject matter of the claim, the effects of a contract of novation (§§ 1377, 1378) shall come into effect rather than of the assumption of the debt.

3. Main section

Of cancellation of rights and liabilities Cancellation  
of rights and liabilities

§ 1411

Rights and liabilities are related in such a way that the extinction of the right cancels the liability and the extinction of the latter cancels the right.

1. Through the payment

§ 1412

The obligation is dissolved primarily by payment, that is, by the performance of what one owes to perform (§ 469).

*How to make the payment*

§ 1413

The creditor cannot be forced against his will to accept anything other than what he is obliged to demand, nor can the debtor be forced to perform anything other than what he is obliged to perform. This also applies to the time, place and manner of performing the obligation.

§ 1414

If, because the creditor and the debtor agree or because the payment itself is impossible, something else is given in lieu of payment, the transaction shall be regarded as a paid transaction.

§ 1415

The creditor is not obliged to accept payment of a debt item in part or on account. If, however, various items are to be paid, the one which the debtor has expressly declared his intention to pay with the creditor's consent shall be deemed to have been paid.

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General Civil Code

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§ 1416

If the will of the debtor is doubted or contradicted by the creditor, the interest shall be settled first, then the capital, but of several capitals the one which has already been claimed or is at least due, and after that the one which is most burdensome for the debtor to remain indebted.

when

§ 1417

If the term of payment is not determined in any way, the obligation to pay the debt shall arise only on the day on which the reminder is issued (section 904). Section 907a(2) shall apply to the payment period in the case of performance of a monetary debt by bank transfer.

§ 1418

In certain cases, the payment term is determined by the nature of the matter. Alimonies are paid at least one month in advance. If the recipient dies during this period, his heirs are not obliged to return any of the advance payment.

§ 1419

If the creditor has hesitated to accept the payment, the adverse consequences fall on him.

§ 1420

If the place and the type of performance are not determined, the rules established above (§ 905, § 907a par. 1) must be applied.

From whom

§ 1421

Even a person who is otherwise incapable of managing his or her assets may lawfully discharge a debt that has become due and forfeited and discharge himself or herself from his or her obligation. If, however, the person has discharged a debt that is still uncertain or has not expired, the persons entrusted with the custody of the debt shall be liable for the payment of the debt.

The beneficiary, his administrator or trustee shall be entitled to reclaim what has been paid.

§ 1422

A person who pays the debt of another for which he is not liable (section 1358) may, before or at the time of payment, require the creditor to assign his rights; if he has done so

the payment shall be deemed to be a redemption of the claim.

§ 1423

If redemption is offered with the debtor's consent, the creditor must accept payment; however, except in the case of fraud, he is not liable for the collectability and correctness of the claim. As a rule (Art. 377 SR), payment cannot be imposed on the creditor by a third party without the debtor's consent.

§ 1424

*To whom*

The amount of the debt shall be paid to the creditor or to the person entitled to receive it or to the person whom the court has recognized as the owner of the debt. A person who has paid a debt to a person who is not entitled to manage his or her own property is obliged to pay it back to the extent that the debt is not actually available or has not been used for the benefit of the recipient.

§ 1425

Judicial deposit of the debt

If a debt cannot be paid because the creditor is unknown, absent or dissatisfied with what has been offered, or for other important reasons, the debtor has the option of depositing the thing to be discharged with the court or, if it is not suitable for this purpose, of applying to the court for its safekeeping. Either of these acts, if they have been performed in accordance with the law and made known to the creditor, releases the debtor from his obligation and transfers the risk of the thing delivered to the creditor.

Receipts

§ 1426

1) In all cases, the payer is entitled to demand a receipt from the satisfied party, namely a written certificate of the discharged debt. The receipt shall state the name of the debtor and the creditor, as well as the place, time and subject of the discharged debt, and it shall be signed by the creditor or his authorized representative.

2) The costs of the receipt shall be borne by the creditor unless otherwise agreed.

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## General Civil Code

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### § 1427

A receipt for the paid capital gives rise to the assumption that the interest was also paid from it.

### § 1428

If the creditor has a promissory bill from the debtor, he is obliged, in addition to issuing a receipt, to return the same or to have the advance payment made, if any, written off on the promissory bill itself. The returned promissory bill without a receipt establishes for the debtor the legal presumption that payment has been made; however, it does not exclude proof to the contrary. If the promissory bill which is to be returned has been lost, the payer shall be entitled to demand security or to deposit the amount in court.

and to require that the creditor cause the killing of the promissory bill in accordance with the court order.

### § 1429

A receipt which the creditor has issued to the debtor for a newer debt item which has been paid off does not prove that other older items have been paid off as well: but if it concerns certain charges, annuities or such payments which, like money, land, house or capital interest, are to be paid from the very same title and at a certain time, it is presumed that the person who identifies himself with the receipt of the last expired term has also corrected the earlier expired ones.

### § 1430

Likewise, merchants and traders who are in the habit of settling invoices with their customers (clients) within certain periods of time, assume that if they have received a receipt for an invoice from a later period of time, the earlier invoices have also been paid.

### Payment of a non-debt

### § 1431

If a person has been provided with a thing or an action as a result of an error, even if it is an error of law, to which he has no right against the party providing the service, then as a rule the thing can be reclaimed in the first case, but in the second case a remuneration commensurate with the benefit provided can be demanded.

### § 1432

However, payments of a debt that is time-barred or of such a debt that is invalid only for lack of formalities or for the collection of which the law merely denies the right of action, can no more be reclaimed than if a person makes a payment that he knows he does not owe.

§ 1433

This provision (§ 1432), however, cannot be applied to the case in which a fostered person or another person has paid who cannot freely dispose of his property.

§ 1434

Deferment of payment may also be claimed if the debt is still uncertain in any way or if it still depends on the fulfillment of an attached condition. However, the payment of a just and unconditional debt cannot be claimed back because the term of payment has not yet expired.

§ 1435

Also, things that have been given as a true debt may be reclaimed by the giver from the receiver if the legal reason to keep them has ceased.

§ 1436

If a person was bound to give only one of two things at his discretion, and if he gave both by mistake, it is up to him to reclaim one or the other.

§ 1437

The recipient of a paid non-debt is considered a bona fide or dishonest possessor, depending on whether or not he knew or should have suspected from the circumstances the mistake of the giver.

2. Compensation

§ 1438

If claims mutually coincide that are correct, of the same kind, and of such a nature that a thing due to one as a creditor can also be paid by him as a debtor to the other, then, insofar as the claims balance each other out, a mutual cancellation of the liabilities (compensation) arises, which in itself brings about the mutual payment.

## General Civil Code

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### § 1439

Compensation does not take place between correct and incorrect claims, as well as between due and not yet due claims. The Insolvency Code determines the extent of compensation against the insolvency estate.

### § 1440

In the same way, claims which have as their object things which are dissimilar or certain and indeterminate cannot be set off against each other. Items which have been seized, borrowed, held in custody or stock, either by the owner or by cunning, are not subject to retention or compensation at all.

### § 1441

A debtor cannot set off against a creditor what the creditor has to pay to a third party and what the third party has to pay to the debtor. Even a sum that someone has to claim to one treasury cannot be set off against a payment that he has to make to another treasury.

### § 1442

If a claim is gradually transferred to more than one holder, the debtor may deduct the claim he had against the first holder at the time of the transfer as well as the claim he has against the last holder, but not the claim he had against one of the intermediate holders.

### § 1443

The objection of compensation may be raised against an assignee against a claim recorded in the public books only if the counterclaim has also been recorded, namely with the claim itself, or has been made known to the assignee when the latter took over the claim.

### § 1444

#### 3. Renunciation

In all cases in which the creditor is entitled to exercise his right, he may also renounce it for the benefit of his debtor, and thereby cancel the debtor's obligation.

#### 4. Association

§ 1445

As often as the right and the obligation are united in one person in whatever way, both shall be extinguished, unless the creditor is still free to demand a separation of his rights (§§ 802 and 812) or if circumstances of a quite different nature arise. Therefore, the succession of the debtor to the estate of his creditor does not change the rights of the creditors, co-heirs or legatees, and the inheritance of the debtor and guarantor does not change the rights of the creditor.

§ 1446

Rights and liabilities entered in the public books shall not be cancelled by the unification until they have been deleted from the public books (Art. 202 and 273 SR).

§ 1447

5. Demise of the thing

The accidental total destruction of a certain thing cancels all obligations, even the obligation to pay its value. This principle also applies to those cases in which the fulfillment of the obligation or the payment of a debt becomes impossible by some other accident. In any case, however, the debtor must set aside or compensate what he has received in order to fulfill the obligation, like a bona fide owner, but in such a way that he does not profit from the other party's loss.

§ 1448

6. Death

Death extinguishes only those rights and obligations that are limited to the person or that relate solely to the personal actions of the deceased.

7. Course of time

§ 1449

Rights and obligations shall also be extinguished by the passage of time to which they are limited by a last will, contract, judicial pronouncement or by law. The manner in which they are annulled by the lapse of time determined by law is set forth in the following main section.

§ 1450

*From the establishment in the previous status*



## General Civil Code

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The civil laws, according to which unlawful acts and transactions may be directly contested if the statute of limitations does not stand in the way, do not allow for an interlocutory revision. The cases of relief from the effects of the statute of limitations which are part of the judicial proceedings are defined in the Code of Judicial Procedure.

### 4. main part

From the statute of limitations and prescription

#### § 1451

Limitation

The statute of limitations is the loss of a right that has not been exercised during the time determined by the law.

#### § 1452

Ersitzung

If the time-barred right is transferred to someone else at the same time by virtue of legal possession, it is called an acquired right, and the mode of acquisition is called succession.

#### § 1453

Who can barred and ersitzen

Anyone who is otherwise capable of acquiring may also acquire a property or other rights by acquisitive prescription.

#### § 1454

*Against whom*

Limitation and prescription may take place against all private persons who are capable of exercising their rights themselves. Against wards and foster children; against churches, municipalities and other moral bodies; against administrators of public property and against those who are absent through no fault of their own, it is permitted only under the following restrictions (§§ 1494, 1472 and 1475).

What items

#### § 1455

What can be acquired can also be purchased. Things, on the other hand, which can be

The right of inheritance does not apply to property which cannot be possessed by virtue of its essential nature or by virtue of the law, nor to property and rights which are absolutely inalienable.

§ 1456

For this reason, neither the rights vested in the head of state alone, e.g. the right to establish customs duties, mint coins, issue taxes and other sovereign rights (regalia), nor the debts corresponding to these rights can be barred by prescription.

§ 1457

Other rights to which the head of state is entitled, but which are not exclusively reserved, e.g. to forests, hunts, fisheries, etc., may be acquired by other citizens, but only within a period longer than the usual period (§ 1472).

§ 1458

The rights of a spouse, a registered partner, a father, a child and other personal rights are not subject to prescription. However, those who exercise such rights in good faith shall be entitled to the innocent ignorance for the provisional assertion and exercise of their alleged rights.

§ 1459

The rights of a person over his actions and over his property, e.g. to buy a commodity here or there, to use his meadows or his water, shall not be subject to prescription, except where the law expressly connects the loss of the same with the failure to exercise it within a period of time. If, however, one person has prohibited another from exercising such a right or prevented him from doing so, possession of the right of prohibition on the part of the one shall begin against the freedom of the other from the moment when the latter has complied with the prohibition or prevention, and thereby, if all other requirements are fulfilled, the statute of limitations or prescription shall be effected (§§ 313 and 351).

Requirements for acquisitive prescription

*1. Possession*

§ 1460

For the acquisition is required in addition to the ability of the person and the object:

## General Civil Code

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that a person really possesses the thing or right to be acquired in this way, that his possession is lawful, honest and genuine, and continues throughout the time determined by law (§§ 309, 316, 326 and 345).

namely a) a lawful

### § 1461

Any possession based on such a title, which would have been sufficient to take over the property if such had been due to the transferor, is lawful and sufficient for acquisitive prescription. Such are, for example, the legacy, the gift, the loan, the purchase and sale, the exchange, the payment, etc..

### § 1462

Property pledged, lent, held in custody or given in usufruct may never be seized by creditors, borrowers and bailees or usufructuaries for lack of a lawful title. Their heirs present the testators and have no more title than the same. Only the third legal owner can be granted the right of possession.

### § 1463

b) bona fide

The possession must be bona fide. However, the dishonesty of the previous possessor does not prevent a bona fide successor or heir from commencing the process of adverse possession from the day of his possession (§ 1493).

### § 1464

c) real

The possession must also be genuine. If someone seizes a thing by force or trickery, or sneaks into possession secretly, or possesses a thing only by request, neither he himself nor his heirs can have it barred.

## 2. Course of time

### § 1465

The course of time prescribed by law is also necessary for prescription and limitation. In addition to the period of time prescribed by law for certain special cases, the period of time prescribed by law in all other cases for prescription or prescription

The time necessary for the limitation of the period of limitation is determined at all. It depends on the diversity of rights and things, as well as on the diversity of persons.

*Term of office Ordinary*

§ 1466

A person acquires ownership of another person's movable property by holding it in good faith for five years without interruption or challenge (Art. 196 SR).

§ 1467

In the case of immovable property, the person in whose name it is entered in the public books shall acquire the full right against all objections for a period of ten years. The limits of the right of subrogation shall be assessed according to the mass of the registered property.

§ 1468

Where no ordinary public books have yet been established and the acquisition of immovable property can be proved from court records and other documents, or if the property is not registered in the name of the person exercising the rights of possession over it, acquisitive prescription shall be completed only after 30 years.

§ 1469

Easements and other special rights exercised on another's land shall, like the right of ownership, be acquired within ten years by the person in whose name they are entered in the public books.

§ 1470

Where no ordinary public books exist or such a right is not recorded in them, the bona fide owner may acquire it only after 30 years.

§ 1471

In the case of rights which can rarely be exercised, e.g. the right to grant a benefice or to require someone to contribute to the construction of a bridge, the person claiming the right of subrogation must, in addition to a period of 30 years, at the same time prove that the case for exercise arose at least three times within this period and that he exercised this right each time.

extraordinary

§ 1472

## General Civil Code

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Against the treasury, that is, against the administrators of the state property and the state assets, insofar as the statute of limitations takes effect (§§ 287, 289 and 1456 and 1457), furthermore against the administrators of the properties of the churches, municipalities

and other permitted bodies, the ordinary period of possession shall not be sufficient. The possession of movable property, as well as the possession of immovable property or of easements exercised thereon and other rights, if they are entered in the public books in the name of the owner, must be continued for six years. Rights of this kind, which are not entered in the public books in the name of the owner, and all other rights may be acquired against the Treasury and the beneficiaries mentioned herein only by possession for 40 years.

### § 1473

Whoever is in community with a person favored by the law with regard to the period of limitation shall benefit from the same favor. Privileges of the longer limitation period shall also have effect against other persons who are likewise favored therein.

### § 1474

#### Objective

### § 1475

The residence of the owner outside the province in which the thing is located shall be an obstacle to the ordinary prescription and limitation to the extent that the period of arbitrary and blameless absence shall be counted only half, consequently one year only for six months. However, short periods of absence which have not lasted for a full year without interruption shall not be taken into account, and in general the time shall never be extended further than 30 years in total. Guilty absence does not enjoy any exception from the ordinary period of limitation.

### § 1476

A person who has taken possession of a movable object directly from a false or dishonest owner, or who is not able to indicate his foreman, must also wait twice for the otherwise ordinary period of possession to elapse.

### § 1477

Those who base the acquisition on a period of 30 or 40 years do not need a

Indication of the lawful title. However, the dishonesty of the owner, which has been proven against him, also excludes the right of subrogation in this longer period of time.

Limitation period.General

§ 1478

In so far as each prescription includes a limitation, both are completed in one period of time with the above requirements. For the actual limitation, however, the mere non-use of a right, which in itself could have been exercised, is sufficient for 30 years.

§ 1479

All rights against a third party, whether or not they are recorded in the public books, are therefore extinguished, as a rule, at the longest by thirty years of non-use or by silence observed for such a long time.

§ 1480869870

Claims for annual payments in arrears, in particular interest, annuities, maintenance payments, payments on account, as well as annuities agreed for the repayment of capital, shall expire in three years; the right itself shall be barred by the statute of limitations if it is not used for 30 years.

Exceptions

§ 1481

The obligations based in the family right and in general in the personal right, e.g. to provide the children with the indispensable maintenance, as well as those which agree with the right mentioned above (§ 1459) to freely manage one's property, e.g. the obligation to have the division of a common property or the determination of the boundary, may not be annulled.

§ 1482

In the same way, a person who has been able to exercise a right on another's land as a whole or in any number of ways is not restricted in his rights merely because he has exercised it for however long a time only on a part of the land or only in a certain way, but the restriction must be effected by acquiring or acquiring the right to suppress or prevent (§ 351). The same shall apply to the case where a person has exercised a right against all members of a municipality only against certain members of that municipality.

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## General Civil Code

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### § 1483

As long as the creditor has the pledge in his hands, the failure to exercise the lien cannot be objected to and the lien cannot be barred by the statute of limitations. The debtor's right to redeem his pledge also remains unaffected by the statute of limitations. However, if the claim exceeds the value of the pledge, it may be extinguished in the meantime by prescription.

### § 1484

For the limitation of such rights, which can be exercised only rarely, it is required that during the limitation period of 30 years no use had been made of three opportunities to exercise such a right (§ 1471).

### § 1485

1) With regard to the persons benefiting from § 1472, 40 years are required, as for prescription, thus also for limitation.

2) The general rule that a right is lost because of non-use only after the lapse of 30 or 40 years is applicable only to those cases for which the law has not measured a shorter period (§ 1465).

#### *Special limitation period*

### § 1486

In five years, the statute of limitations will expire:

the claims:

1. for delivery of goods or performance of work or other services in a commercial, business or other business operation;
2. for supply of agricultural and forestry products in an agricultural and forestry enterprise;
3. for taking over for feeding, care, cure, education or instruction by persons engaged in it or in institutions serving this purpose;
4. of rents and leases;
5. employees for remuneration and reimbursement of expenses arising from the employment contracts of unskilled workers, day laborers, servants and all private servants, and employers for advances granted on such claims;
6. of physicians, veterinarians, midwives, private teachers, lawyers, legal agents, trustees, asset managers, auditors, financial advisors, business consultants, tax advisors and all other persons engaged in the provision of certain services.

Matters of publicly appointed persons for remuneration of their services and reimbursement of their expenses, as well as of the parties for advances to these persons;

7. the right of one spouse to compensation for his or her contribution to the other's acquisition shall be barred by the statute of limitations after five years from the end of the month in which the service was rendered.

§ 1487

The rights to overturn a declaration of the last will and testament; to claim the compulsory portion or its supplement; to revoke a gift because of the ingratitude of the donee or to claim against the donee for reduction of the compulsory portion; to rescind a contract for valuable consideration on the ground of breach in excess of one half, or to dispute the division made of a community property; and the claim on account of a fear or mistake made in the contract, where the other party to the contract is not guilty of any trickery, must be brought within three years. After this period they are time-barred.

§ 1488

The right of the easement shall be barred by non-use if the obligated party opposes the exercise of the easement, and the beneficiary has not asserted his right for three consecutive years.

§ 1489

Any action for compensation shall be time-barred after three years from the time when the damage and the person of the damaging party or the party liable to pay compensation became known to the damaged party; the damage may have been caused by a breach of a contractual obligation or without reference to a contract. If the damage or the person of the damaging party or the party liable to pay compensation has not become known to the damaged party, or if the damage has arisen from a crime, the right of action shall expire only after 30 years.

§ 1489a

Any action for compensation in connection with the provision of financial services by a financial intermediary licensed by the FMA shall be time-barred after three years from the time when the damage and the identity of the damaging party or the party liable to pay compensation became known to the damaged party, but in any case after ten years from the time when the transaction was effected.



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General Civil Code

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§ 1490

1) Actions for insults to honor consisting merely of insults by words, writings or gestures may not be brought after the lapse of one year. If, however, the insult consists of assault, the right of action for satisfaction shall last for three years.

2) The provisions of § 1489 shall apply to an action for damages for jeopardizing the credit, acquisition or advancement of another person by dissemination of untrue facts.

§ 1491

Some rights are limited by law to an even shorter period. The regulations in the places where these rights are dealt with apply to these rights.

§ 1492

How long the right of exchange is granted to a bill of exchange is determined in the bill of exchange regulations.

§ 1493

Inclusion of the limitation period of the forerunner

Whoever takes over a thing in good faith from a lawful and honest owner, is entitled as successor to include the period of possession of his ancestor (§ 1463). The same applies to the period of limitation. In the case of a 30- or 40-year period of possession, this period is taken into account even without a lawful title, and in the case of the actual limitation period, even without good faith or innocent ignorance.

Suspension of the statute of limitations

§ 1494

The period of prescription or limitation may not begin to run against persons who are incapable of administering their rights themselves owing to lack of mental faculties, such as minors or persons who do not have the use of reason, unless legal representatives have been appointed for such persons. The period of prescription or limitation, once commenced, shall continue, but it may never be completed earlier than within two years after the obstacles have been removed.

§ 1495

The period of prescription or limitation may also not be commenced or continued between spouses or registered partners or between minors or other persons in their care and guardians, custodians or curators, as long as the marriage or registered partnership continues or the guardianship, custodianship or curatorship by the same person continues. This shall not apply to the claims of one spouse or registered partner for compensation for his or her participation in the acquisition of the other; however, the statute of limitations shall be suspended for as long as legal proceedings are pending between the spouses or registered partners for a decision on a claim and are duly continued.

§ 1496

Absence from civil or military service or a complete standstill in the administration of justice, e.g. in times of pestilence or war, shall not only suspend the commencement but also, for as long as this impediment lasts, the continuation of prescription or limitation.

§ 1497

Interruption of the limitation period

Both the prescription and the limitation period shall be interrupted if the person who intends to invoke it has acknowledged the other's right either expressly or tacitly before the expiry of the limitation period or if he is sued by the entitled person and the action is duly continued. If, however, the action is declared inadmissible by a final judgment, the limitation period shall be deemed to be uninterrupted.

Effect of prescription or limitation

§ 1498

A person who has acquired a thing or a right may apply to the court for the granting of ownership against the previous owner and, if the right granted constitutes an object of the public books, have it recorded in the latter's name.

§ 1499

In the same way, after the statute of limitations has expired, the obligor may obtain the cancellation of his obligation registered in the public books or the annulment of the right hitherto granted to the beneficiary and of the documents issued in respect thereof.

§ 1500

## General Civil Code

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However, the right acquired by prescription or prescription by operation of law cannot cause any disadvantage to the person who, relying on the public books, has acquired a thing or a right before the registration of the same.

### § 1501

The statute of limitations shall not be taken into account ex officio, without objection by the parties.

### § 1502

#### Renunciation or extension of the limitation period

The statute of limitations cannot be waived in advance, nor can a longer period of limitation be stipulated than is determined by the law.

## **II. Public Liability Act**

of September 22, 1966 on

Public Liability

I hereby give my consent to the following resolution adopted by the Diet:

Art. 1

*General*

Damage arising from official conduct shall be compensated in accordance with the provisions of this Act (public liability).

Art. 2

*Definitions*

- 1) Public entities within the meaning of this Act are the state, the municipalities and other corporations, institutions and foundations under public law.
- 2) For the purposes of this Act, organs are all natural persons acting on behalf of a public entity, regardless of whether they are appointed permanently or temporarily or for the individual case, whether they are elected, appointed or otherwise appointed and whether their relationship with the public entity is to be assessed under public or private law.
- 3) Official activity within the meaning of this Act is, unless otherwise specified, any act or omission in execution of the law, official duty, the duty to perform official activity.

Art. 3

*Liability of public entities towards third parties*

- 1) Public entities shall be liable for damage unlawfully caused to third parties by persons acting as their organs in the course of their official duties.
- 2) Bodies shall not be liable to third parties. This also applies to the performance of tasks under private law by the public legal entity.
- 3) The Land shall also be liable if other public entities or individual members of their bodies act directly on its behalf.

- 4) Unless otherwise provided by this Act, the provisions of civil law shall apply *mutatis mutandis* to liability.
- 5) Liability shall exist even if the public entity does not prove that its bodies are not at fault. Insanity shall not be deemed to be blamelessness.
- 6) The damage is to be compensated only in money.

Art. 4

*Precaution against liability consequences*

Public entities shall take adequate precautions against the liability consequences arising from this Act.

Art. 5

*Limitation of liability towards third parties*

- 1) If the injured party could have prevented the damage by legal remedy or supervisory complaint, there shall be no claim for compensation, unless the legal remedy or supervisory complaint was not taken through no fault of the injured party.
- 2) Foreigners are only entitled to claims for compensation to the extent that this is stipulated by state treaties or to the extent that reciprocal rights exist. A prerequisite for the application of reciprocal rights is in any case that the home state has issued a declaration of reciprocal rights to the government.
- 3) A claim for compensation cannot be derived from a finding of the State Court.

Art. 6

*Recourse of the Public Entity against Governing Bodies*

- 1) If the public entity has compensated the injured party for the damage on the basis of this Act, it may have recourse against the persons who acted as its organs and intentionally or grossly negligently committed or caused the violation of the law. The provisions of civil law shall apply, unless otherwise provided for in this Act.
- 2) Only the members who voted in favor of resolutions adopted by a collegial body shall be liable for them. However, if the resolution is based on an incomplete or incorrect presentation of the facts by the rapporteur, the members who voted in favor of it shall not be liable either, unless they have not taken into account the facts of the case.

have grossly negligently disregarded due care.

3) No recourse may be had against a governing body on account of conduct that has taken place on the instructions of a superior, unless the governing body has followed the instructions of a superior who is clearly not competent or has violated criminal law in following the instructions. Government ordinances are not instructions within the meaning of this paragraph.

4) The institution may oppose the right of recourse to any objections not raised by the public entity and thereby exempt itself from the right of recourse to the extent that these objections, if properly used, would have resulted in a different decision on the claim for damages.

5) The provisions of this article shall apply *mutatis mutandis* to the performance of duties under private law by the public entity, except in the case of persons who have voluntarily assumed the official duties within the scope of their profession in return for remuneration.

#### Art. 7

##### *Liability of the executive bodies in the event of direct damage*

1) Persons acting as executive bodies shall be liable to the public entity in whose service they are for the damage they directly cause to it through intentional or grossly negligent breach of their official duties.

2) Unless otherwise provided by this Act, liability shall be governed by the provisions of civil law; in the case of civil servants and employees, however, the provisions of the service law shall apply first.

3) When performing duties under private law, bodies shall be liable to the public entity for the performance of its duties only for the damage directly caused to it by their intentional or grossly negligent conduct. This shall not apply to persons who have voluntarily assumed the task within the scope of their profession for the individual case in return for remuneration.

#### Art. 8

##### *Assertion of restitution and compensation of direct damage*

1) Reimbursement and compensation for direct damage against organs must be claimed by the public legal entity in any case.

2) The assertion of restitution against members of the Government and of compensation for direct damage against members of the Diet or against fellow members of the Government shall be governed by the laws of the Federal Republic of Germany.

The Diet shall have the right of recourse against members of the Government. A state commissioner shall be appointed to enforce restitution and compensation for direct damage against members of the municipal council, and the supreme supervisory body shall be appointed to enforce restitution and compensation for direct damage against the supreme administrative bodies of the other legal entities.

3) Restitution and compensation for direct damage may be claimed against the estate or heirs of a deceased institution only if the conduct giving rise to the claim has resulted in enrichment of the estate or heirs.

#### Art. 9

##### *Limitation*

1) Claims for compensation against public entities shall become time-barred three years after the day on which the damage became known to the injured party, but not before one year after a decision or order violating the law has become final.

2) The knowledge of the guilty body is of no legal significance for the limitation of claims for compensation.

3) The statute of limitations shall be suspended for six months by the request pursuant to Art. 11 Par. 2.

4) Claims under a right of recourse shall become time-barred within one year of the day on which the public entity recognized the claim for compensation with the injured party or was legally ordered to pay compensation.

#### Art. 10

##### *Authorities*

1) The Supreme Court shall have jurisdiction in the first instance to decide on actions under this Act.

2) If the claim for compensation is derived from the activities of the Supreme Court or a member of the Supreme Court, the Supreme Court shall be called upon to decide.

3) Retrieved

4) Decisions of the Supreme Court in private law matters under this Act shall be decided by the Supreme Court in second and final instance. Article 23 of the State Court Act shall remain unaffected.

5) Decisions of the Supreme Court in private law matters under this Act that relate to the activities of the Supreme Court or its

members shall be final. Article 23 of the State Court Act shall remain unaffected.

Art. 11

*Procedure, General*

- 1) Proceedings under this Act shall be governed by the Civil Procedure Law, unless it provides otherwise.
- 2) The injured party must first request in writing the public entity against which he wishes to assert the claim for compensation to recognize the claim for compensation. If the injured party does not receive a statement of his claim within three months of receipt of this request by the public entity, or if compensation is refused in whole or in part within this period, he may assert the claim for compensation by bringing an action against the public entity.
- 3) When asserting a claim for compensation, it is not necessary to name a specific body. It is sufficient to prove that the damage was only  
could have arisen as a result of a violation of the law by an organ of the defendant public entity.
- 4) The defendant public entity shall give notice of the dispute to the bodies it considers liable for recourse. The latter may join the dispute as intervening parties.
- 5) In the action against the institution, the public entity may request that a payment order (mandate) be issued against the defendant. This request shall be dealt with in analogous application of the Code of Civil Procedure.
- 6) Every action and every final decision shall also be brought to the attention of the Government by the court and, if the Land is the defendant, also of Parliament.

Art. 12

*Binding to other authorities*

If the facts on which the action is based are the subject of criminal or disciplinary proceedings or a ministerial indictment, the court shall suspend the proceedings until a final decision has been rendered. The court shall be bound by this final decision, unless several such decisions contradict each other. However, the State Court shall not be bound by its own decisions.



## Art. 13

*Official secrecy*

- 1) In the proceedings under this Act, neither the institution nor the persons to be heard as witnesses or experts shall be obliged to maintain official secrecy.
- 2) At the request of a party, the public must be excluded from the hearing if facts must be discussed or proven that would otherwise be covered by official secrecy.
- 3) At the request of a party, if the public is excluded, the secrecy of facts which would otherwise be covered by official secrecy shall be expressly recalled to the persons present and recorded in the minutes of the hearing.

## Art. 14

*Innocent killing, injury, arrest and conviction.*

- 1) The provisions of this Act shall apply to claims for compensation for proven innocent death or injury, unless caused by the omission of a public body, and to proven innocent arrest and conviction, with the proviso that illegality and fault on the part of a public body are not prerequisites for the liability of the public body.
- 2) Insanity is not considered lack of fault in homicide, injury, and arrest cases.
- 3) Predominant contributory negligence of the injured party in the innocent conviction excludes liability.
- 4) If the public entity has compensated the injured party for the damage, it shall have recourse against persons who are not its organs and who have caused the damage in whole or in part by criminal conduct. In this respect, the provisions of this Act on recourse against organs shall apply mutatis mutandis.

## Art. 14a

*Liability for damages in connection with the operation or during the use of the Schengen/Dublin information systems or their components.*

- 1) The provisions of this Act shall apply mutatis mutandis to damage caused by bodies of public legal entities in connection with the operation or use of

of any of the Schengen/Dublin information systems or any of its components unlawfully to any third party.

2) Schengen/Dublin information systems or their components are considered to be:

- a) the Schengen Information System;
- b) the entry and exit system;
- c) the Central Visa Information System;
- d) the European Travel Information and Authorization System;
- e) the shared repository for identity data;
- f) the European search portal;
- g) the multiple identities detector;
- h) Eurodac.

3) Public entities are liable to third parties without proof of illegality if:

a) the authority of another Schengen or Dublin State has entered data incorrectly or stored data unlawfully in the operation or use of one of the Schengen/Dublin Information Systems or any of their components; and

b) as a result of such data processing, an organ of a public entity has caused the damage in the exercise of its official duties.

4) If, in the case of paragraph 3, the country has suffered damage as a result of official liability, the country shall have recourse to the Schengen or Dublin State responsible for the incorrect entry or unlawful storage.

#### Art. 15

##### *Adaptation of current law*

1) Section 265 is repealed in the General Civil Code.

2) In the Criminal Code, in § 309, the words "in the manner described in the preceding paragraph" are repealed.

3) In the Act of December 12, 1915, on Intermediary Offices, in § 8, para. 2, the following is added: "8. in matters of official liability".

4) In the Court Organization Act of April 7, 1922, in Section 6, subsection 3 and the last sentence of subsection 4 are repealed.

5) In the Act Concerning Amendment of the Code of Criminal Procedure, LGBl. 1922 No. 17,

the sentence shall be added to subsection 5 of section 286 of the Code of Criminal Procedure: "However, the official liability shall remain unaffected."

6) The General Provincial Administration Act of April 21, 1922, is amended as follows:

a) Art. 13 is repealed.

b) In paragraph 1 of Article 19, the words "under criminal, disciplinary and civil law" shall be replaced by the words "under the Constitution and relevant laws".

c) Paragraphs 2 to 4 of Art. 19 are repealed.

d) Paragraph 6 of Article 120 (as amended by Article 56 of the Law on the State Court of November 5, 1925) is repealed.

e) In paragraph 3 of Art. 132, the words "and shall not hold the institution responsible (Art. 111 par. 5)" shall be omitted.

f) Paragraph 5 of Art. 132 is repealed.

g) Paragraph 6 of Art. 133 is repealed.

7) The Property Law of December 31, 1922 is amended as follows:

a) In Art. 432, the words "for the damage caused by his fault" shall be replaced by the words "in accordance with the relevant laws".

b) Art. 327, 552 and 553 are repealed.

8) In the Government Ordinance on Property Law of May 1, 1924, the last paragraph of Art. 53, the first two paragraphs of Art. 61, Art. 67 and the last paragraph of Art. 128 are repealed.

9) The State Court Act of November 5, 1925, is amended as follows:

a) In the entrance, after Art. 2, Art. 32 and 59 and after Art. 106, Art. 109bis are inserted.

b) Art. 14 shall read:

"The State Court, as the first and only instance, shall have jurisdiction to adjudicate petitions filed against members for violation of the Constitution or laws, as well as disciplinary actions pursuant to Article 104(1) of the Constitution.

The State Court shall have jurisdiction in the second and final instance to decide on claims for official liability under Articles 32 and 109bis of the Constitution."

The marginal has to read:

"4. as a ministerial court of impeachment, disciplinary court, and court of public liability."

c) In paragraph 3 of Art. 50, the words "on the asserted claims for compensation and" shall be omitted.

d) To Art. 53, an Art. 53bis with the marginal "c. Public liability proceedings", which reads:

"A special law shall determine the procedure for claims for damages derived from decisions and against organs of the Supreme Court and the Administrative Appeals Board."

e) Paragraph 1 of Art. 54 is repealed.

10) The Persons and Companies Law of January 20, 1926, is amended and supplemented as follows:

a) Art. 63 is repealed.

b) In the third paragraph of Art. 65, the words "liability under private law" shall be replaced by the words "official liability".

11) In the Law on Old Age and Survivors' Insurance of December 14, 1952, Art. 17 shall read: "The provisions on official liability shall apply to the Establishment and its organs."

12) In the Law of June 2, 1955 concerning the Liechtensteinische Landesbank, Art. 12 (2) is repealed.

13) Retrieved

14) In the Law on Disability Insurance of December 23, 1959, Article 16 shall read: "The provisions on official liability shall apply to the Establishment and its organs."

15) Notwithstanding the provisions of this Article, all provisions that are contrary to this Act shall also be repealed.

#### Art. 16

##### *Transitional provisions*

The provisions of this Act shall apply only to damage caused since the entry into force of Article 109bis of the Constitution.

#### Art. 17

##### *Entry into force*

This Act is declared non-urgent and shall enter into force on the day of its promulgation.

### III. Remote and outbound transactions- Act

from September 3, 2015

on distance and off-premises contracts (Distance and Off-premises Contracts Act; FAGG)

I hereby give my consent to the following resolution adopted by the Diet:

#### I. General provisions Art. 1

##### *Scope*

1) This law applies to distance and off-premises contracts (distance and off-premises contracts) between entrepreneurs and consumers (Art. 1 KSchG).

2) It does not apply to contracts, subject to Art. 9, para. 4:

a) which are concluded away from business premises (Art. 4 let. a) and for which the consideration payable by the consumer does not exceed the amount of 60 Swiss francs;

b) on social services including the provision and rental of social housing, child care or assistance to families or persons in need of permanent or temporary assistance, including long-term care;

c) on healthcare services pursuant to Art. 3(a) of Directive 2011/ 24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (EEA Collection of Laws: Annex X 2.01), irrespective of whether they are provided by a healthcare facility, with the exception of the distribution of medicinal products and medical devices at a distance;

d) on games of chance that require a monetary stake, including lotteries, gambling in casinos and betting;

e) on financial services;

f) on the establishment, acquisition or transfer of ownership or rights thereto in immovable property;

g) on the construction of new buildings, significant remodeling of existing buildings, or the rental of residential space;

h) on package travel within the meaning of Article 3(2) of Directive (EU) 2015/2302 on package travel, package holidays and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/ EU and repealing Directive 90/314/EEC ([OJ L 326, 11.12.2015, p. 1](#));

i) which fall within the scope of Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term vacation product, resale and exchange contracts (EEA Corp.: Annex XIX 7b.01);

k) concluded before a public official who is legally bound to independence and impartiality and who must ensure, through comprehensive legal information, that the consumer concludes the contract only on the basis of thorough legal examination and in knowledge of its legal scope;

l) on the supply of foodstuffs, beverages or other household goods for daily use supplied by the entrepreneur within the framework of frequent and regular trips to the consumer's place of residence, place of stay or place of work;

m) closed using vending machines or automated business premises;

n) concluded with operators of means of telecommunication by means of public telephones for their use, or that

for the use of a single telephone, internet or fax connection established by a consumer.

3) Only Art. 9 applies to contracts for the carriage of passengers.

4) Insofar as a provision of this Act is in irreconcilable conflict with another provision of law which serves to implement a sector-specific EEA legal provision or with a domestic directly applicable EEA legal provision, it shall not apply to the contracts covered by the conflicting provision.

## Art. 2

### *Implementation of EEA legislation*

This Act serves to implement Directive 2011/83/EU of the European

Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (EEA law: Annex XIX 7i.01).

Art. 3

*Mandatory law*

Insofar as agreements to the detriment of the consumer deviate from the provisions of this Act, they shall be invalid.

Art. 4

*Terms and designations*

1) For the purposes of this Act shall be deemed to include:

a) "off-premises contract" means any contract between an entrepreneur and a consumer:

1. concluded with the simultaneous physical presence of the entrepreneur and the consumer at a place which is not the business premises of the entrepreneur;

2. for which the consumer has made an offer under the circumstances referred to in Clause 1;

3. concluded at the business premises of the trader or by means of distance communication, immediately after the consumer has been addressed personally and individually at a place other than the business premises of the trader, with the simultaneous physical presence of the trader or his representative and the consumer; or

4. concluded on an excursion organized by an entrepreneur or by his agents with the intention or with the result that the entrepreneur advertises or has advertised the sale of goods or the provision of services to the consumer and concludes corresponding contracts with the consumer;

b) "Distance contract" means any contract concluded between a trader and a consumer without the simultaneous physical presence of the trader and the consumer in the context of a distribution or service system organized for distance sales, where, up to and including the conclusion of the contract, the trader and the consumer have concluded a distance contract.

The customer may only use means of distance communication for the execution of the contract;

c) "Business premises" means immovable commercial premises in which the entrepreneur carries out its activities on a permanent basis or movable commercial premises in which the entrepreneur usually carries out its activities;

d) "public auction" means a method of sale in which the entrepreneur offers goods or services to consumers who are present in person at the auction or who are afforded that opportunity, in a transparent process conducted by the auctioneer and based on competing bids, in which the winning bidder is obligated to purchase the goods or services;

e) "durable medium" means any medium which allows the consumer or the entrepreneur to store information addressed to him/her personally in such a way that he/she may subsequently consult it for a period of time adequate for the purposes of the information, and which allows the unchanged reproduction of the stored information;

f) "digital content": Data that is produced or made available in digital form;

g) "ancillary contract" means a contract under which the consumer acquires goods or services that are related to a remote or outbound transaction and under which those goods or services are purchased by the business or a third party on the basis of

supplied or rendered under an agreement between such third party and the Entrepreneur.

2) The persons and function designations used in this Act shall be understood as members of the male and female genders.

## II. Information

requirements

### Art. 5

#### *Content of the duty to inform and legal consequences*

1) Before the consumer is bound by a contract or his contractual declaration, the entrepreneur must inform him in a clear and comprehensible manner about the consequences:

a) the essential characteristics of the goods or services to the extent appropriate for the means of communication and the goods or services;



- b) the name or company name of the entrepreneur and the address of its establishment;
- c) if necessary:
  - 1. the telephone number, fax number and e-mail address at which the consumer can quickly reach the entrepreneur and contact him without any special effort;
  - 2. the business address, other than the place of business of the trader, to which the consumer may address any complaint; and
  - 3. the name or business name and the address of the establishment of the person on whose behalf the entrepreneur acts, as well as the business address of this person, if different, to which the consumer may address any complaint;
- d) the total price of the goods or services including all taxes and duties, but if the price cannot reasonably be calculated in advance due to the nature of the goods or services, the method of calculating the price and, if applicable, any additional freight, delivery, shipping or other costs or, if such costs cannot reasonably be calculated in advance, the possible incurrence of such additional costs;
- e) in the case of an indefinite term contract or a subscription contract, the total cost incurred for each billing period, if fixed amounts are charged for such a contract, the total monthly cost, but if the total cost cannot reasonably be calculated in advance, the method of calculating the price;
- f) the costs of using the means of telecommunication used for the conclusion of the contract, unless these are charged according to the basic tariff;
- g) the terms of payment, delivery and performance, the period of time within which the goods will be delivered or the service will be provided after the entrepreneur's promise, as well as any procedure provided for the entrepreneur's handling of complaints;
- h) if there is a right of withdrawal, the conditions, deadlines and procedures for exercising this right, providing the model withdrawal form in accordance with Annex Part B;
- i) if applicable, the consumer's obligation to bear the costs of returning the goods in the event of his withdrawal from the contract pursuant to Art. 16 so-

as in the case of distance contracts for goods which, due to their nature, are not normally sent by post, the amount of the return costs;

k) if applicable, the consumer's obligation to pay a pro rata amount for the services already provided in the event of his withdrawal from the contract pursuant to Art. 17;

l) if applicable, about the non-existence of a right of withdrawal under Art. 19 or about the circumstances under which the consumer loses his right of withdrawal;

m) in addition to the reference to the existence of a statutory warranty right for the goods, where applicable, the existence and conditions of after-sales services and of commercial guarantees;

n) if applicable, relevant codes of conduct pursuant to Art. 1a para. 1 let. i UWG and how the consumer can obtain a copy thereof;

o) where applicable, the term of the contract or the conditions for terminating open-ended contracts or automatically renewing contracts;

p) if applicable, the minimum duration of the obligations that the consumer enters into with the contract;

q) if applicable, the entrepreneur's right to require the consumer to provide a deposit or other financial security and the conditions thereof;

r) where applicable, the functioning of digital content, including applicable technical protection measures for such content;

s) where applicable, to the extent material, the interoperability of digital content with hardware and software, to the extent that such interoperability is known or reasonably should be known by the Contractor; and

t) where applicable, the possibility of access to an out-of-court complaint and redress procedure to which the entrepreneur is subject and the conditions for such access.

2) In the case of a public auction, the corresponding information of the auctioneer may be transmitted instead of the information specified in par. 1 fig. b and c.

3) The information pursuant to par. 1 letters h, i and k can be provided by means of the model return.

The consumer must be provided with a notice of withdrawal in accordance with Annex Part A. With this information notice on the form, the aforementioned information obligations of the entrepreneur shall be deemed to have been fulfilled, provided that the entrepreneur has sent the form to the consumer duly completed.

4) The information provided to the consumer in accordance with paragraph 1 shall be an integral part of the contract. Amendments shall only be effective if they have been expressly agreed by the contracting parties.

5) If the entrepreneur has not fulfilled his obligation to inform about additional and other costs according to paragraph 1 letter d or about the costs for returning the goods according to paragraph 1 letter i, the consumer does not have to bear the additional and other costs.

6) The information obligations under paragraph 1 apply without prejudice to other information obligations under statutory provisions based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (EEA Corp.: Annex X 1.01) or Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (EEA Corp.: Annex XI 5h.01).

#### Art. 6

##### *Provision of information for contracts concluded away from business premises*

1) In the case of contracts concluded away from business premises, the information referred to in Art. 5(1) must be provided to the consumer on paper or, if the consumer agrees, on another durable medium. The information must be legible, clear and understandable.

2) The entrepreneur shall provide the consumer with a copy of the signed contract document or the confirmation of the concluded contract on paper or, if the consumer agrees, on another durable medium. If applicable, the copy or confirmation of the contract must also contain a confirmation of the consumer's consent and acknowledgement in accordance with Art. 19 Para. 1 Letter I.

#### Art. 7

##### *Simplified provision of information for craftsmen's contracts*

1) In the case of off-premises contracts for repair uro-

of the maintenance work, where the consumer has expressly requested the services of the contractor to carry out this work, the fee payable by the consumer does not exceed the amount of 250 Swiss francs and both parties to the contract immediately fulfill their contractual obligations, the provisions of the following paragraph shall apply to the provision of information in derogation of Art. 6 Para. 1.

2) The trader must provide the consumer with the information referred to in Art. 5(1)(b) and (c)(1) and (3), as well as information on the amount of the price or the method of calculating the price, together with an estimate of the total cost, on paper or, if the consumer agrees, on another durable medium. In addition, the trader must provide the consumer with the information referred to in Art. 5(1)(a), (h) and (l), but may refrain from providing it on paper or on another durable medium if the consumer expressly agrees to it. The copy or confirmation to be provided in accordance with Art. 6(2) must also contain the information referred to in Art. 5(1).

### Art. 8

#### *Provision of information for distance contracts*

1) In the case of distance contracts, the information referred to in Art. 5(1) shall be provided to the consumer in a clear and comprehensible manner adapted to the means of distance communication used. If this information is provided on a durable medium, it must be legible.

2) If the contract is concluded using a means of distance communication where only limited space or time is available for the presentation of the information, the trader shall provide the consumer with at least the information referred to in Art. 5(1)(a), (b), (d), (e), (h) and (o) on the essential characteristics of the goods or services, the name of the trader, the total price, the right of withdrawal, the duration of the contract and the conditions of termination of contracts of indefinite duration before the conclusion of the contract using this means of distance communication. The other information referred to in Article 5(1) shall be provided to the consumer in an appropriate manner in compliance with paragraph 1.

3) Within a reasonable period of time after the conclusion of the contract, but no later than upon delivery of the goods or before the commencement of the provision of services, the trader shall provide the consumer with a confirmation of the concluded contract on a durable medium containing the information referred to in Art. 5 par. 1, provided that the trader has provided this information to the

consumer on a durable medium prior to the conclusion of the contract. If applicable, the confirmation of the contract must also contain a confirmation of the consumer's consent and acknowledgement in accordance with Art. 19 (1) (l).

#### Art. 9

##### *Special requirements for contracts concluded electronically*

1) If a distance contract concluded electronically, but not exclusively by way of electronic mail or a comparable individual electronic means of communication, obliges the consumer to make a payment, the trader must draw the consumer's attention clearly and prominently to the information referred to in Art. 5(1)(a), (d), (e), (o) and (p) immediately before the consumer makes his contractual declaration.

2) The Entrepreneur must ensure that the Consumer expressly confirms when placing the order that the order is linked to a payment obligation. If the ordering process requires the activation of a button or the activation of a similar function, this button or function must be clearly marked with the words "order with obligation to pay" or similar, unambiguous wording, which informs the consumer that the order is associated with an obligation to pay the entrepreneur. If the entrepreneur does not comply with the obligations under this paragraph, the consumer is not bound by the contract or his contractual declaration.

3) On websites for electronic commerce, it must be clearly stated at the latest at the beginning of the order process whether delivery restrictions exist and which means of payment are accepted.

4) Paragraphs 1 to 3 shall also apply to the contracts referred to in Article 2(2)(h). The provisions of the second and third sentences of paragraph 2 shall also apply to the contracts referred to in Article 2, paragraph 2, letters b and c, provided that they are concluded in the manner specified in paragraph 1.

#### Art. 10

##### *Special requirements for contracts concluded by telephone*

1) In the case of long-distance calls with consumers aimed at concluding a distance contract, the trader shall inform the consumer at the beginning of the conversation of his name or company name and, if applicable, the name of the person in whom the call was made.

whose order he acts, as well as the business purpose of the conversation.

2) In the case of a distance contract for a service negotiated during a call initiated by the trader, the consumer shall not be bound until the trader provides the consumer with a confirmation of his contractual statement on a durable medium and the consumer subsequently provides the trader with a written statement of acceptance of this contractual statement on a durable medium.

3) Paragraphs 1 and 2 shall also apply to the contracts referred to in Art. 1(2)(h).

#### Art. 11

##### *Commencement of the performance of the contract before the expiry of the withdrawal period*

If the subject matter of a distance or off-premises contract is a service, the supply of water, gas or electricity not offered in a limited volume or quantity, or the supply of district heating, and if the consumer wants the trader to start performing the contract before the expiry of the withdrawal period under Art. 12, the trader must ask the consumer to state an explicit request for early performance of the contract in the case of an off-premises contract on a durable medium.

#### III. Withdrawal from the

#### contract Art. 12

##### *Right of withdrawal and withdrawal period*

1) The consumer may withdraw from a distance contract or an off-premises contract within 14 days without giving any reason.

2) The period for withdrawal begins:

a) in the case of service contracts, from the date of conclusion of the contract;

b) in the case of purchase contracts and other contracts for the acquisition of goods for consideration:

1. on the day on which the consumer or a third party designated by the consumer and not acting as a carrier acquires possession of the goods;

2. if the consumer has ordered several goods as part of a single order, which are delivered separately, on the day on which the consumer

or a third party named by the consumer and not acting as carrier acquires possession of the last goods delivered;

3. in the case of delivery of goods in several partial consignments or pieces, on the day on which the consumer or a person appointed by the consumer

named third party not acting as carrier acquires possession of the last partial consignment or the last piece;

4. in the case of contracts for the regular delivery of goods over a fixed period, on the day on which the consumer or a third party designated by the consumer and not acting as a carrier acquires possession of the goods first delivered;

c) in the case of a contract for the supply of water, gas or electricity not offered in a limited volume or quantity, the supply of district heating or the supply of digital content not stored on a tangible medium, on the date of conclusion of the contract.

#### Art. 13

##### *Failure to inform about the right of withdrawal*

1) If the entrepreneur has not fulfilled his duty to inform according to Art. 5 para. 1 let. h, the withdrawal period provided for in Art. 12 shall be extended by twelve months.

2) If the trader provides the information within twelve months of the date on which the period begins in accordance with Art. 12 Para. 2, the withdrawal period ends 14 days after the date on which the consumer receives this information.

#### Art. 14

##### *Exercise of the right of withdrawal*

1) The declaration of withdrawal is not bound to any particular form. The consumer may use the model withdrawal form as set out in Annex Part B for this purpose. The withdrawal period shall be deemed to have been observed if the declaration of withdrawal is sent within the period.

2) The Entrepreneur may also give the Consumer the option to electronically fill in and submit the model withdrawal form according to Annex Part B or a differently formulated declaration of withdrawal on the Entrepreneur's website. If the Consumer submits a declaration of withdrawal in this way, the Entrepreneur shall immediately send the Consumer a confirmation of receipt of the declaration of withdrawal.

declaration of withdrawal on a durable data medium.

Art. 15

*Obligations of the entrepreneur in case of withdrawal of the consumer from the contract*

- 1) If the consumer withdraws from the contract in accordance with Art. 12 Par. 1, the contractor shall reimburse all payments made by the consumer, including delivery costs if applicable, without delay, but no later than 14 days after receipt of the notice of withdrawal. He shall use the same means of payment for the repayment as the consumer used to make his payment; however, the use of another means of payment shall be permissible if this has been expressly agreed with the consumer and the consumer does not incur any costs as a result.
- 2) If the Consumer has expressly opted for a type of delivery other than the most favorable standard delivery offered by the Entrepreneur, he shall not be entitled to reimbursement of the additional costs incurred by him as a result.
- 3) In the case of sales contracts and other contracts for the purchase of goods against payment, the entrepreneur may refuse repayment until he has either received the goods back or the consumer has provided him with proof of the return of the goods; this does not apply if the entrepreneur has offered to collect the goods himself.

Art. 16

*Obligations of the consumer in case of withdrawal from the contract*

- 1) If the consumer withdraws from a contract or other contract for the purchase of goods in accordance with Article 12(1), he shall return the goods received to the trader without undue delay, but no later than 14 days from the date of the declaration of withdrawal; this shall not apply if the trader has offered to collect the goods himself. The return period shall be deemed to have been observed if the goods are dispatched within the period.
- 2) The direct costs of returning the goods shall be borne by the consumer; this shall not apply if the entrepreneur has agreed to bear these costs or if he has failed to inform the consumer about his obligation to bear the costs.
- 3) For contracts concluded away from business premises, where the goods at the time of conclusion of the contract to the home of the consumers, the entrepreneur must collect the goods at his own expense if such goods, due to their nature, are not usually delivered to the consumer.



be sent by mail.

4) The consumer shall only pay the entrepreneur compensation for a reduction in the market value of the goods if this loss in value is due to handling of the goods that is not necessary for checking the condition, properties and functioning of the goods. The consumer shall in no case be liable for a loss of value of the goods if he has not been informed by the entrepreneur of his right to withdraw from the contract in accordance with Article 5(1)(h).

5) Apart from the payments specified in this provision and any additional costs pursuant to Art. 15 Para. 2, no other charges may be imposed on the consumer on account of his withdrawal.

#### Art. 17

##### *Obligations of the consumer in the event of withdrawal from a contract for services, energy and water supplies or digital content*

1) If the consumer withdraws from a contract for services or for the supply of energy and water referred to in Art. 11 in accordance with Art. 12 Para. 1 after he has made a request in accordance with Art. 11 and the contractor has thereupon commenced performance of the contract, he shall pay the contractor an amount which, compared with the total price agreed in the contract, corresponds proportionately to the services provided by the contractor up to the time of withdrawal. If the total price is excessive, the pro rata amount to be paid shall be calculated on the basis of the market value of the services rendered.

2) The pro rata payment obligation under para. 1 shall not apply if the entrepreneur has not fulfilled its obligation to provide information under Art. 5 para. 1 letters h and k.

3) If the consumer withdraws from a contract for the supply of digital content not stored on a physical medium pursuant to Art. 12(1), the consumer shall not be obliged to pay for the services already provided by the trader.

4) Apart from the payment referred to in paragraph 1, no other charges may be imposed on the consumer on account of his withdrawal.

#### Art. 18

##### *Effects of the rescission on accessory contracts*

If the consumer withdraws from the contract pursuant to Art. 12, para. 1, the withdrawal shall also apply to an accessory contract. Except for the cases specified in Art. 16 and 17

Payments may not impose any other burdens on the consumer as a result.

Art. 19

*Exceptions to the right of withdrawal*

- 1) The consumer has no right to withdraw from distance or off-premises contracts:
  - a) services, if the Entrepreneur, on the basis of an express request by the Consumer pursuant to Art. 11 and a confirmation by the Consumer of the Consumer's knowledge of the loss of the right of withdrawal in the event of complete performance of the contract, had commenced performance of the service before the expiry of the withdrawal period pursuant to Art. 12 and the service was then completely performed;
  - b) Goods or services, the price of which depends on fluctuations in the financial market, over which the entrepreneur has no control and which may occur within the withdrawal period;
  - c) Goods that are manufactured according to customer specifications or are clearly tailored to personal needs;
  - d) Goods that can spoil quickly or whose expiration date would pass quickly;
  - e) Goods that are delivered sealed and are not suitable for return for reasons of health protection or hygiene, provided that their seal has been removed after delivery;
  - f) Goods that have been inseparably mixed with other goods after delivery due to their nature;
  - g) alcoholic beverages, the price of which was agreed upon at the conclusion of the contract, but which cannot be delivered earlier than 30 days after the conclusion of the contract and the current value of which depends on fluctuations in the market over which the Contractor has no control;
  - h) Sound or video recordings or computer software delivered in a sealed package, provided that the seal has been removed after delivery;
  - i) Newspapers, periodicals or magazines with the exception of subscription contracts for the delivery of such publications;

k) Non-residential accommodation services, transport of goods, rental of motor vehicles and supply of food and beverages, and services provided in connection with leisure activities, provided that in each case a specific time or period is contractually stipulated for the performance of the contract by the entrepreneur;

l) the delivery of digital content not stored on a tangible medium, if the Entrepreneur, with the express consent of the Consumer and with the latter's knowledge of the loss of the right of withdrawal in the event of premature commencement of performance of the contract, and after providing a copy or confirmation pursuant to Art. 6 par. 2 or Art. 8 par. 3, has commenced delivery before the expiry of the withdrawal period pursuant to Art. 12.

2) Furthermore, the consumer has no right to withdraw from contracts for urgent repair or maintenance work, where the consumer has expressly requested the entrepreneur to visit him in order to carry out this work. If, during such a visit, the Entrepreneur provides additional services which the Consumer has not expressly requested or supplies goods which are not necessarily required as spare parts for the maintenance or repair work, the Consumer shall have the right of withdrawal in respect of such additional services or goods.

3) Finally, the consumer has no right to withdraw from contracts concluded at a public auction.

#### IV. Penal provisions

##### Art. 20

##### *Penal provisions*

The Office of Economic Affairs shall, unless the act constitutes a criminal offense within the jurisdiction of the courts or is punishable by a more severe penalty under other administrative penal provisions, impose a fine of up to 5,000 francs, or 20,000 francs in the case of a repeat offense, on anyone who:

a) includes incorrect information in the pre-contractual information required under Art. 5 Par. 1 or fails to fulfill the information obligations under Art. 5 Par. 1 or fails to fulfill them completely;

b) violates any of the orders on the manner of providing information made in Art. 6 par. 1, Art. 7 par. 2 and Art. 8 par. 1 and 2;

- c) fails to provide the consumer with a copy or confirmation of the contract in contravention of Art. 6 Par. 2 or Art. 8 Par. 3;
- d) does not or not completely fulfill its special pre-contractual information obligations for contracts concluded electronically in accordance with Art. 9 (1) and (3);
- e) commences a long-distance call without disclosing at the beginning of the call the name (company) of the entrepreneur, the name of the person on whose behalf he is acting, if any, as well as the business purpose of the call pursuant to Art. 10 par. 1;
- f) fails to provide the consumer with a confirmation of receipt of the notice of withdrawal on a durable medium in accordance with Art. 14(2);
- g) violates its reimbursement obligation under Art. 15 par. 1.

IVa.            Data  
                         protection  
                         Art. 20a

*Processing and transmission of personal data*

- 1) The Office of National Economy may process personal data, including personal data on criminal convictions and offences, on entrepreneurs and consumers to the extent necessary to fulfill its duties under this Act.
- 2) The Office of National Economy may transmit data pursuant to para. 1 to other competent bodies and authorities as well as courts and the public prosecutor's office if they require the data for the performance of their statutory duties.

V. Transitional and final provisions Art. 21

*Repeal of previous law*

It is repealed:

- a) Act of April 18, 2002 on Consumer Protection in Distance Contracts (Distance Contracts Act; FAG), LGBl. 2002 No. 71;
- b) Act of October 23, 2002 on the Amendment of the Distance Selling Act, LGBl. 2002 No. 167;
- c) Act of April 14, 2004 on the Amendment of the Act on Consumer Protection in Distance Contracts (Distance Contracts Act; FAG), LGBl. 2004 No. 128;

d) Act of 15 December 2004 on the amendment of the Distance Selling Act, LGBl. 2005 No. 37;

e) Act of 30 June 2010 on the Amendment of the Distance Selling Act, LGBl. 2010 No. 237.

#### Art. 22

##### *Transitional provisions*

Contracts concluded before the date of entry into force of this Act shall be governed by the previous law.

#### Art. 23

##### *Entry into force*

Subject to the unused expiry of the referendum period, this Act shall enter into force on 1 January 2016, otherwise on the day following its promulgation.

### Appendix

(Art. 5 par. 1 and 3, Art. 14) Information

on exercising the right of withdrawal

#### A. Sample cancellation policy

##### Right of withdrawal

You have the right to withdraw from this contract within fourteen days without giving any reason.

The withdrawal period is fourteen days from the day [1].

In order to exercise your right of withdrawal, you must inform us ([2]) by means of a clear declaration (e.g. a letter sent by post, fax or e-mail) of your decision to withdraw from this contract. You can use the attached sample withdrawal form for this purpose, which is, however, not mandatory. [3]

To comply with the withdrawal period, it is sufficient that you send the notice of exercise of the right of withdrawal before the expiry of the withdrawal period.

##### Consequences of the withdrawal

If you withdraw from this contract, we will have to pay you all the payments we have received from you, including the delivery costs (with the exception of the

additional costs resulting from the fact that you have chosen a type of delivery other than the cheapest standard delivery offered by us) immediately and at the latest within fourteen days from the day on which the notification of your withdrawal from this contract is received by us. For this repayment, we will use the same means of payment that you used for the original transaction, unless expressly agreed otherwise with you; in no case will you be charged for this repayment. [4]

[5]

[6]

Design notes:

[1.] Insert one of the following text blocks enclosed in quotation marks:

a) in the case of a service contract or a contract for the supply of water, gas or electricity, if they are not offered for sale in a limited volume or quantity, of district heating or of digital content not supplied on a tangible medium: "of the conclusion of the contract.";

b) in the case of a contract of sale: ", on which you or a third party named by you, who is not the carrier, have taken or has taken possession of the goods.";

c) in the case of a contract for several goods ordered by the consumer as part of a single order and delivered separately: ", on which you or a third party named by you, who is not the carrier, has or has taken possession of the last goods.";

d) in the case of a contract for the delivery of goods in several partial consignments or pieces: ", on which you or a third party named by you, who is not the customer, have taken possession of the last partial consignment or the last piece";

e) in the case of a contract for the regular delivery of goods over a fixed period of time: ", on which you or a third party named by you, who is not the carrier, have or has taken possession of the first goods".

[2. Insert your name, address and, if available, your telephone number, fax number and e-mail address.

[3.] If you give the consumer the choice of receiving the information about their

If you choose to electronically complete and submit a withdrawal from the contract on your website, insert the following: "You may also electronically complete and submit the model withdrawal form or another clear declaration on our website [insert internet address]. If you make use of this option, we will send you confirmation of receipt of such withdrawal without delay (e.g. by e-mail)."

[4.] In the case of sales contracts in which you have not offered to collect the goods yourself in the event of withdrawal, insert the following: "We may refuse repayment until we have received the goods back or until you have provided evidence that you have

have returned the goods, whichever is the earlier." [5.] If the consumer has received goods in connection with the contract:

a) Insert:

- "We'll pick up the goods."; or
- "You shall return or hand over the goods without undue delay and in any event no later than fourteen days from the day on which you notify us of the withdrawal from this contract to ... us or to [insert here the name and address of the person authorized by you to receive the goods, if applicable]. The deadline is met if you send the goods before the expiry of the period of fourteen days.";

b) Insert:

- "We will bear the cost of returning the goods";
- "You shall bear the direct costs of returning the goods.";
- In the case of a distance contract, if you do not offer to bear the costs of returning the goods and the goods cannot be returned normally by mail due to their nature: "You shall bear the direct costs of returning the goods in the amount of ... francs [insert amount]."; or if the costs cannot reasonably be calculated in advance: "You shall bear the direct costs of returning the goods. The costs are estimated to be no more than approximately ... francs [insert amount]."; or
- if, in the case of an off-premises contract, the goods cannot be returned by normal post due to their nature and have been delivered to the consumer's home at the time the contract was concluded: "We will collect the goods at our expense."; and

c) Insert: "You must only pay for any loss in value of the goods if this loss in value is attributable to handling of the goods that is not necessary for checking the condition, properties and functioning of the goods."

[6.] In the case of a contract for the provision of services or supply of water, gas or electricity, if not offered for sale in a limited volume or quantity, or district heat, insert the following: "If you have requested that the services or supply of water/gas/electricity/district heating [delete as appropriate] commence during the withdrawal period, you shall pay us a reasonable amount equal to the proportion of the services already provided up to the time you notify us of the exercise of the right of withdrawal in respect of this contract compared to the total amount of services provided for in the contract."

#### B. Sample cancellation form

(If you want to withdraw from the contract, please fill out this form and send it back)

- To [here the name, address and, if applicable, the fax number and e-mail address of the entrepreneur is to be inserted by the entrepreneur]:

- I/we (\*) hereby withdraw from the contract concluded by me/us (\*) for the purchase of the following goods (\*)/provision of the following service (\*)

- Ordered on (\*)/received on (\*)

- Name of the consumer(s)

- Address of the consumer(s)

- Signature of the consumer(s) (only in case of notification on paper)

- Date

(\*) Delete as applicable.



#### **IV. Private International Law Act**

from September 19, 1996

on Private International Law (IPRG)

I hereby give my consent to the following resolution adopted by the Diet:

##### **I. General provisions Art. 1**

###### *Principle of private international law*

1) In private law, matters involving foreign countries shall be judged in accordance with the legal system specified in this Act or in another legal provision (reference provision).

2) In the absence of a reference rule, the legal system with which the facts of the case have the strongest relationship shall be decisive.

##### **Art. 2**

###### *Determination of the conditions relevant for the connection*

The factual and legal requirements for the connection to a particular legal system shall be determined ex officio, unless under procedural law provisions in a subject area open to choice of law (Articles 20, 29(3), 39(1)) factual party submissions are to be considered true.

##### **Art. 3**

###### *Application of foreign law*

If foreign law is authoritative, it shall be applied ex officio and as in its original scope of application.

##### **Art. 4**

###### *Determination of foreign law*

1) The foreign law shall be determined ex officio. Admissible aids for this purpose are also the cooperation of the parties involved, information from the government and expert opinions.

2) If, despite thorough efforts, the foreign law cannot be determined within a reasonable period of time, Liechtenstein law shall apply.

Art. 5

*Referral to the relevant standard; Referral back to the relevant standard*

1) If foreign law is authoritative, its substantive norms are to be applied (legal norms with the exception of the referral norms). This does not apply if the rules of referral of the foreign law declare Liechtenstein law to be authoritative; in this case, the substantive rules of Liechtenstein law are to be applied (referral back).

2) If a foreign legal system consists of several partial legal systems, the partial legal system to which the rules existing in the foreign legal system refer shall be applied. In the absence of such rules, the partial legal order with which there is the strongest relationship shall be decisive.

Art. 6

*Reservation clause*

A provision of foreign law shall not be applied if its application would lead to a result that is incompatible with the fundamental values of the Liechtenstein legal system. If necessary, the corresponding provision of Liechtenstein law shall be applied in its place.

Art. 7

*Change of Articles of Association*

The subsequent change of the conditions for the connection to a certain legal order does not have any influence on already completed facts.

Art. 8

*Form*

The form of a legal act is to be judged according to the same law as the legal act itself; however, compliance with the formal requirements of the state in which the legal act is performed is sufficient.

Art. 9

*Domicile and habitual residence*

For the purposes of this Act, a natural person:

- a) reside in the place where he/she is staying with the intention of permanent residence;
- b) their habitual residence in the place where they live for a long time,

even if this time is limited in advance.

Art. 10

*Personal statute of a natural person*

1) The personal statute of a natural person is the law of the state to which the person belongs. If a person has Liechtenstein citizenship in addition to a foreign citizenship, this is decisive. For other multiple nationalities, the nationality of the state with which there is the strongest relationship is decisive.

2) If a person is stateless or if his or her nationality cannot be determined, his or her personal statute shall be the law of the country in which he or she has his or her habitual residence.

3) The personal statute of a person who is a refugee within the meaning of the international conventions applicable to Liechtenstein or whose relations with his or her country of origin have been severed for comparable serious reasons shall be the law of the country in which he or she is domiciled,

has its habitual residence in the absence of such; a reference of this law to the law of the home state shall be irrelevant.

Art. 11

*Choice of law*

1) A choice of law by the parties (Art. 20, 29 para. 3 and Art. 39 para.

1) in case of doubt, does not refer to the referral rules of the chosen legal system.

2) A choice of law made only in pending proceedings shall only be considered if it has been expressly made.

3) The legal position of third parties shall not be affected by a subsequent choice of law.

II. Personal law Art. 12

*Legal capacity and capacity to act*

1) The legal capacity of a natural person is to be assessed according to his or her personal statute.

2) A person who has concluded a legal transaction even though he was incapable of acting under his personal statute may not invoke his incapacity if, under the law of the state in which he concluded the legal transaction, he was

The court shall be competent to act if the other party was aware or should have been aware of his incapacity to act. This provision does not apply to family and hereditary legal transactions or to those which dispose of real property situated in another state or of a right equivalent thereto.

Art. 13

*Tort*

The tort capacity of a natural person is to be judged according to the law of the state in which the conduct causing the damage was set.

Art. 14

*Name*

- 1) The use of the name of a natural person is to be judged according to his or her personal statute, on whatever grounds the acquisition of the name is based.
- 2) The protection of a natural person's name is to be assessed according to the law of the state in which the infringing act is committed.

Art. 15

*Declaration of missing*

The declaration of the disappearance of a person by a Liechtenstein court and its effects shall be governed by Liechtenstein law.

Art. 16

*Appointment of a guardian for disabled persons, advance directive*

- 1) The appointment of a guardian for a mentally ill or mentally disabled person by a Liechtenstein court and its effects are governed by Liechtenstein law.
- 2) The prerequisites for the establishment and the effects of living wills are governed by Liechtenstein law. Art. 8 remains unaffected.

III. Family law

A.  
Matrimonial  
law

Art. 17

*Form of marriage*

- 1) The form of a domestic marriage is to be assessed according to the domestic formal requirements.
- 2) The form of a marriage abroad is determined according to the personal statute of each of the

However, it is sufficient to comply with the formal requirements of the place of marriage.

Art. 18

*Requirements for marriage*

- 1) The prerequisites for marriage and the invalidity of marriage are to be assessed for each of the fiancées or spouses according to their personal statute.
- 2) If a marriage has been declared invalid, divorced or determined to be non-existent by a decision effective for the Liechtenstein legal sphere, a new marriage may not be prohibited or a new marriage declared invalid solely because the decision is not recognized according to the personal statute of one or both fiancés or spouses. This applies mutatis mutandis in the case of a declaration of disappearance.

Art. 19

*Personal legal effects of marriage*

- 1) The personal legal effects of a marriage shall be governed by the law of the State in which both spouses have their habitual residence or, in the absence of such a State, by the law of the State in which both spouses had their last habitual residence, provided that one of them has retained it.
- 2) If a marriage has not come into existence for the area of the law specified in para. 1, but for the area of Liechtenstein law, the personal legal effects are to be assessed according to Liechtenstein law.

Art. 20

*Matrimonial property law*

- 1) Marital property law is to be assessed according to the law that the parties determine in writing.
- 2) The spouses may choose between the law of the State in which they both have their habitual residence or will have their habitual residence after marriage and one of the home laws of either spouse.
- 3) In the absence of such a choice of law, the matrimonial property law is to be assessed according to the law that is authoritative for the personal legal effects of the marriage at the time of the marriage.

Art. 21

*Marriage separation and divorce*

1) The conditions for and the effect of the separation and divorce of a marriage shall be assessed in accordance with the law applicable to the personal legal effects of the marriage at the time of the separation or divorce.

2) If, under this law, the marriage cannot be separated or divorced on the basis of the facts alleged, or if none of the connecting factors of Art. 19 is present, the separation or divorce of the marriage shall be assessed according to the personal status of the plaintiff spouse at the time of the separation or divorce.

3) The Liechtenstein court shall apply Liechtenstein law even if only one of the spouses is a Liechtenstein citizen.

A. Law of registered partnership

Art. 21a

*Form of registration of the partnership*

1) The form of registration of the domestic partnership is to be assessed according to the domestic formal requirements.

2) The form of registration of the partnership abroad is to be assessed according to the formal requirements of the place of registration.

Art. 21b

*Requirements for the registration of the partnership*

The conditions and invalidation of the registered partnership are to be assessed according to the law of the state in which it is established.

Art. 21c

*Personal legal effects of the registered partnership*

The personal legal effects of the registered partnership must be assessed:

a) under the law of the State in which the registered partners have their common habitual residence, or, in the absence of such a State, under the law of the State in which they both had their last habitual residence, provided that one of them has retained it;

b) otherwise in accordance with Liechtenstein law; this is also applicable insofar as the law applicable in accordance with subparagraph a does not regulate the personal legal effects of the registered partnership.

Art. 21d

*Property law of the registered partnership*

- 1) The property law of the registered partnership is to be assessed according to the law that the parties determine in writing.
- 2) The registered partners may choose between the law of the state in which both have their habitual residence or will have it after the registration of the partnership and one of the home laws of either partner.
- 3) In the absence of such a choice of law, the law applicable to the personal effects of the partnership at the time of registration of the partnership shall apply to the matrimonial property regime.

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Art. 21e

*Judicial dissolution of the registered partnership*

- 1) The requirements and the effects of the judicial dissolution of the registered partnership shall be assessed:
  - a) under the law of the State in which the registered partners have their common habitual residence at the time of dissolution, or, in the absence of such a State, under the law of the State in which they both had their last habitual residence before that, provided that one of them has retained it;
  - b) according to the personal statute of the plaintiff registered partner at the time of the dissolution of the registered partnership, if the prerequisites for the application of the law determined in subparagraph a do not exist or if the registered partnership cannot be dissolved according to this law on the basis of the facts asserted;
  - c) otherwise in accordance with Liechtenstein law; this shall also apply if, in accordance with the law applicable under subparagraph (b), the registered partner-

The Company does not believe that the partnership can be dissolved on the basis of the facts alleged.

- 2) The Liechtenstein court shall apply Liechtenstein law if even one of the registered partners is a Liechtenstein citizen.

B. Childhood law Art. 22

*Descent of the child from the mother's husband*

The conditions of a child's descent from the mother's husband and their contestation shall be assessed according to the personal status which the spouses had at the time of the child's birth or, if the marriage was dissolved beforehand, at the time of the dissolution. If the personal status of the

spouses, the personal statute that is more favorable for the child is decisive.

Art. 23

*Legitimation by subsequent marriage*

The requirements for the legitimation of an illegitimate child by subsequent marriage are to be assessed according to the personal statute of the parents. If the parents have different personal statutes, the personal statute that is more favorable for the legitimation of the child is decisive.

Art. 24

Repealed

Art. 25

*Effects of marriage and legitimation*

The effects of a child's marital status and legitimacy are to be assessed in accordance with the law of the State in which the child is habitually resident.

Art. 26

*Parentage of a child whose parents are not married to each other and its effects*

- 1) The conditions for establishing and acknowledging paternity of a child whose parents are not married to each other shall be assessed according to the child's personal statute at the time of birth. However, they are to be assessed according to a later personal statute of the child if the establishment or recognition is admissible according to this, but not according to the personal statute at the time of birth. The law according to which paternity was established or recognized is also decisive for disputing it.
- 2) The effects of filiation of a child whose parents are not married to each other are to be judged according to the law of the state in which the child has his or her habitual residence.
- 3) The mother's claims against the father to whom she is not married in connection with pregnancy and childbirth shall be governed by the law of the State in which the mother has her habitual residence.

Art. 27

*Adoption in lieu of child*

- 1) The requirements for adoption in lieu of a child and termination of the



Elective parenthood must be assessed according to the personal statute of each adopter. If the child's personal statute requires the consent of the child or of a third party with whom the child has a family law relationship, this law shall also be decisive in this respect.

2) The effects of adoption in the place of a child shall be judged in accordance with the law of the State in which the adopter has his or her habitual residence; in the case of adoption by spouses, in accordance with the law governing the personal legal effects of marriage; after the death of one of the spouses, in accordance with the law of the State in which the other spouse has his or her habitual residence.

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### C. Guardianship and guardianship law

#### Art. 28

##### *Arrangement and effects*

The order of a guardianship or conservatorship by a Liechtenstein court and its effects are governed by Liechtenstein law.

#### IV. Inheritance Law

##### ce Law

#### Art. 29

##### *Legal succession by reason of death*

1) The legal succession by reason of death is to be assessed according to the personal statute of the testator at the time of his death.

2) If probate proceedings are conducted by a Liechtenstein court, the succession upon death shall be judged in accordance with Liechtenstein law, subject to paras. 3 and 4.

3) The foreign testator may, by testamentary disposition or contract of inheritance, subject his succession to one of his home laws or to the law of the state of his last habitual residence.

4) The domestic testator domiciled abroad may, by testamentary disposition or contract of inheritance, subject his succession to one of his home laws or to the law of the state of his last habitual residence.

5) Whether the beneficiary of the compulsory portion who has been abridged may raise rights against third parties who received property from the deceased during his lifetime is to be assessed according to the law of the state to which the succession upon death is subject. Moreover, the assertion of such rights is only permissible if this is also permissible under the law applicable to the acquisition transaction.

#### Art. 30

*Validity of a disposition upon death*

1) The testamentary capacity and the other requirements for the validity of a testamentary disposition, an inheritance contract or a waiver of inheritance contract are given if the validity requirements of one of the following rights are met:

a) one of the decedent's home rights at the time of the legal act or at the time of his death;

b) of the law of the state in which the decedent had his habitual residence at the time of the legal act or at the time of his death;

c) of Liechtenstein law, provided that the probate proceedings are conducted before a Liechtenstein court.

2) Paragraph 1 shall apply mutatis mutandis to the revocation or cancellation of these legal acts.

V. Property law

A. Types of things

Art. 31

*Principle*

The law applicable at the place where the thing is located determines whether a thing is to be considered movable or immovable.

B. Immovable property Art. 32

*Substantive law*

Rights in rem, including possession of immovable property, are governed by the law of the place where the property is located.

Art. 33

*Form*

1) Rights in rem, including possession of real property, as well as obligatory obligations relating to such property, shall be in the form prescribed by the law of the place where the property is located.

2) Public notarizations and certifications are recognized if they correspond to the right at the place of the conclusion of the contract.

C. Movable property Art. 34

*Acquisition and loss in general*

1) Acquisition and loss of rights in rem including ownership of a

movable thing shall be judged according to the law of the place where the thing is located at the time of completion of the act.

2) Changes of location made with the apparent intention of evading the law shall not be taken into account.

Art. 35

*Ersitzung*

1) Seizure shall take place only if the conditions exist according to the law in force at the place where the thing is situated.

2) If a right of subrogation has commenced under another right, the elapsed period of subrogation shall be proportionately credited to the period of subrogation.

Art. 36

*Effects towards third parties*

In order to be effective against third parties acting in good faith, ownership and limited rights in rem shall require such publicity as the law has established at the place of the respective situation of the thing for the protection of bona fide transactions.

Art. 37

*Content*

The content of rights in rem, including possession of movable property, shall be determined in accordance with the law applicable at the place of the respective location.

Art. 37a

*Securities transferable on demand*

1) The legal nature and content of rights in rem in respect of securities transferable on a book entry basis (Article 2(1)(g) of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements) and the acquisition of rights in rem therein, including possession, must be assessed in accordance with the substantive rules of the country in which the relevant account (Article 2(1)(h) of Directive 2002/47/EC) is maintained.

2) In accordance with the law referred to in para. 1, the following shall also be assessed,

a) whether the ownership or other rights in rem of securities transferable under the book-entry system are superseded or subordinated to the ownership or other rights in rem of a third party or whether a bona fide acquisition has occurred;

b) whether and which steps are required for the liquidation of book-entry securities after the occurrence of the liquidation or termination event (Art. 2 par. 1 letter I of Directive 2002/47/EC).

VI. Intellectual property

rights Art. 38

*Intellectual property rights*

- 1) The creation, content and extinction of intellectual property rights are to be assessed according to the law of the country in which the act of use or infringement is committed.
- 2) For intellectual property rights that are related to the activities of an employee within the scope of his employment, the relationship between the employer and the employee is governed by the consecration standard applicable to the employment relationship (Art. 48).
- 3) If the employee usually performs his work in the Principality of Liechtenstein or if the hiring branch office is located there, Liechtenstein law shall apply. A choice of law must always be observed.

Art. 38a

*Copyright contracts*

- 1) Contracts on copyrights are to be judged according to the law applicable to contractual obligations (Art. 39 f.); a choice of law must always be observed.
- 2) Contracts for the collective management of rights in Liechtenstein are always subject to Liechtenstein law.

VII. Law of

obligations

Art. 39

*General rules*

- 1) Obligations shall be governed by the law expressly or impliedly determined by the parties (Art. 11); an implied determination shall be deemed to have been made if it is clear from the circumstances that the parties have accepted a certain legal order as being authoritative.
- 2) Insofar as a choice of law has not been made or is irrelevant under this Act, Articles 40 to 53 shall apply.

Art. 40

*Reciprocal contracts*

Reciprocal contracts under which one party owes the other at least predominantly money are to be judged according to the law of the country in which the other party has its habitual residence. If this party concludes the contract as an entrepreneur, the place of business in which the contract is concluded is decisive instead of the habitual residence.

Art. 41

*Unilateral contracts and legal transactions*

Unilaterally binding contracts and unilateral legal transactions giving rise to a debt shall be governed by the law of the country in which the debtor has his habitual residence or, in the case of the second sentence of Article 40, his place of business.

Art. 42

*Banking and insurance contracts*

1) Banking transactions are to be judged according to the law of the country in which the enterprise conducting business under the Banking Act has its place of business (Art. 40, Sentence 2); in the case of banking transactions between such enterprises, the law of the place of business of the enterprise commissioned is decisive.

2) Insurance contracts are governed by the Law on International Insurance Contract Law.

Art. 43

*Stock exchange transactions and similar contracts*

Stock exchange transactions and contracts concluded at markets and trade fairs are to be judged according to the law of the country in which the stock exchange or market is located or the trade fair takes place.

Art. 44

*Sales by auction*

Sales by auction are to be judged according to the law of the state in which the auction takes place.

Art. 45

*Consumer contracts*

1) Contracts for which the law of the country in which a party has his habitual residence grants him special protection under private law as a consumer are to be judged according to that law if they are concluded in connection with a business activity developed in that country and aimed at the conclusion of a contract.

The Contractor shall not be liable for any damage caused by the activities of the Contractor or the person used by the Contractor for the performance of such contracts.

2) A choice of law to the detriment of the consumer shall be irrelevant insofar as it concerns mandatory provisions of the law referred to in para. 1. If this is the law of a member state of the EEA Agreement, this includes in particular provisions which correspond to regulations for the protection of consumers within the meaning of Annex XIX to the EEA Agreement.

3) Art. 9 Timeshare Act remains reserved.

4) Insurance contracts are governed by the Law on International Insurance Contract Law.

Art. 46

*Contracts for the use of immovable property*

Contracts for the use of immovable property or superstructures shall be governed by the law of the country in which the property is located.

Art. 47

*Contracts for intellectual property rights*

1) Contracts concerning intellectual property rights are to be judged according to the law of the country for which the intellectual property right is transferred or granted. If the contract relates to more than one country, the law of the country in which the acquirer (licensee) has his habitual residence (his domicile, Art. 40, sentence 2) is decisive.

2) For contracts on intellectual property rights related to the activities of an employee within the scope of his employment relationship, the reference standard applicable to the employment relationship (Art. 48) is decisive.

Art. 48

*Employment contracts*

1) Employment contracts are governed by the law of the country in which the employee habitually performs his work. This law also remains applicable if the employee is posted to a place of work in another country.

2) If the employee habitually performs his work in more than one country or has no habitual place of work, the law of the country in which the employer has his habitual residence (his place of business, Art. 40, Sentence 2) shall apply.

3) A choice of law shall only be relevant if it has been expressly made.

However, as far as the mandatory provisions of the rights mentioned in paras. 1 and 2 are concerned, an express choice of law shall also be irrelevant if it has been made to the disadvantage of the employee.

Art. 49

*Dependent legal transactions*

A legal transaction, the effects of which are conceptually dependent on an existing obligation, is to be judged according to the substantive rules of the state, the substantive rules of which are decisive for the obligation. This applies in particular to legal transactions which have as their object the securing or modification of a liability. Art. 42 para. 1 remains unaffected.

Art. 50

*Enrichment*

Claims for enrichment are to be judged according to the law of the state in which the enrichment occurred. If, however, the enrichment is based on a service rendered on the basis of a legal relationship, the substantive rules of the state whose substantive rules are applicable to the legal relationship shall be decisive; this shall apply mutatis mutandis to the claim for compensation for an expense which another person would have had to incur.

Art. 51

*Management without order*

Management without a mandate is to be judged according to the law of the country in which it was carried out; however, if it is internally connected with another legal relationship, Art. 49 applies mutatis mutandis.

Art. 52

*Non-contractual claims for damages*

- 1) Non-contractual claims for damages shall be governed by the law of the country in which the conduct causing the damage occurred. However, if the parties have a closer relationship with the law of one and the same other country, this law shall be decisive.
- 2) Claims for damages and other claims arising from unfair competition are to be assessed according to the law of the state on whose market the competition has an effect.

Art. 53

*Voluntary substitution*

1) The conditions and the effects of the voluntary representation in the relationship of the principal and the representative to the third party shall be assessed in accordance with the law determined by the principal in a manner recognizable to the third party.

2) If the applicable law has not been determined, the law of the country in which the representative is to act in accordance with the principal's will as discernible to the third party shall be decisive; if the representative has been appointed for several transactions, the law of the country in which he is to act regularly in accordance with the principal's will as discernible to the third party shall be decisive.

3) If the connection provided for in para. 2 also fails, the law of the state in which the deputy acts shall be decisive.

VIII. Transitional and final provisions Art. 54

*Repeal of previous law*

It is repealed:

a) in the Law on Persons and Companies of 20 January 1926 (PGR), LGBl. 1926 No. 4: Articles 8, 23 par. 1, 24, 30, 31, 42, 45 par. 1, 53, 57 par. 4;

- § Section 70 (4) to (6) of the Final Division;
- in Art. 14, para. 1, the words "applying the law of the home country";
- in Art. 14, para. 3, the words "under Liechtenstein law" and "under Liechtenstein or foreign law";
- in Article 45(2), the words "under domestic law";
- in Art. 57 paras. 2 and 3, the words "under Liechtenstein law";

b) §§ Sections 4, 34, 35, 36 and 37 of the General Civil Code of

1. June 1811 (ABGB), ASW;

c) Articles 9 to 18 of the Property Law of December 31, 1922 (SR), LGBl. 1923 No. 4;

d) in the Act of December 4, 1911, on the Handling of the Abandonment of Foreigners, LGBl. 1911 No. 6:

- the Art. 2 par. 2 and Art. 9 par. 2;
- in Article 1(2), the words "in accordance with the laws of this country";
- in Art. 1 para. 3 the words "the proceedings shall be conducted in accordance with Liechtenstein law".



law without regard to a foreign inheritance dispute and Liechtenstein law is also to be applied to the last will and testament made abroad";

- in Art. 3, the words "in accordance with Liechtenstein law";
- in Art. 4, the words "in accordance with Liechtenstein law".

Art. 55

*Preservation of previous law*

This Act shall, in particular, amend Articles 9(3), 37, 49, 595,

613, 679, 778, 793, 828, 833, 931, 932a § 170, 943, and 1044 of the Code of Personal

and Company Law, LGBl. 1926 No. 4, Article 75 of the Legal Security Code, LGBl.

1923 No. 8, and Article 80 (2) of the Road Traffic Act, LGBl. 1978 No. 18, shall not be affected.

Art. 56

*Entry into force*

This Act shall enter into force on January 1, 1997.

## **V. Consumer Protection Act**

from 23 October 2002

for the protection of consumers (Consumer Protection Act, KSchG)

I hereby give my consent to the following resolution adopted by the Diet:

I. Special provisions for contracts between entrepreneurs and consumers

A. Scope of application, terms Art. 1

### *Scope, terms*

1) This Act applies to legal transactions in which

a) on the one hand, someone for whom the business is part of the operation of his business (hereinafter referred to as the entrepreneur for short), and

b) on the other hand, someone for whom this does not apply (hereinafter referred to as the consumer for short) are involved.

2) An enterprise within the meaning of paragraph 1(a) is any permanent organization engaged in independent economic activity, even if it is not profit-making. Legal entities under public law are always deemed to be entrepreneurs.

3) Transactions carried out by a natural person prior to the commencement of the operation of his enterprise in order to create the conditions for such operation do not yet form part of such operation within the meaning of subsection 1(a).

4) This Act does not apply to contracts that a person concludes with an employer as an employee or a person similar to an employee.

5) Other regulations that are more favorable to the consumer remain unaffected.

6) The persons and function designations used in this Act shall be understood as members of the male and female genders.

### **Art. 2**

#### *Implementation of EEA legislation*

This law serves in particular to implement:

a) of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (EEA Supplement: Annex XIX - 7e.01);

b) of Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests (EEA Law Series: Annex XIX - 7d.01).

Art. 3

*Indispensability*

If agreements deviate from this law to the detriment of the consumer, they are invalid.

B. General rules Art. 4

*Right of withdrawal*

1) If the consumer has not made his contractual declaration either in the premises permanently used by the entrepreneur for his business purposes or at a stand used by the entrepreneur for this purpose at a trade fair or market, he may withdraw from his application for a contract or from the contract.

withdraw from the contract. This withdrawal may be declared until the conclusion of the contract or within 14 days thereafter. This period begins with the delivery to the consumer of a document containing at least the name and address of the trader, the information necessary to identify the contract, as well as instructions on the right of withdrawal, the withdrawal period and the procedure for exercising the right of withdrawal, but no earlier than the conclusion of the contract, or, in the case of contracts for the sale of goods, the day on which the consumer obtains possession of the goods. If such a document is not delivered, the consumer has the right to withdraw from the contract for a period of 12 months and 14 days from the conclusion of the contract or the delivery of the goods; if the entrepreneur delivers the document within 12 months from the beginning of the period, the extended withdrawal period ends 14 days after the consumer receives the document. In the case of insurance contracts, the withdrawal period ends no later than one month after the contract is concluded. The provisions of the Insurance Contract Act remain reserved.

2) The right of withdrawal also exists if the entrepreneur or a third party cooperating with him has brought the consumer to the premises used by the entrepreneur for his business purposes in the course of a promotional trip, an excursion or a similar event or by personally addressing him individually on the street.

3) The consumer does not have the right to withdraw from the contract:

a) if he himself has the business connection with the entrepreneur or his

representative for the purpose of concluding this contract;

b) if the conclusion of the contract was not preceded by discussions between the parties or their representatives;

c) in the case

of contracts in which the performance of both parties is to be provided immediately when:

1. they are usually concluded by entrepreneurs outside their business premises and the agreed remuneration does not exceed 20 francs; or

2. the business is not operated on permanent business premises by its nature and the remuneration does not exceed 70 francs;

d) in the case of contracts subject to the Distance and Off-Site Transactions Act; or

e) in the case of contractual declarations made by the consumer in the physical absence of the entrepreneur, unless the consumer has been urged to do so by the entrepreneur.

4) The declaration of withdrawal is not bound to any particular form. The withdrawal deadline is met if the declaration of withdrawal is sent within the deadline.

#### Art. 5

##### *Right of withdrawal in case of error*

1) The consumer may also withdraw from his contract application or from the contract if, without his having caused this, circumstances relevant for his consent, which the entrepreneur has presented as probable in the course of the contract negotiations, do not occur or occur only to a significantly lesser extent.

2) Relevant circumstances in the sense of para. 1 are:

a) the expectation of the cooperation or consent of a third party, which is necessary for the performance of the entrepreneur or to be used by the consumer;

b) the prospect of tax benefits;

c) The prospect of public funding; and

d) the prospect of a loan.

3) The withdrawal can be declared within one week. The period shall commence as soon as it is apparent to the consumer that the circumstances referred to in paragraph 1 do not arise or arise only to a significantly lesser extent and the consumer has received written notification of this right of withdrawal. The right of withdrawal

However, it shall expire no later than one month after the complete performance of the contract by both contracting parties, and in the case of banking and insurance contracts with a term exceeding one year, no later than one month after the contract has come into force.

- 4) The consumer is not entitled to the right of withdrawal in case of error if:
- a) he already knew or should have known at the time of the contract negotiations that the relevant circumstances would not occur or would only occur to a significantly lesser extent;
  - b) the exclusion of the right of withdrawal has been negotiated in detail; or
  - c) the Contractor agrees to a reasonable adjustment of the contract.
- 5) Art. 4 para. 4 shall apply mutatis mutandis to the declaration of withdrawal.

#### Art. 6

##### *Consequences of the withdrawal*

- 1) If the consumer withdraws from the contract in accordance with Art. 4 or 5, Zug um Zug:
- a) the Entrepreneur shall reimburse all services received together with statutory interest from the date of receipt and reimburse the necessary and useful expenses incurred by the Consumer on the item;
  - b) the consumer must return the services received and pay the contractor an appropriate fee for the use of the services, including compensation for any associated reduction in the fair market value of the services; the transfer of the services to the custody of the consumer is not in itself to be regarded as a reduction in value.
- 2) If the restitution of the services already rendered by the Entrepreneur is impossible or impracticable, the Consumer shall compensate the Entrepreneur for their value, insofar as they are to the Entrepreneur's clear and predominant advantage.
- 3) Paragraphs 1 and 2 shall not affect claims for damages.

#### Art. 7

##### *Quotations*

- 1) For the preparation of a cost estimate within the meaning of § 1159 ABGB by the entrepreneur, the consumer has to pay a fee only if he was previously informed of this payment obligation.
- 2) If the contract is based on a cost estimate of the Contractor, then

its correctness is deemed to be guaranteed, unless the opposite is expressly stated.

Art. 7a

*General information obligations of the entrepreneur*

1) Before the consumer is bound by a contract or his contractual declaration, the entrepreneur must inform him in a clear and comprehensible manner about the consequences, unless this information is already directly apparent from the circumstances:

a) the essential characteristics of the goods or services to the extent reasonable for the data carrier and the goods or services;

b) the name or company name and telephone number of the Contractor and the address of its establishment;

c) the total price of the goods or services including all taxes and duties, but if the price cannot reasonably be calculated in advance due to the nature of the goods or services, the method of calculating the price and, if applicable, any additional freight, delivery or shipping costs or, if such costs cannot reasonably be calculated in advance, the possible incurrence of such additional costs;

d) if applicable, the terms of payment, delivery and performance, the period of time within which the goods will be delivered or the service will be provided after the entrepreneur's promise, as well as any procedure provided for the entrepreneur's handling of complaints;

e) in addition to the reference to the existence of a statutory warranty right for the goods, where applicable, the existence and conditions of after-sale customer services and commercial guarantees;

f) where applicable, the term of the contract or the conditions for terminating open-ended contracts or automatically renewing contracts;

g) where applicable, the functioning of digital content, including applicable technical protection measures for such content; and

h) where applicable, to the extent material, the interoperability of Digital Content with hardware and software, to the extent that such interoperability is known or reasonably should be known to Contractor.

2) The information requirements set forth in paragraph 1 do not apply to contracts:

a) about transactions of daily life, which at the time of the conclusion of the contract

be fulfilled immediately;

b) subject to the Remote and Off-Site Transactions Act;

c) on social services including the provision and rental of social housing, child care or assistance to families or persons in need of permanent or temporary assistance, including long-term care;

d) on healthcare services pursuant to Art. 3(a) of Directive 2011/ 24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (EEA Collection of Laws: Annex X 2.01), regardless of whether they are provided by a healthcare facility;

e) on games of chance that require a monetary stake, including lotteries, gambling in casinos and betting;

f) on financial services;

g) on the establishment, acquisition or transfer of ownership or rights thereto in immovable property;

h) on the construction of new buildings, significant remodeling of existing buildings, or the rental of residential space;

i) on package travel within the meaning of Article 3(2) of Directive (EU) 2015/2302 on package travel, package holidays and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/ EU and repealing Directive 90/314/EEC ([OJ L 326, 11.12.2015, p. 1](#));

k) falling within the scope of Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term vacation product, resale and exchange contracts (EEA Corp.: Annex XIX 7b.01);

l) concluded before a public official who is legally obligated to be independent and impartial and who must ensure, through comprehensive legal information, that the consumer concludes the contract only on the basis of thorough legal examination and in knowledge of its legal implications;

m) on the supply of foodstuffs, beverages or other household goods for daily use, which are supplied by the entrepreneur in the

Delivered within the framework of frequent and regular trips to the consumer's residence, place of stay or place of work;

- n) on the carriage of passengers;
- o) closed using vending machines or automated business premises;
- p) concluded with operators of means of telecommunication using public telephones for their use or concluded for the use of a single telephone, Internet or fax connection established by a consumer.

Art. 7b

*Profit pledges*

Entrepreneurs who address prize promises or other comparable communications to certain consumers, thereby creating the impression that the consumer has won a certain prize, must pay this prize to the consumer; it may also be claimed in court.

Art. 8

*Inadmissible contractual components*

- 1) For the consumer are particularly such contractual provisions within the meaning of § 879 ABGB in any case not binding, according to which:
  - a) the trader has set himself an unreasonably long or insufficiently definite period of time during which he can accept or reject the consumer's request for a contract or during which the consumer is bound by the contract;
  - b) a certain conduct of the consumer shall be deemed to constitute the making or nonmaking of a declaration, unless the consumer is specifically informed of the significance of his conduct at the beginning of the period provided for this purpose and is given a reasonable period of time to make an express declaration;
  - c) a legally significant statement by the Entrepreneur which has not been received by the Consumer shall be deemed to have been received by the Consumer, unless it is a question of the validity of a statement sent to the Consumer's last known address in the event that the Consumer has not notified the Entrepreneur of a change of address;
  - d) a notification or declaration to be made by the consumer to the entrepreneur or a third party must be made in a form that is more stringent than the written form or in a special form.



has to meet access requirements;

e) the Contractor is entitled, at his request, to a higher remuneration for his performance than the remuneration determined at the time of the conclusion of the Contract, unless the Contract also provides for a reduction in remuneration if the agreed conditions for a change in remuneration are met, the circumstances determining the change in remuneration are described in the Contract and are objectively justified and their occurrence does not depend on the Contractor's will;

f) the consumer's right to refuse performance pursuant to Section 1052 of the Austrian Civil Code (ABGB) until counter-performance has been effected or secured is excluded or limited in the event that the entrepreneur fails to perform in accordance with the contract or its performance is jeopardized by the entrepreneur's poor financial circumstances, which were neither known nor should have been known to the consumer at the time the contract was concluded, for example by making the right to refuse performance dependent on the entrepreneur acknowledging defects in its performance;

g) a right of retention to which the consumer is entitled by law is excluded or limited;

h) the right of the consumer to set off his liabilities is excluded or limited in case of insolvency of the entrepreneur or for counterclaims which are legally connected with the consumer's liability, which have been determined by a court or which have been acknowledged by the entrepreneur;

i) an obligation of the Contractor to compensate for damage to the person is excluded or limited or an obligation of the Contractor to compensate for other damage is excluded or limited in the event that he or a person for whom he is responsible has caused the damage intentionally or through gross negligence;

k) the entrepreneur or a body or person under his control is authorized to decide with binding effect for the consumer whether the services provided to him by the entrepreneur comply with the agreement;

l) imposes a burden of proof on the consumer that is not imposed on him by law;

m) the consumer's rights to an item that the entrepreneur has taken over for processing expire in an unreasonably short period of time;

n) the interest payable in the event of the consumer's default exceeds the interest rate agreed for the case of contractual payment by more than 5 percentage points per year;

o) the right to assert a mistake made by him or the defect or the omission of the basis of the transaction is excluded or limited in advance, for example also by an agreement according to which promises of the contractor do not concern the main thing or an essential quality of the same (§ 871 ABGB);

p) he undertakes to pay collection costs after the occurrence of the default, unless these costs are shown separately and itemized in the agreement or insofar as these costs were not necessary for the appropriate collection of the claim.

2) Unless the Contractor proves that they were negotiated in detail, the same shall apply to contractual provisions according to which:

a) the entrepreneur can withdraw from the contract without factual justification;

b) the entrepreneur is granted the right to assign his obligations or the entire contract with debt-discharging effect to a third party who is not named in the contract;

c) the entrepreneur may unilaterally change or deviate from a service to be provided by him, unless the change or deviation is reasonable for the consumer, especially because it is minor and objectively justified;

d) the Contractor is entitled, at its request, to a higher remuneration for its performance to be rendered within two months of the conclusion of the Contract than the remuneration originally determined;

e) an obligation of the Contractor to compensate for damage to an item which he has accepted for processing is excluded or limited;

f) claims of the consumer under § 908 ABGB be limited or excluded.

3) A contractual provision contained in general terms and conditions or contract forms shall be invalid if it is unclear or incomprehensible.

#### Art. 8a

##### *Fulfillment of a monetary debt*

1) Unless the nature of the contractual relationship dictates otherwise, e.g. in the case of step-by-step

If cash payment is customary for contracts to be performed, the entrepreneur shall provide the consumer with a customary bank account for the performance of the consumer's monetary debt. This shall not apply if a specific other method of performance has been agreed, e.g. by way of collection or by credit card.

2) If a consumer's monetary debt to an entrepreneur is fulfilled by bank transfer, it is sufficient for the timeliness of the fulfillment, in deviation from § 907a para. 2 first sentence ABGB, that the consumer issues the transfer order on the day of the due date, even if the due date is determined in advance.

#### Art. 8b

##### *Costs of telephone contact after conclusion of the contract*

If the entrepreneur has set up a telephone connection in order to enable his contractual partners to contact him by telephone in connection with concluded consumer contracts, he may not charge a consumer who makes use of this possibility. This shall not affect the right of telecommunications service providers to charge fees for actual communications services.

#### Art. 8c

##### *Additional payments*

1) An agreement by which a consumer undertakes to make further payments in addition to the remuneration agreed for the main service, e.g. as remuneration for an additional service of the entrepreneur, shall only be validly concluded if the consumer expressly consents thereto. In particular, such consent is not given if the consumer would have to reject a default setting made by the entrepreneur in order to avoid a contractual declaration, but fails to do so.

2) In the absence of the consent required under paragraph 1, the entrepreneur shall reimburse the consumer for any additional payments made.

3) The consumer may subsequently bring about the effectiveness of the agreement by expressly agreeing to it within the meaning of paragraph 1.

4) Paragraphs 1 to 3 do not apply to the contracts listed in Art. 7a par. 2 letters c to h, k to m, o and p.

#### Art. 9

##### *Deposit and repentance money*

If the entrepreneur is entitled to withhold or reclaim a deposit (§ 908 ABGB) or the consumer is obliged to pay a penalty (§ 909 ABGB), the judge may reduce the deposit or the penalty in analogous application of § 1336 para 2 ABGB.

Art. 9a

*Performance period for contracts for goods*

In the absence of any other contractual agreement, the Entrepreneur shall make the goods available without undue delay, but in any case not later than 30 days after the conclusion of the contract or, if the delivery of the goods has been agreed, deliver them to the Customer.

Art. 9b

*Transfer of risk when sending the goods*

If the entrepreneur sends the goods, the risk of loss or damage to the goods shall not pass to the consumer until the goods are delivered to the consumer or to a third party designated by the consumer and chosen by the carrier. If, however, the consumer has concluded the contract of carriage himself without making use of a choice suggested by the carrier, the risk shall pass as soon as the goods are handed over to the carrier. In the absence of any other agreement, the consumer acquires ownership of the goods at the same time as the risk is transferred.

Art. 10

*Warranty*

1) If the entrepreneur is obliged to improve or replace (§ 932 ABGB), he has to fulfill this obligation:

a) at the place where the item was handed over. If the entrepreneur has transported or shipped the goods to a place within the country in accordance with the contract, this place shall take the place of the place of delivery; or

b) if the consumer so requires, at the place where the goods are usually located, provided that this place is within the country, it was not necessary for the entrepreneur to move the goods quickly, and provided that the nature of the goods makes it impossible for the consumer to transport them to the entrepreneur, in particular because the goods are bulky, heavy or have become immovable due to installation.

2) The entrepreneur may require that the consumer, if it is for this

the item is feasible. However, the entrepreneur shall bear the risk of the delivery.

3) The necessary costs of improvement or replacement, in particular shipping, labor and material costs, shall be borne by the Contractor.

#### Art. 11

##### *Exclusion and limitation of warranty*

Warranty rights of the consumer (§§ 932 to 933 ABGB) cannot be excluded or limited before knowledge of the defect. The agreement of a shorter warranty period than the statutory warranty period is invalid, but the warranty period may be reduced to one year in the case of the sale of used movable goods, provided this is negotiated in detail. In the case of motor vehicles, such a reduction is only effective if more than one year has elapsed since the date of first registration.

#### Art. 12

##### *Warranty for assemblies*

If the Contractor was obliged to assemble the item under the contract, he shall also be liable for any defect in the item caused by his improper conduct. The same shall apply if the item was intended for assembly by the consumer and the improper assembly is due to a defect in the assembly instructions.

#### Art. 13

##### *Contractual guarantee*

1) If an entrepreneur undertakes vis-à-vis a consumer to improve, replace, refund the purchase price or otherwise remedy the defect (guarantee), he shall also refer to the legal warranty obligation of the transferor and to the fact that it is not limited by the guarantee. The entrepreneur is bound to the promises made in the guarantee declaration and to the contents of the guarantee announced in the advertising.

2) The guarantee declaration shall contain the name and address of the guarantor as well as, in a simple and comprehensible form, the content of the guarantee, in particular its duration and territorial validity, and the other information necessary for its claim. If the declaration does not specify the guaranteed properties

If the warranty does not cover the goods, the guarantor shall be liable for the fact that the goods have the properties usually assumed.

3) The guarantee shall be disclosed to the consumer at his request in writing or on another durable medium available to him.

4) If the guarantor violates the provisions of paragraphs 1 to 3, this shall not affect the validity of the guarantee. Furthermore, the Guarantor shall be liable to the Consumer for the damage caused by the breach.

Art. 14

*Scope of the power of representation and oral commitments*

1) A power of attorney granted by an entrepreneur extends, subject to special statutory provisions on the scope of the power of attorney, in dealings with consumers to all legal acts which such transactions usually entail. A restriction of this power of attorney is only effective vis-à-vis the consumer if he was aware of it.

2) If the consumer was not aware of the limitation of the power of attorney only due to gross negligence, the entrepreneur shall have the right to withdraw from the contract without prejudice to the assertion of this circumstance under other provisions. The withdrawal must be made immediately after the entrepreneur has become aware of the exceeding by the representative.

and the circumstances from which the gross negligence of the consumer arises.

3) The legal validity of informal declarations made by the entrepreneur or his representatives cannot be excluded by contract to the detriment of the consumer.

Art. 15

*Prohibition of order change*

1) The entrepreneur may only accept a consumer's bill of exchange liability for his claims against the consumer if the customer is the bill of exchange customer (Art. 1(f) and Art. 75(e) of the Bills of Exchange Act) and the bill of exchange contains the words "not to order" or an equivalent endorsement. A violation of this provision shall not affect the legal validity of the bill of exchange.

2) If subsection 1 has not been complied with, any consumer who has redeemed the bill of exchange shall be entitled to payment from the entrepreneur of an amount equal to the amount of the recourse, unless the entrepreneur proves that the

the consumer has been released from an obligation to pay this amount, which also existed without the bill of exchange, by the acceptance or fulfillment of the bill of exchange liability.

Art. 16

*Prohibition of salary assignment*

- 1) A consumer's wage or salary claim may not be assigned to the entrepreneur to secure or satisfy his claims that are not yet due.
- 2) If the employer has paid amounts to the entrepreneur or a third party on the basis of a wage or salary claim assigned contrary to para. 1 with the effect that he has been released from the consumer's wage or salary claim, the consumer shall be entitled to compensation from the entrepreneur for this amount unless the entrepreneur proves that the consumer has been released from a debt by the assignment or payment of the wage or salary claim.

Art. 17

*Deadline loss*

If the consumer has to pay his debt in installments and the entrepreneur has reserved the right to demand immediate payment of the entire outstanding debt in case of non-payment of partial amounts or additional claims (forfeiture), he may exercise this right only if:

- a) he himself has already performed his service;
- b) at least one overdue payment by the consumer has been due for at least six weeks; and
- c) the Entrepreneur has unsuccessfully sent a reminder to the Consumer under the threat of losing the deadline and setting a grace period of at least two weeks.

Art. 18

*Consumer contracts with a foreign connection*

1) If the parties to a consumer contract with a foreign connection have chosen the law of a country that is not a contracting state of the Agreement on the European Economic Area (EEA), this choice of law is relevant for the assessment:

- a) the validity and consequences of the invalidity of a provision of the contract that does not specify one of the main services provided by both parties;

- b) the consequences of an unclear and incomprehensible contractual provision;
- c) warranty and guarantee for the purchase or manufacture of movable goods as defined in Articles 10 to 13 and Sections 922 to 924, 928, 932 and 933 of the General Civil Code;
- d) of protection in the conclusion of contracts under the Distance and Off-Site Selling Act and the Distance Financial Services Act.

Law;

- e) of protection in consumer credit agreements and other forms of credit within the meaning of Directive 2008/48/EC;

irrelevant insofar as the chosen law is more disadvantageous for the consumer than the law that would be applicable without the choice of law. This shall only apply if, without the choice of law, the law of a state which is a contracting state of the EEA would be applicable.

2) Art. 8 and §§ 864a and 879 para. 3 ABGB shall be applied for the protection of the consumer irrespective of the law to which the contract is subject if it has been concluded in connection with an activity of the entrepreneur or of the persons used by him for the conclusion of such contracts which is carried out in Liechtenstein.

Art. 19

*Jurisdiction*

1) If the consumer is domiciled or habitually resident in Austria or if he is employed in Austria, an action may be brought against him in accordance with the provisions of the German Civil Code.

In accordance with §§ 43, 44, 46 para. 2 and 53 para. 1 JN, only the jurisdiction of the Princely Regional Court may be established.

2) The absence of domestic jurisdiction shall be perceived ex officio at any stage of the proceedings.

3) An agreement excluding a place of jurisdiction given by law for an action of the consumer against the entrepreneur shall be legally ineffective vis-à-vis the consumer.

4) Paragraphs 1 to 3 shall not apply in whole or in part if international law or special legal provisions expressly provide otherwise.

C. Special types of contracts Art. 20

*Contracts for recurring services*



1) Contracts by which the Contractor undertakes to repeatedly deliver movable tangible property, including energy, or to repeatedly perform work, and the Consumer undertakes to repeatedly pay money, and which have been concluded for an indefinite period or for a period exceeding one year, may be terminated by the Consumer by giving two months' notice to the end of the first year, and thereafter to the end of each half year.

2) If the entirety of the goods to be delivered is a service of an indivisible nature, the scope and price of which are already determined at the time of the conclusion of the contract, the first termination date may be extended until the expiry of the second year may be postponed. In such contracts, the notice period may be extended to a maximum of six months.

3) If the performance of a specific contract referred to in paragraph 1 or of contracts with a group of already specified individual consumers requires substantial expenses on the part of the entrepreneur and if he has informed the consumer of this fact at the latest at the time of the conclusion of the contract, the entrepreneur may, in accordance with the circumstances and deviating from paragraphs 1 and 2, deduct from the price of the contract the costs incurred by the consumer for the performance of the contract.

2 different termination dates and periods of notice may be agreed.

4) A termination by the consumer that has not been given in due time shall take effect as of the next termination date after the expiry of the notice period.

#### Art. 21

##### *Installment business*

1) Art. 23 to 30 apply to instalment transactions in which:

a) the cash payment price does not exceed 34,000 Swiss francs or it is not known at the time the contract is concluded that it will exceed 34,000 Swiss francs; and

b) after the performance of the Contractor's services, apart from one payment, at least two partial payments are to be made.

2) A hire-purchase agreement within the meaning of these provisions is a contract for the sale of a tangible movable item, on the basis of which the trader is obliged to hand over the item to the consumer prior to full payment and the consumer is obliged to pay the consideration in installments.

3) The cash payment price within the meaning of these provisions shall be the consideration that would be payable in the event of such continuous cash payment, and the total consideration shall be the cash payment price including all interest and other surcharges.

Art. 22

*Equated transactions*

Articles 23 to 30 shall apply mutatis mutandis to legal transactions other than contracts of sale, subject to the conditions set out in Article 21, if the parties involved pursue the same economic purpose as in an instalment transaction.

Art. 23

*Third-party financing transactions*

If the same economic purpose is pursued by a third party providing the funds for the consideration (financier) and the consumer has to pay the amount owed to the financier in installments, Art. 22 shall also apply to the relationship of the consumer to the financier if the contracts with the entrepreneur and the financier form an economic unit for the latter. This is assumed to be the case if the lender and the entrepreneur enter into a legal relationship with each other in the course of this transaction or if they have a continuous business relationship with each other due to such financing. In this case, the consumer may also refuse to satisfy the lender insofar as he is entitled to objections against the latter arising from his legal relationship with the entrepreneur.

Art. 24

*Special case of third-party financing*

If, in the case of a contract of sale which is neither an instalment transaction nor covered by Art. 23, the same economic purpose is pursued by the businessman, in economic unity with the contract, inducing the consumer to take out a loan repayable in instalments in order to pay the consideration and assisting in the preparation of the taking out of the loan, Arts. 23 to 30 shall apply mutatis mutandis to the relationship between the businessman and the consumer, with the following special features:

- a) insofar as the content of the loan agreement is decisive, the consumer cannot invoke a deviation of the actually concluded loan agreement from the envisaged loan agreement;
- b) if the consumer has to make payments to the lender which he would not be obliged to make if the loan agreement were a legal transaction under Art. 23, the entrepreneur shall release the consumer from the obligation to pay these amounts to the lender or reimburse the consumer for amounts already paid.

Art. 25

*Down payment*

1) The consumer must pay a part of the cash price at the latest at the time of handing over the item. The deposit must be at least 10

% of the cash payment price or, if this exceeds 350 francs, at least 20

% of the cash payment price. If a movable tangible thing is given as a down payment, its fair value shall be taken into account. In the cases referred to in Articles 23 and 24, the consumer may make the down payment either to the entrepreneur or to the lender.

2) If the entrepreneur hands over the item to the consumer without having received the minimum down payment (para. 1), he shall not be entitled to the part of the purchase price corresponding to the down payment not made.

Art. 26

*Runtime*

The consumer shall repay the outstanding instalment claims at the latest within five years from the handover of the item. If a longer repayment period has been agreed, the entrepreneur shall not be entitled to the part of the interest and other surcharges that would be payable after the expiry of five years if they were divided equally over the entire repayment period.

Art. 27

*Non-performance by the consumer*

1) If, in the cases referred to in Art. 23, the lender has reserved the right to deprive the consumer of the use of the object and to sell it on the open market on account of the consumer's failure to perform his obligations, the assertion of these rights shall not be regarded as a rescission of the contract if the preconditions of Art. 17 for the loss of the term are fulfilled and the consumer is credited with the entire proceeds in the event of the sale, but at least with the fair market value which the object had at the time of the sale.

2) In the cases referred to in Article 23, the reimbursement and maintenance obligations of the providers of funds under Article 6(1)(a) also include the benefits received by the entrepreneur.

Art. 28

*Warranty*

As long as the purchase price has not been paid in full, the claim for warranty due to material defects can be asserted by legal action beyond the periods provided for in § 933 ABGB (Austrian Civil Code) until the due date of the last partial payment. The Buyer reserves the right to assert the claim by way of a plea if he has notified the Seller of the defect by that time.

Art. 29

*Installment letter*

- 1) The agreement on the installment transaction shall be recorded in writing (installment letter). The installment letter must contain:
- a) the first name and surname (company name), profession (subject of the business) and habitual residence (registered office) of the contracting parties;
  - b) the date and place of the consumer's contract application or acceptance;
  - c) the subject of the instalment transaction;
  - d) the cash price;
  - e) the total charge and the amount of the resulting effective annual interest rate;
  - f) the amount of the deposit;
  - g) the number, amount and due date of partial payments;
  - h) the date of delivery of the thing;
  - i) a statement as to whether and how many bills of exchange have been handed over as security for the outstanding partial payment claims and whether other security, including an all- due reservation of title, has been agreed; and
  - k) in the case of the first sentence of Art. 4 par. 1, the wording of Art. 4 (Consumer's Right of Withdrawal) together with the heading, but without the last sentence of par. 1.
- 2) Immediately after the consumer has signed the installment letter, the entrepreneur shall provide the consumer with a copy of the installment letter at his own expense; the information specified in paragraph 1 shall be clearly reproduced therein.
- 3) The legal validity of the instalment transaction is independent of the establishment of the letter of intent.

Art. 30

*Payment transactions in the trade of printed products*

1) Art. 29 applies to installment contracts in the trade of printed matter only if the transaction was concluded under such circumstances in which the consumer is entitled to withdraw from the contract according to Art. 4.

2) In the cases referred to in Art. 23, the entrepreneur and the consumer shall draw up separate deeds on the purchase agreement and the lender and the consumer shall draw up separate deeds on their legal transaction. Together they form the installment note. The deed of sale shall contain the information specified in Art. 29 Para. 1 Letters a to d, f, h and k, and the deed of the other legal transaction shall contain the information specified in Art. 29 Para. 1 Letters a, c, g and i mutatis mutandis, as well as the financed consideration or the financed portion of the consideration and the consideration for the credit. The obligation under Art. 29(2) applies to the entrepreneur and the lender only in respect of the documents to be drawn up by each of them.

3) In the cases referred to in Art. 24, the entrepreneur and the consumer shall draw up a deed on the contract; it shall be deemed to be an installment note. The deed shall contain the information specified in Art. 29 par. 1 letters a, b, h and k, the subject matter of the contract, the consideration and the amount corresponding to the down payment, as well as the amount and the term of the intended loan.

## Art. 31

*Credit transactions of spouses and registered partners*

1) Entrepreneurs whose business purpose is the granting or brokering of loans must inform spouses who jointly take out a loan as consumers, even if one of them only assumes liability as a guarantor, or a spouse who assumes liability as a consumer for an existing loan obligation of the other, by handing over a separate document that:

a) if the spouses are jointly and severally liable, the full amount of the debt may be claimed from each of the debtors in any order, irrespective of which of them received the amount of the credit;

b) the liability remains in force even if the marriage is dissolved;

c) only the court may limit the liability of one of the spouses to a deficiency guarantee in the case of divorce in accordance with Art. 86 of the Marriage Act.

2) The registered partner shall be treated in the same way as the spouse in accordance with para. 1. The judicial dissolution of a registered partnership is equivalent to a divorce or dissolution of marriage.

Art. 32

*Consumer credit liabilities*

- 1) If a consumer is a joint and several debtor of a loan granted by an undertaking referred to in Art. 31, the creditor shall also serve on the consumer any reminder or other notice of default by another joint and several debtor.
- 2) If a consumer is the guarantor of a loan granted by one of the undertakings referred to in Art. 31 and the principal debtor defaults, the creditor shall notify the consumer thereof within a reasonable time. If he fails to do so, the consumer shall not be liable to him for the interest and costs incurred from the time when the creditor became aware of the default of the principal debtor until the consumer himself defaults.

Art. 33

*Consumer as co-debtor, guarantor or surety*

If a consumer joins a debt as co-debtor, guarantor or surety (intercession), the creditor must inform him of the debtor's economic situation if he realizes or must realize that the debtor will probably not or not completely fulfill his obligation. If the entrepreneur fails to provide this information, the intercessor is liable only if he would have assumed his obligation despite such information.

Art. 34

*Right of moderation*

1) The judge may reduce or waive the liability of an intercessor (Art. 33) to the extent that it is not included in a contract, taking into account the

The creditor shall be entitled to demand that the debtor's performance be disproportionately disproportionate to the creditor's performance, provided that the fact that the consumer is merely an intermediary and the circumstances giving rise to or causing the disproportion were apparent to the creditor at the time the debt was incurred.

- 2) When making the decision in accordance with Paragraph 1, particular consideration shall be given to:
  - a) the creditor's interest in establishing the intercessor's liability;
  - b) the fault of the intercessor in the circumstances that created or brought about the disproportion referred to in paragraph 1;
  - c) the benefit of the intercessor from the creditor's performance; and
  - d) the recklessness, the predicament, the inexperience, the excitement of mind or

the dependence of the intermediary on the debtor at the time of the establishment of the liability.

Art. 35

Repealed

Art. 36

Repealed

Art. 37

*Housing Improvement*

KSchG

1) Contracts for the renovation of residential premises shall be made in writing if the Customer is a consumer and if they are concluded under circumstances that entitle him to withdraw from the contract in accordance with Article 4.

2) The contract document shall contain:

a) the first name and surname (company name), profession (subject of the business) and habitual residence (registered office) of the contracting parties;

b) the date and place of the contract application or the contract acceptance by the consumer;

c) the subject of the contract, specifying the manufacturer and type of goods to be delivered for the performance of the contract, provided that their description with manufacturer and type is customary;

d) the amount and due date of the payments to be made;

e) if the consumer's withdrawal has been excluded in accordance with Art. 5 Para. 4 letter b, this agreement;

f) an instruction about the right of withdrawal according to Art. 4 and 5.

3) The entrepreneur shall provide the consumer with a copy of the contract document at his own expense immediately after the consumer has signed it. The contract document shall contain the information specified in paragraph 2 in a clearly legible manner.

4) The legal validity of a contract under para. 1 shall be independent of the drawing up of the contract document.

5) The provisions of paragraphs 1 to 4 shall not apply to contracts for the renovation of residential premises that are subject to the Distance and Foreign Transactions Act.

Art. 38

*Prepayment purchases*

The consumer may withdraw from a contract for the delivery of a movable tangible item, by which the consumer undertakes to pay the purchase price in advance in instalments, as long as the contract is not completely fulfilled by both parties and as long as the goods can only be determined by declaration of the contracting parties or the price is not fixed according to the price conditions at the time of the conclusion of the contract. Art. 6 shall apply *mutatis mutandis* to the restitution of services already rendered.

Art. 39

*Contract for work*

If the performance of a work has failed and the entrepreneur nevertheless demands the agreed remuneration (§ 1156 para. 1 ABGB), he shall inform the consumer of the reasons why he has neither saved anything nor acquired or intentionally neglected to acquire anything as a result of the failure to perform the work.

D. Data

protection

Art. 39a

*Processing of personal data*

- 1) The entrepreneur may process personal data, including health data and personal data on criminal convictions and criminal offenses, about consumers that it requires in connection with the conclusion and performance of a consumer contract under this Act.
- 2) The entrepreneur must take appropriate measures to ensure that, in particular, the principles for the processing of personal data under data protection legislation are complied with.

II. Action by  
associations

Art. 40

*Injunctive relief*

1) Any person who, in the course of business, in general terms and conditions on which he bases contracts concluded by him or in contract forms used in this connection, provides for terms and conditions which are contrary to a statutory prohibition or to good morals, or who recommends such terms and conditions in the course of business, may be sued for injunctive relief. This prohibition also



includes the prohibition of relying on such a condition to the extent that it is

has been impermissibly agreed.

2) The risk of using and recommending such conditions no longer exists if the entrepreneur, after being warned by an institution entitled to bring an action pursuant to Art. 42, issues a cease-and-desist declaration within a reasonable period of time, secured by an appropriate contractual penalty (Art. 1336 of the German Civil Code).

Art. 41

*Injunction*

1) Any person who, in the course of business with consumers in connection with door-to-door sales, off-premises transactions

The following provisions shall not apply to contracts, the trader's general information obligations (Art. 7a), consumer credit relationships, package travel contracts and contracts for the provision of linked travel services, timeshare relationships, distance contracts, the agreement of unfair contract terms, the warranty or guarantee for the purchase or manufacture of movable property, the demand for telephone charges (Art. 8b) or additional payments (Art. 8c), the performance period (Art. 9a) or the transfer of risk (Art. 9c). 8b) or additional payments (Art. 8c), the term of performance (Art. 9a) or the passing of risk (Art. 9b), in connection with information society services in electronic commerce, investment services, asset management services, payment services or the issuance of electronic money violates a legal requirement or prohibition, in connection with alternative dispute resolution (Art. 18 AStG) or online dispute resolution (Art. 14 para. 1 and 2 of the Regulation (EU) No. 524/2013) or violates a legal requirement or prohibition under Directive 2006/123/EC on services in the internal market (EEA Law Series: Annex X 1.01) in the provision of services in the internal market, thereby adversely affecting the general interests of consumers, may be sued for injunctive relief, without prejudice to Article 40(1).

2) Art. 40 Para. 2 shall apply *mutatis mutandis*.

Art. 42

*Right of action*

1) The claim for injunctive relief may be asserted:

- a) of professional and trade associations authorized by the Articles of Association to safeguard the economic interests of their members;
- b) organizations that are dedicated to consumer protection nationwide and in accordance with their articles of association; and
- c) by the representative of the public law.

2) If the origin of the infringement (Art. 40 par. 1 and Art. 41 par. 1) is in Liechtenstein, the claim under par. 1 may also be brought by any entity of another contracting state of the EEA qualified according to Art. 3 of Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests (EEA Law Series: Annex XIX - 7d.01), provided that the interests protected by that entity in that state are

and the purpose of the publication justifies this action.

3) The Government or an office delegated by it shall notify the Standing Committee of the EFTA States:

a) the right of action of a qualified entity within the meaning of subsection 2 upon application;

b) the name and purpose of the qualified entity.

4) The Standing Committee of the EFTA States shall maintain a list of qualified entities.

5) Proof of publication in the directory must be provided when the claim is filed.

### III. Package travel

contract Art. 43

Repealed Art.

44 Repealed

Art. 45

Repealed Art.

46 Repealed

Art. 47

Repealed Art.

48 Repealed

### IV. Penal provisions

Art. 49

*Transgressions*

1) An entrepreneur or, in the cases referred to in Article 23, also the financier, or a representative acting on their behalf or on behalf of these persons, shall be punished by the Office of National Economy for a misdemeanor by a fine of up to 5,000 francs or, in the case of a repeated offence, up to 20,000 francs, provided that the offence does not constitute a criminal offense falling within the jurisdiction of the courts or is punishable by a more severe penalty under other administrative penal provisions:

a) refrains from doing it:

1. to fulfill the information requirements according to Art. 7a completely and with accurate information;

2. to provide or deliver the goods in time within the meaning of Art. 9a;

3. to issue an installment letter (Art. 29 par. 1) or a deed provided for in Art. 30 and 37 par. 1, containing the information prescribed in Art. 29 par. 1, Art. 30 par. 2 and 3, and 37 par. 2, respectively;

4. to deliver to the consumer, after signing the installment letter or the contract document, a copy in which the prescribed information is clearly legible (Art. 29 par. 2 and Art. 37 par. 3);

5. to instruct or inform the borrower or intermediary in accordance with Articles 31 to 33;

a) violates Art. 37 par. 3;

b) violates the prohibition of order changes (Art. 15);

c) violates the prohibition of salary assignment (Art. 16);

d) sends goods or provides services to a consumer without the consumer's initiative and combines this with a request for payment; or

e) includes incorrect information in the document to be issued to the consumer pursuant to Art. 4 Para. 1.

f) Retrieved

2) If, in the case of paragraph 1(d), a third party enforces the bill of exchange debt against the consumer or his guarantor, or if, in the case of paragraph 1(c), the employee or a third party enforces the assigned wage or salary claim against the employer, the upper limit of the fine may be exceeded up to the amount of the bill of exchange sum or the amount whose payment has been demanded by the employer, but in any case up to twice the amount.

3) In the cases referred to in Paragraph 1(b) and (c), the limitation period shall begin to run on the earlier of the date on which the bill of exchange is asserted or the date on which the bill of exchange is returned or destroyed or the date on which the assigned wage or salary claim against the employer is settled or the date on which the assignment is reversed.

IVa. Data

protection Art.

49a

*Processing and transmission of personal data*

1) The Office of National Economy may process personal data, including health data and personal data on criminal convictions and offences, on entrepreneurs and consumers to the extent necessary for the performance of its duties under this Act.

2) The Office of National Economy may transmit data pursuant to para. 1 to other competent bodies and authorities as well as courts and the public prosecutor's office if they require the data for the performance of their statutory duties.

V. Transitional and final provisions Art. 50

*Executive Orders*

The Government shall issue the regulations necessary for the implementation of this Act.

Art. 51

*Transitional provisions*

Contracts concluded before the date of entry into force of this Act shall be governed by the previous law.

Art. 52

*Repeal of previous law*

It is repealed:

- a) Act of November 18, 1964, on the contract of instalment and advance payment, LGBl. 1965 No. 6;
- b) Act of 22 October 1992 on Package Travel, LGBl. 1992 No. 120;
- c) Act of October 22, 1992, on Consumer Protection in Doorstep Sales and Similar Contracts, LGBl. 1992 No. 113.

Art. 53

*Entry into force*

This Act shall enter into force on the day of its promulgation.



## **VI. Notaries Act**

from 3 October 2019

I hereby give my consent to the following resolution adopted by the Diet:

### **I. General provisions Art. 1**

#### *Subject*

This law regulates:

- a) access to the profession of notary and the rights and obligations associated with the practice of the profession;
- b) the establishment of notarial deeds and notarial certification in Liechtenstein.

#### **Art. 2**

*Notarization and certification by courts and authorities; voluntary nature of the notarial act*

- 1) The provisions of other laws and regulations concerning certification and authentication by courts and authorities shall not be affected by this Act.
- 2) This law does not establish a notarial duty.

#### **Art. 3**

#### *Designations*

The personal, professional and functional designations used in this Act shall apply to persons of the female and male genders.

### **II. Liechtenstein Notary's Office**

#### **A. Access to the profession**

##### **1. Notary**

#### **Art. 4**

#### *Requirements for the practice of the profession*

- 1) The profession of Notary may be exercised by anyone who fulfills the requirements of Paragraph 2 and is entered in the list of Liechtenstein Notaries (Notaries' List).



- 2) Prerequisites according to para. 1 are:
  - a) Ability to act;
  - b) Trustworthiness;
  - c) Liechtenstein national citizenship or citizenship of another State party to the Agreement on the European Economic Area (EEA Treaty State) or of a State treated as such on the basis of an international treaty;
  - d) Successfully passed the bar exam or successfully completed notariate training in an EWRA member state or Switzerland;
  - e) Three years of effective and regular practice as a lawyer or notary public in a country that is a party to the EWRA or in Switzerland;
  - f) successfully passed notary examination according to Art. 5;
  - g) Conclusion of liability insurance in accordance with Art. 20; and
  - h) domestic registered office according to Art. 17.
- 3) The proofs of fulfillment of the requirements under Paragraph 2(a), (b) and (g) shall not be older than three months at the time of their submission.
- 4) The notary shall immediately notify the Chamber of Notaries in writing of any change in the requirements under Paragraph 2.

#### Art. 5

##### *Notary exam*

- 1) Anyone who fulfills the requirements according to Art. 4 Para. 2 Letters a to e is admitted to the notarial examination.
- 2) The application for admission to the notarial examination must be submitted to the Liechtenstein Chamber of Notaries. The Liechtenstein Chamber of Notaries decides on admission.
- 3) The notary examination is to be taken before the Examination Commission for Notaries. It determines the place and time of the examination.
- 4) The notarial examination comprises a written examination and an oral examination in the areas of law relevant to the practice of the profession of notary.
- 5) Persons who meet the requirements for entry in the list of Liechtenstein lawyers (Art. 7 RAG) or in the list of established European lawyers (Art. 7 RAG) are exempt from the written examination pursuant to Par. 4.

(Art. 60 RAG) must be fulfilled.

- 6) If the written notary examination is not passed, it can be repeated at the earliest after one year. If the second written examination is also failed, a final repetition can take place at the earliest after the expiry of three years after the first examination.
- 7) If the oral notary examination is not passed, it can be repeated at the next examination date. If the second oral examination is also failed, the last repetition can take place at the earliest two years after the first examination.
- 8) The government shall regulate the details by ordinance.

#### Art. 6

##### *Entry in the list of notaries*

- 1) A person who proves the fulfillment of the requirements under Article 4, Paragraph 2, shall be entered in the list of notaries upon application by the Chamber of Notaries.
- 2) The Chamber of Notaries shall maintain the necessary surveys and, if the registration is to be refused, shall hear the applicant beforehand.
- 3) The applicant shall be issued a confirmation of the entry in the notarial list.

#### Art. 7

##### *Swearing in*

- 1) Before taking up his professional activity, the notary must pledge obedience to the law, strict observance of the Constitution and conscientious and impartial performance of his duties.
- 2) The oath shall be taken before the President of the Supreme Court.

#### 2. Notary substitute

#### Art. 8

##### *Activity requirements*

- 1) Anyone who fulfills the requirements of Paragraph 2 and is entered in the list of Liechtenstein notarial substitutes (Notarial Substitutes List) may act as a notarial substitute.
- 2) Prerequisites according to para. 1 are:
  - a) Ability to act;

- b) Trustworthiness;
  - c) Liechtenstein national citizenship or citizenship of another State party to the EWRA or of a State treated as equivalent on the basis of an international treaty;
  - d) successfully passed the bar exam or successfully completed a clerkship in a state party to the EWRA or in Switzerland; and
  - e) Proof of liability insurance taken out in accordance with Art. 20 Para. 2.
- 3) The proofs of fulfillment of the requirements under par. 2 letters a, b and e must not be older than three months at the time of their presentation.
  - 4) The substituting notary and the notarial substitute shall immediately notify the notarial chamber in writing of any change in the requirements under paragraph 2.

#### Art. 9

##### *Entry in the list of notary substitutes*

- 1) A person who proves that he/she meets the requirements of Article 8 shall be entered in the list of notarial substitutes by the Chamber of Notaries upon request; the request shall be submitted jointly by the substituting notary and the prospective notarial substitute.
- 2) A notary substitute can always be entered in the list of notary substitutes only as a notary substitute of a particular notary.
- 3) In all other respects, Art. 6 paras. 2 and 3 shall apply *mutatis mutandis*.

#### B. Rights and duties

##### 1. Notaries

#### Art. 10

##### *Scope of professional activity*

- 1) The notary public is authorized to perform notarizations and certifications as well as related activities in accordance with this Act.
- 2) The documents drawn up by notaries are public documents, provided that the legal requirements were observed during their recording and execution.

#### Art. 11

##### *Job title*

Only those who are registered in the list of notaries (Article 6, Paragraph 1) are entitled to use the professional title of public notary.

Art. 12

*Notary substitutes and substitution*

- 1) The notary is entitled to substitute a notarial substitute or, in case of incapacity, another notary under legal liability.
- 2) The notary shall supervise the activities of his notarial substitutes subject to this Act.

Art. 13

*Personal responsibility*

The notary is obliged to exercise his profession independently, in his own name and on his own responsibility.

Art. 14

*Professional honor*

The notary is obliged to uphold the honor and reputation of the profession through honesty and integrity in his professional and non-professional conduct. He must refrain from anything that could diminish confidence in the profession.

Art. 15

*Incompatible employment*

It is incompatible with the practice of the notary's office to engage in such occupations that are contrary to the reputation of the profession.

Art. 16

*Confidentiality*

- 1) The notary is obliged to maintain secrecy about the matters entrusted to him and the facts otherwise made known to him in this capacity, the secrecy of which is in the interest of the persons involved in the notarization or certification. Like a lawyer, he has the right to secrecy in judicial or other official proceedings.
- 2) The notary's right to confidentiality may not be violated by judicial or other official measures, in particular by questioning the notary's assistants or by ordering the surrender of documents, visual, audio or data carriers or by confiscating them,

not be circumvented; special regulations delimiting this prohibition remain unaffected.

3) The notary's right to confidentiality under paragraph 2 also extends to all correspondence between the notary, his party and the persons involved, irrespective of where and in whose custody these correspondences covered by the protection of professional secrecy are located.

4) The notary does not have the right to secrecy if a document is presented to him in the original or as a copy and the notary is to provide information as to whether this document was notarized or certified by him.

5) The notary may provide anyone who can prove a legitimate interest with a copy of a document he has drawn up on request. He is obliged to provide the corresponding information to domestic authorities upon request, without the authority having to prove an interest.

#### Art. 17

##### *Office location*

- 1) The notary is obliged to run a law office with its registered office in the country.
- 2) The office must actually and permanently fulfill the spatial, personnel and organizational requirements for the exercise of the profession of notary.
- 3) If the notary does not fulfill his obligation under paragraphs 1 and 2 despite being requested to do so, the Chamber of Notaries shall prohibit him from practicing as a notary until he provides proof that he has fulfilled this obligation.

#### Art. 18

##### *Stamp and seal*

- 1) The notary must use a notary's stamp approved by the Chamber of Notaries for notarizations and certifications.
- 2) The notary stamp consists of:
  - a) the national coat of arms with the addition "Principality of Liechtenstein"; and
  - b) a circumscription with the name (first name, surname and optionally academic title) of the notary and the addition "Public Notary".
- 3) The notary may use notarial stamps on which the additions "Principality of Liechtenstein" and "Public notary" according to Paragraph 2 are written in a foreign language.

are.

- 4) If a seal is desired or required, the notary uses an adhesive, paper or embossed seal corresponding to the stamp instead of the stamp.
- 5) Stamps and seals shall be kept in such a way that they are personally accessible only to the notary and his notarial substitutes.

Art. 19

*Business supply obligations*

- 1) The notary shall conduct his business with honesty, accuracy and diligence in accordance with the existing legal regulations and shall refuse any cooperation in prohibited, suspicious, pretended or contrary to his conscience business.
- 2) Further obligations to provide services in accordance with Chapter III shall remain unaffected. Art. 20

*Liability insurance*

- 1) Every notary is obliged to take out liability insurance to cover claims for damages against him arising from his professional activity. He must maintain the insurance coverage for the duration of his professional activity and prove this to the Chamber of Notaries upon request.
- 2) If the notary uses one or more notarial substitutes, the insurance cover shall also extend to the activities of the notarial substitutes. The notary must maintain the insurance coverage for the duration of the activity of the notarial substitutes and prove this to the Chamber of Notaries upon request.
- 3) If the notary does not fulfill his obligation under Paragraphs 1 and 2 despite being requested to do so, the Chamber of Notaries shall give him until the provision of  
of proof of fulfillment of this obligation to prohibit the exercise of the profession of notary or the appointment of a notarial substitute.
- 4) The minimum insurance sum must amount to five million Swiss francs per year.
- 5) The insurance coverage of the liability insurance must provide for a subsequent liability of at least three years in cases of expiration or suspension of the authorization to practice the profession. The deductible may not exceed 10 % of the sum insured per claim.

6) The "Special Conditions" of the insurance contract must contain the following text: "The policyholder instructs the insurer to notify the Chamber of Notaries of the Principality of Liechtenstein of the suspension or cessation of insurance coverage."

Art. 21

*Fee*

- 1) The notary has the right of free agreement of a fee.
  - 2) The fee shall be assessed according to the nature and extent of the efforts and the severity of the case.
  - 3) The Chamber of Notaries issues guidelines on the amount of an appropriate honorary.
2. Notary substitutes Art. 22

*Principle*

Unless otherwise provided below, the following provisions on the rights and duties of the notary apply mutatis mutandis to the notarial substitutes:

- a) Art. 14 (Professional Ethics);
- b) Art. 15 (Incompatible Employment);
- c) Art. 16 (Confidentiality);
- d) Art. 19 (Business obligations);
- e) Art. 21 (Fee).

Art. 23

*Scope of activities*

The notary substitute is entitled to perform notarizations and certifications and related activities on behalf of the notary.

Art. 24

*Activity title*

Only those who are registered in the list of notary substitutes (Article 9, Paragraph 1) are entitled to use the title of notary substitute.

Art. 25

*Stamp and seal*

1) If the notary substitute performs notarization or certification, he:

a) to use the notary's stamp (Art. 18) and additionally in the notarization or certification:

1. indicate that the notarization or certification was performed by the notarial substitute on behalf of the notary; and

2. state his or her name (first name, last name and optional academic title); or

b) use a special notary's stamp approved by the Chamber of Notaries, which contains the following information in addition to the features described in Article 18, Paragraph 2:

1. an indication that the notarization or certification was performed by the notarial substitute on behalf of the notary; and

2. the name (first name, last name and optional academic title) of the notarial substitute.

2) In addition to the additions in accordance with Art. 18 Para. 3, the reference in accordance with Para. 1 Letter a No. 1 and Letter b No. 1 may also be made in a foreign language.

3) In all other respects, Art. 18 paras. 4 and 5 shall apply *mutatis mutandis*.

### III. Certifications and attestations

#### A. Certifications

##### 1. General procedure

#### Art. 26

##### *Establishment of the certificate*

The deed is either presented by the parties or drawn up by the notary himself at their request.

#### Art. 27

##### *Obligation to instruct and examine*

1) The notary shall instruct the parties on the legal content and significance of the document or the legal transaction to be notarized and shall draw their attention to any defects, factual inaccuracies and contradictions with statutory provisions.

2) The notary verifies the identity of the parties and the persons involved and



the power of representation of representatives carefully. The identity of natural persons is established by the presentation of an official photo ID, in particular a passport. The identity of legal entities, partnerships and their power of representation shall be established by the presentation of a certified excerpt from the Commercial Register, an official confirmation, a certified comparable foreign document or an excerpt from an official register in electronic form. Other powers of representation shall be established by presentation of a certified power of attorney in the name of the relevant transaction. If the identity and/or power of representation cannot be established without doubt, the notary shall refuse certification.

3) The notary must carefully examine the capacity of the parties and the natural persons involved. If there are justified doubts about the capacity to judge, the notary shall require the person concerned to provide a statement from an expert about his or her current capacity to judge, or he or she may consult an expert on his or her own initiative. In both cases, the notary is obliged to keep the expert's statement in his files for at least ten years.

4) The notary may refuse to certify the document without giving reasons.

5) If a party is represented in the notarization process by a lawyer admitted to practice in the jurisdiction under whose law the document is drawn up, the notary is not obliged to instruct in accordance with Paragraph 1. Moreover, these parties may agree with the notary on limitation of liability.

#### Art. 28

##### *Conflict of interest*

1) The notary must perform his duties independently of the parties or third parties. He is obliged to impartiality when performing notarizations.

2) A notary may not certify legal transactions if:

a) he/she is or was involved in the legal transaction or is or was married to one of the parties, lives or has lived in a registered partnership, leads or has led a de facto cohabitation or is related by blood or marriage up to the fourth degree. Elective, step and guardianship relationships are treated in the same way as natural child relationships;

b) a disposition is made for his own benefit or for the benefit of one of the persons referred to in subparagraph (a);

- c) he is a representative, agent, employee or organ of a party;
  - d) he has advised one party in this legal transaction by a lawyer. If, on the other hand, the notary has represented or advised all parties with regard to the respective legal transaction, the certification is admissible.
- 3) If a notarization is made in the cases mentioned in paragraph 2, it shall be null and void.

Art. 29

*Minimum content of documents*

The documents must contain at least in case of other nullity:

- a) the surname, first name and office address of the notary as well as the following information about the parties and other persons participating in the notarization:
  - 1. for natural persons: Surname, first name, date of birth, nationality, residential or business address, profession and, if necessary, other information and, depending on the legal transaction, also civil status and marital status;
  - 2. in the case of partnerships and associations: Company name or name, register and register number, legal form and statutory seat. If a partnership or association is subject to foreign law and this law does not provide for a register number or a statutory seat, the partnership or association must be identified by other suitable information;
- b) the clear, complete and, as far as possible, unambiguous expression of the will of the parties or their representatives to be notarized, the resolution to be notarized or the determination to be notarized;
- c) Place, day and, if necessary, time of certification.

Art. 30

*Foreign language certificates*

- 1) If the notary, a party or a cooperating person does not understand the language in which the document is drawn up, or if a party so requests, a translation must be prepared. The document must state that a translation has been made. The notary is obliged to keep the translation in his files for at least ten years.
- 2) If a document has been drawn up in a foreign language and no translation is required, the notary and the parties shall expressly declare that they sufficiently understand the language in which the document has been drawn up and waive the production of a translation; this shall be noted in the document.

Art. 31

*Persons with disabilities*

1) If the party or a participating person is mute, deaf, blind or otherwise impaired in his sensory perception or his ability to express himself, the notarization may only be performed if the notary is convinced that this person is able to comprehend the content of the document. If necessary, an expert must be consulted.

2) The notarization shall record the manner in which and the person by whom the contents of the document were brought to the attention of the party or the cooperating person. The expert to be consulted, if necessary

must confirm by signature that the actions performed by him/her have been performed conscientiously. This declaration shall be attached to the certificate.

NotarG

Art. 32

*Determination of the will of the party*

1) The notary presents the document to the parties for reading or reads it to them. He has them confirm that the document contains their will.

2) The notary shall have the parties sign the document after they have approved its contents. Persons who do not know how to write or are unable to write due to physical infirmity or great weakness may have their signature replaced by a hand sign or by notarization. The document shall state the reason why such person does not sign and shall be accompanied by a witness.

3) Subsequent to the approval and signature according to paragraph 2, the notarization takes place by the notary's signature on the document confirming that the document contains the parties' will and the parties:

a) have read the documents themselves or it has been read to them;

b) have approved the content of the document;

c) have been informed about the legal content and significance of the notarized legal transaction; and

d) have signed the deed. If no signature is required, the notary shall state the reason.

Art. 33

*Presence*

The parties or their representatives and the persons involved must appear in person before the notary. The deed shall be drawn up and notarized in the presence of these persons.

Art. 34

*Execution of the certificate*

- 1) Notarial deeds shall be expressly designated as such.
- 2) The certificate must be drawn up in clearly legible writing and without gaps. The certificate may be handwritten, typewritten or printed.
- 3) Signatures must be handwritten.
- 4) The original document may be issued in several copies. The number of copies is to be noted in the certificate.
- 5) Multi-page documents shall be solidly stapled or joined, except for the execution for the notary. The individual pages shall be stamped and initialed by the notary.
- 6) The notarial stamp or seal shall be attached to the notarization signed by the notary.
- 7) Enclosures that are part of the document shall be attached to it or clearly marked as enclosures.
- 8) If desired or required, the individual pages of the document and the accompanying enclosures shall be bound together with a ribbon and seal.

Art. 35

*Corrections*

- 1) Erasures must not be made in a document. Erased areas must remain legible.
- 2) Corrections are to be made in the deed or in a notarized addendum and clearly marked. If possible, a cleaned-up deed is to be prepared.
- 3) Corrections that change the content may only be made during the notarization process. For facts and legal relationships as well as for ingress and notarial notes, the competence to make corrections lies with the notary, for individual declarations and for protocol declarations requiring signatures, it lies jointly with the declaring parties and the notary. Each correction must be signed by the persons competent to make the correction with their own name or with their

Paraphrase to sign.

4) Obvious clerical errors may be corrected even after the notarization process has been completed. Any such correction shall be initialed by the notary.

#### Art. 36

##### *Archiving*

1) A copy of each document shall be physically kept by the notary for at least ten years, unless the parties have agreed with the notary on a longer period.

2) The notary shall keep an alphabetical and a chronological register of the essential data of the notarization ready for the day. The registers are to be kept in paper form or electronically. The notary must ensure the traceability and verifiability of the register entries. Several notaries may keep an overall register. In this case, it must be possible to assign the documents to the respective notary.

3) The notary shall make arrangements for the transfer of the documents and registers to a successor if the notary ceases or is no longer able to perform the activity. In the absence of a successor arrangement, the documents and registers shall be transferred to a notary to be designated by the Chamber of Notaries.

4) The Chamber of Notaries may, as part of its supervision of notaries, inspect the registers at any time and issue appropriate guidelines for keeping the registers.

#### 2. Special procedures Art. 37

##### *Assembly resolutions of association persons or partnerships*

1) A deed of assembly resolutions of association persons or personal companies must contain at least:

a) Place, date and time of the meeting, the company name or the name of the association or partnership, the register and the register number, the registered office, the name of the person chairing the meeting, the person taking the minutes and the person counting the votes;

b) the findings of the person chairing the meeting regarding the convening of the meeting in accordance with the law and the Articles of Association, the number of participants as well as the rights represented by them and the quorum of the meeting, as well as any objections to these findings;

- c) Motions and other statements by participants whose certification is requested;
  - d) in the case of votes, the proportion of votes, the wording of the resolutions adopted and a reference to the documents on which the resolutions are based;
  - e) the signatures of the person chairing the meeting and the person taking the minutes; and
  - f) the signature of the notary confirming that he attended the meeting.
- 2) If the procedure is fixed in advance, the meeting can be conducted in the simultaneous presence of the participants like a contract certification. Otherwise, the notary records the procedure in a suitable manner and draws up the notarial deed at the same time or at a later point in time. If the material law requires the co-signature of certain persons, the notary obtains their signatures before signing himself.
- 3) Insofar as this is permissible under the relevant provisions for the meeting, the notary may also be the person taking the minutes within the meaning of Paragraph 1.

Art. 38

*Facts and legal relations*

- 1) The notary may notarize legally relevant facts and legal relationships in which there is an interest worthy of protection and the legal significance of which is understood by the notary.
- 2) If the interest in certification or the legal significance of the certification is not obvious, the notary must examine these concerns and state them in the document; he must also name the person who requested the certification.
- 3) The notary clarifies the facts carefully and without delay and certifies the result of his investigations completely and clearly.

*Documents under foreign law*

Art. 39

*a) Exhibition*

- 1) The notary issues deeds under foreign law if:
  - a) he understands the legal acts to be notarized and is able to explain them to the parties, and has determined the applicable foreign law in such a way that he can formulate the deed according to the parties' specifications or can create a deed that is acceptable to the parties.

- may review the draft submitted to the parties for compatibility with foreign law; or
- b) each party is represented by a lawyer admitted to practice in the jurisdiction under whose law the foreign instrument is drawn up. Article 27(5) applies.
- 2) If the notary draws up a deed in accordance with foreign law, the execution, including the designation of the deed, may be made in accordance with the foreign law applicable to the notarization.

#### Art. 40

##### *b) Special forms of explanation*

- 1) The taking of the oath, the declaration in lieu of an oath and comparable forms of declaration shall be governed *mutatis mutandis* by the provisions on the issuance of documents under foreign law. The person making the declaration must appear in person before the notary.
- 2) Unless foreign law is applicable, the notary certifies that the person making the declaration has signed the document in his presence and has sworn or declared on oath with a hand vow that the content of the document is true.
- 3) The notary may record the unsworn or sworn examination of witnesses for the use or preparation of court proceedings abroad. In doing so, the formal requirements of foreign law must be observed. The use of coercive means within the framework of such an examination is inadmissible. The notary is obliged to point out to the witness to be examined that his cooperation can only be voluntary. The notary must not be involved in the court proceedings themselves.

#### 3. Enforceability of notarial deeds Art. 41

##### *Executability*

A notarial deed, like a settlement concluded in court, is executable if:

- a) an obligation to perform or refrain from performing is established therein;
- b) the exact designation of the parties, the legal grounds, the precisely defined subject matter, the nature, scope and time of the performance or omission;
- c) a settlement is permissible with respect to the obligation under subparagraph (a); and

d) the obligee has declared that this deed shall be enforceable immediately or from a certain date (submission to enforcement). This declaration does not require acceptance by the obligee in order to be legally effective. If a private document is notarially confirmed only by the obligor, the obligor's submission to enforcement in the notarial deed executed thereon is sufficient for the enforceability of the obligor's notarially confirmed obligation.

B. Certifications

Art. 42

*Signature and hand sign*

- 1) Notarization of a signature consists in certification by the notary that the person signing has affixed the signature in his presence or has acknowledged it to him as his own.
- 2) If the notary does not know the person signing, he shall verify his identity in accordance with Art. 27 Para. 2.
- 3) If, exceptionally, a blank signature is certified, the notary mentions this in the certification note.
- 4) Paragraphs 1 and 2 apply mutatis mutandis to the certification of a hand sign.

Art. 43

*Copy*

- 1) Certification of a copy consists in certification by the notary that the copy fully and correctly reproduces a document submitted to him.
- 2) If not evident from the copy, the certificate shall state whether the document submitted to the notary was an original document or a certified copy.

Art. 44

*Transcript*

- 1) Paragraphs, insertions, deletions and other changes in the document submitted to the notary must be explicitly mentioned in the copy.
- 2) In all other respects, Art. 43 shall apply mutatis mutandis.

Art. 45

*Excerpt*

- 1) The excerpt must contain the essential information for the specified use.



Parts of the document submitted to the notary verbatim.

and must not be misleading in any way. Any omissions must be clearly indicated.

2) In all other respects, Art. 43 and 44 shall apply *mutatis mutandis*.

Art. 46

*Translation*

1) The certification of the translation of a document consists in the certification of the notary that the translation is correct.

2) If the notary does not have sufficient command of the foreign language, he must consult a translator. The translator must confirm the accuracy of the translation. The notary must complete the certificate accordingly.

NotarG

Art. 47

*Date certification*

The certification of the date consists in the certification of the notary when and by whom a document was submitted to him.

Art. 48

*Execution*

1) The certification is made by a note, which is to be signed and stamped by the notary under indication of place and date. The notation shall state the facts on the basis of which the notary is convinced of the authenticity of the signature.

2) When certifying signatures and hand signs, the exact personal data of the person signing must also be recorded.

3) Certifications shall be made directly on the document to which they refer. If this is not possible or if the certification refers to several pages, the certification shall be attached to the document or to the other pages like a deed.

4) Art. 18 Para. 4 shall apply *mutatis mutandis*.

Art. 49

*Register*

The notary shall keep a daily chronological register of the essential data of the certifications. Art. 36 applies *mutatis mutandis*.

IV. Disciplinary law

A. Notaries

1. General

Art. 50

*Disciplinary offense*

- 1) A notary who culpably violates his duties under this Act or by his conduct impairs the honor or reputation of the profession commits a disciplinary offense.
- 2) A notary commits a disciplinary offense through extra-professional conduct if it is likely to affect his trustworthiness.

Art. 51

*Limitation*

- 1) Statute of limitations precludes prosecution of the notary for a disciplinary offense if:
  - a) no disciplinary proceedings have been instituted within one year from the date on which the higher court became aware of the facts on which a disciplinary offense was based, or disciplinary proceedings which have been finally terminated have not been reopened to his detriment;
  - b) no final decision has been rendered within five years of the termination of disciplinary conduct.
- 2) The running of the time limits specified in para. 1 shall be suspended if judicial criminal proceedings are pending or preliminary criminal investigations are being conducted in respect of the facts on which the disciplinary offense is based, for the duration of the proceedings.
- 3) If a disciplinary offense also constitutes a judicially punishable act and if the period of limitation under criminal law is longer than the period specified in subsection 1(b), the period of limitation under criminal law shall take its place.
- 4) If the notary commits a similar disciplinary offense again within the statute of limitations, the statute of limitations under Paragraph 1 shall not apply until the statute of limitations for this disciplinary offense has also expired.

Art. 52

*Disciplinary sanctions*

- 1) The disciplinary sanctions to be applied are:

- a) written reprimand;
  - b) Fines up to the amount of 50 000 francs;
  - c) Prohibition to practice the profession for a period of up to five years;
  - d) Removal from the list of notaries.
- 2) The disciplinary sanction of disqualification from practicing the profession may be conditionally suspended in whole or in part, subject to a probationary period of not less than one year and not more than three years, if it can be assumed that the threat thereof will be sufficient to deter the accused from committing further disciplinary offenses.
- 3) In addition to the unconditional or fully conditional disciplinary sanction of suspension from the profession, a fine may also be imposed.
- 4) As a secondary penalty, taking into account the nature of the disciplinary offense, the prohibition of employment of notary substitutes may be imposed.
- 5) When imposing the disciplinary penalty, particular consideration shall be given to the extent of the fault and the resulting disadvantages and, when assessing the fine, also to the income and financial circumstances.

## 2. Responsibility

### Art. 53

#### *Disciplinary Tribunal*

- 1) Disciplinary authority over notaries is exercised by the Supreme Court as a disciplinary court.
  - 2) The disciplinary court may delegate the conduct of the disciplinary investigation to a legally qualified judge as an investigating judge.
  - 3) Article 44 of the Judges Service Act shall apply mutatis mutandis to the appointment of the investigating judge.
3. Disciplinary proceedings Art. 54

#### *Principle*

- 1) Disciplinary proceedings against notaries are opened ex officio or upon notification.
- 2) When initiating criminal proceedings against a notary public, the criminal authorities shall

to report a felony or misdemeanor to the disciplinary court without delay.

3) A disciplinary offense shall not be prosecuted if the notary's fault is minor and his conduct has not entailed any consequences or has entailed only insignificant consequences.

4) Sections 305 and 306(1) of the Code of Criminal Procedure shall apply mutatis mutandis to the reimbursement of costs.

5) In disciplinary proceedings against notaries, only the disciplinary defendant and the Chamber of Notaries have the right to be parties with the right of application and appeal.

Art. 55

*Disciplinary investigation*

1) The disciplinary investigation may be initiated only by a decision of the disciplinary court (initiation decision).

2) In the decision to initiate proceedings, the points of accusation shall be specifically designated.

3) In the disciplinary investigation, the accusation of a breach of duty made against the disciplinary accused shall be examined and the facts of the case shall be clarified to the extent necessary to be able to discontinue the disciplinary proceedings or to refer the case for oral proceedings.

4) If the facts of the case have been sufficiently clarified, the disciplinary tribunal may refuse to initiate the disciplinary investigation or, after hearing the disciplinary defendant, decide to refer the case for oral proceedings immediately instead of initiating the disciplinary investigation (referral decision).

5) The disciplinary procedure is initiated with the initiation decision or referral decision.

6) No ordinary appeal is permitted against resolutions under paras. 1 and 4. Art.

56

*Interrogation and establishment of the facts*

1) If it has been decided to open the disciplinary investigation, the files shall be forwarded to the investigating judge.

2) The investigating judge shall hear the disciplinary defendant and, if necessary, witnesses and experts, and shall take all necessary steps to fully clarify the matter.

of the facts of the case ex officio. The refusal of the disciplinary accused to comply with a summons or to comment on the points of accusation shall have no influence on the proceedings.

3) The provisions of the Code of Criminal Procedure shall apply to the questioning of the disciplinary defendant, witnesses and experts.

Art. 57

*Inspection of files and completion of the disciplinary investigation*

1) The investigating judge shall grant the disciplinary defendant and his defense counsel access to files in accordance with the provisions of the Code of Criminal Procedure.

2) If the disciplinary defendant requests a supplement to the disciplinary investigation, the investigating judge shall conduct it. If the investigating judge has reservations about granting such a request, he or she must obtain the decision of the disciplinary court.

3) The disciplinary court may ex officio order the completion of the disciplinary investigation.

4) After the disciplinary investigation has been completed or supplemented, the investigating judge shall forward the files to the disciplinary court.

5) No ordinary appeal shall be permitted against resolutions under paras. 2 and 3.

Art. 58

*Discontinuation and referral order*

1) If the disciplinary court considers that there is no reason to continue the disciplinary proceedings, it shall discontinue the proceedings by resolution.

2) In the opposite case, the disciplinary court shall decide to refer the case for oral proceedings (referral decision).

3) The referral order shall specify the points of accusation.

4) The decisions under paras. 1 and 2 shall be served on the disciplinary defendant.

5) No ordinary appeal shall be admissible against the referral decision under para. 2.

Art. 59

*Oral Hearing*

1) At the oral hearing, the disciplinary defendant, his defense counsel

and the Chamber of Notaries.

2) The hearing shall not be public. However, the disciplinary defendant shall be free to request the admission of three persons of his confidence. The conduct of the hearing shall be governed in all other respects by the provisions of the Section 14 of the Code of Criminal Procedure *mutatis mutandis*.

3) The oral proceedings shall begin with the reading of the order of referral.

Art. 60

*Content and pronouncement of the decision*

1) The disciplinary tribunal shall either acquit the accused of the offense with which he is charged or declare him guilty. If a guilty verdict is reached and a disciplinary penalty imposed, the verdict shall also contain the pronouncement on the disciplinary penalty.

2) The decision, including the reasons for the decision, shall be pronounced immediately after the conclusion of the oral proceedings and shall be served on the defendant within two weeks.

3) The disciplinary tribunal may make the decision public if there is a public interest in doing so or if the person subject to disciplinary proceedings has an interest in doing so.

4) The decision on the publication and its nature shall be included in the disciplinary decision.

4. Interim measures Art. 61

*Interim measures*

1) s Disciplinary Court may order provisional measures against a notary, in particular if

a) criminal proceedings have been opened against the notary for a felony or misdemeanor that is likely to significantly shake confidence in the notary, or

b) the disciplinary sanction of removal from the list of notaries has been pronounced or

c) criminal proceedings have been opened against the notary in connection with his professional activity

and the provisional measure with regard to the nature and weight of the

the notary is charged with a disciplinary offense is necessary because of the serious disadvantage to be feared, in particular for the reputation of the profession.

2) Before adopting a decision on a provisional measure, the notary concerned and the Chamber of Notaries must be given the opportunity to comment.

3) Interim measures are in particular:

a) the supervision of the management of the office by the Board of Directors of the Chamber of Notaries;

b) a temporary ban on the employment of notary substitutes;

c) in the cases referred to in paragraph 1 letters a and b, the temporary prohibition of the practice of the profession.

4) Interim measures shall be revoked, modified or replaced by another if it becomes apparent that the conditions for the order do not or no longer exist or that the circumstances have changed significantly.

5) The final termination of the disciplinary proceedings, interim measures shall cease to have effect.

B. Notarial substitutes Art. 62

*Principle*

Articles 50 to 61 apply mutatis mutandis to the disciplinary law of notarial substitutes.

V. Termination and Suspension of the

Notarial Office Art. 63

*Expiry and rest*

1) The authorization to practice as a notary public or to act as a substitute notary public expires:

a) at the notary:

1. if a prerequisite for access to the profession ceases to apply;

2. as a result of waiver;

3. pursuant to a disciplinary decision; or

4. By death;

b) with the notary substitute:

1. if there is a reason for lapse in accordance with subparagraph a; or
  2. with the notary's declaration to the Chamber of Notaries that the person concerned is no longer a notarial substitute.
- 2) The right to exercise the profession of notary or to act as a substitute notary is suspended:
- a) in the case of prohibition of the exercise of the profession or notarial activity within the framework of disciplinary proceedings; or
  - b) by prohibition of the exercise of the profession or the notarial activity for lack of maintenance of the domestic office or the liability insurance.
- 3) In the event of expiry of the authorization under paragraph 1, a deletion from the list of notaries or notary substitutes shall be made upon application or ex officio. If all legal requirements are fulfilled, re-entry into the list is possible.
- 4) In case of suspension of the authorization under paragraph 2, the notary or notary substitute remains registered in the list of notaries or notary substitutes, however, he is temporarily prohibited from practicing the profession of notary or notarial activity. The notary remains a member of the Chamber of Notaries.

## VI. Organization and implementation

### A. General

#### Art. 64

##### *Organs*

The implementation of this law is entrusted to:

- a) the Chamber of Notaries;
- b) the examination board for notaries;
- c) the disciplinary court;
- d) the courts.

#### Art. 65

##### *Processing of personal data*

1) The bodies entrusted with the implementation of this Act may process personal data, including personal data on criminal convictions and criminal offenses of the persons subject to this Act, to the extent necessary for the performance of their duties under this Act.



2) They shall take all technical and organizational measures necessary to protect the data pursuant to paragraph 1.

Art. 66

*Official Secrets*

1) The bodies entrusted with the implementation of this Act and any other persons called in by them shall be subject to official secrecy for an unlimited period of time with regard to confidential information that becomes known to them in the course of their official activities.

2) Information subject to official secrecy may not be disclosed. Criminal law provisions and special statutory provisions are reserved.

B. Liechtenstein Chamber of Notaries Art. 67

*Composition, legal form and legal status*

1) The Liechtenstein Chamber of Notaries (Chamber of Notaries) is formed by all notaries entered in the list of notaries.

2) The Chamber of Notaries is a public corporation. It is subject to the supervision of the Government. In its own sphere of activity, the supervision of the Government is limited to the verification of the legality of the administrative management of the Chamber of Notaries.

3) In disciplinary proceedings under Art. 50 et seq. the Chamber of Notaries is a party with unlimited party rights.

Art. 68

*Tasks*

The Chamber of Notaries is responsible in particular for:

- a) preservation of the honor and reputation of the notarial profession;
- b) safeguarding the rights and monitoring the duties of notaries and notary substitutes.

Art. 69

*Plenary Assembly*

1) The following matters are assigned to the Plenary Assembly:

- a) the election of the President, the Vice-President and the other members of the Board of Directors;

- b) the election of an auditor;
  - c) the establishment of the Rules of Procedure of the Chamber of Notaries;
  - d) the determination of the annual dues of the members of the Chamber to cover the administrative costs;
  - e) the approval of the estimate of revenues and expenditures;
  - f) the approval of the annual financial statements;
  - g) the issuance of professional guidelines;
  - h) the issuance of fee guidelines; and
  - i) the issuance of further guidelines.
- 2) The contributions under subsection 1(d) shall be assessed at the same rate for all members of the Chamber.
- 3) The plenary assembly has a quorum if at least one quarter of the chamber members are present. It passes its resolutions by simple majority. The presence of at least half of the Chamber's members and a majority of two-thirds are mandatory for the adoption of resolutions on the Rules of Procedure.
- 4) The Rules of Procedure of the Chamber of Notaries require the approval of the Government in order to be legally effective.

Art. 70

*Board of Directors*

- 1) The Board of the Chamber of Notaries consists of three to five members who are registered in the Notaries' List.
- 2) The President, the Vice-President and the other members of the Board of Directors are elected from among the members of the Chamber by an absolute majority of the votes cast by those present. The term of office is three years. Re-election is permitted.
- 3) The sphere of activity of the Board of Management includes in particular:
- a) the decision on applications according to Art. 5, 6 and 9;
  - b) keeping the lists under this Act; these lists shall be published on the homepage of the Chamber of Notaries;
  - c) the communication with authorities and third parties;
  - d) the collection and payment of the annual dues of the members of the Chamber;
  - e) the provision of expert opinions on the appropriateness of the fee and the

Remuneration for the notary's services and the requested amicable settlement of an existing dispute;

- f) the settlement of disputes between members of the Chamber;
  - g) the professional supervision;
  - h) the exercise of the party rights of the Chamber of Notaries in disciplinary proceedings;
  - i) the supervision of the management of the office pursuant to Art. 61 par. 3 letter a;
  - k) the preparation of business and the convening of the Plenary Assembly;
  - l) the exercise of party rights in appeal proceedings;
  - m) the execution of the decisions of the Plenary Assembly;
  - n) the preparation of legislative proposals and expert opinions on draft legislation;
  - o) the organization of educational and training events or the cooperation with other sponsors of such events;
  - p) cooperation with foreign notarial organizations;
  - q) the decision on appeals against decisions under paragraph 4;
  - r) the enactment of the schedule of fees; subject to Art. 71 Para. 2;
  - s) the appointment of the data protection officer;
  - t) the approval of the notary's stamps.
- 4) The Board of Directors may delegate certain business to the President, individual members of the Board of Directors or individual members of the Chamber of Notaries for independent performance, in particular in the matters of Paragraph 3, Letters c and f.

#### Art. 71

##### *Fees*

- 1) The Chamber of Notaries shall charge a fee in accordance with its schedule of fees for official acts under this Act, in particular for entries and deletions in the list of notaries or notary substitutes.
- 2) In order to become legally effective, the schedule of fees shall require the approval of the Government and shall be published in the Provincial Law Gazette.

#### Art. 72

##### *Fee and contribution assessment*

The legally enforceable assessment of contributions and fees is an execution instrument within the meaning of the Execution Code.

C. Examination board for notaries Art. 73

*Examination board*

- 1) The Examination Commission for Notaries is to be appointed by the Government for four years at a time. It consists of three members and the same number of substitute members. A district judge, a lawyer nominated by the Bar Association and a notary nominated by the Chamber of Notaries shall be members. The Government shall appoint the chairman.
- 2) The members of the examination board are independent in the exercise of their office and are bound to secrecy.

D. Cooperation

Art. 74

*Cooperation of the courts with the Chamber of Notaries*

The courts shall forward to the Chamber of Notaries, without being requested to do so, all decisions of a disciplinary or criminal nature that it requires for the performance of its duties under this Act.

VII. Appeals

A. Administrative procedure

Art. 75

*appeals against decisions of the Chamber of Notaries, the Examination Commission for Notaries and the Government*

- 1) An appeal against decisions and orders within the meaning of Article 70(4) may be lodged with the Board of the Chamber of Notaries within 14 days of notification.
- 2) An appeal against decisions and orders of the Board of the Chamber of Notaries may be lodged with the Government within 14 days from the date of notification.
- 3) An appeal against decisions and orders of the Examination Commission for Notaries may be lodged with the Government within 14 days from the date of notification.
- 4) Appeals against decisions and orders of the Government may be lodged with the Administrative Court within 14 days of service.

B. Disciplinary proceedings Art. 76

*Appeals against decisions of the disciplinary court*

1) An appeal shall lie from a decision to discontinue proceedings, from an order or refusal to take interim measures, and from any final decision.

The decision of the disciplinary court may be appealed to the Supreme Court within 14 days of notification.

2) The provisions of §§ 238 et seq. of the Code of Criminal Procedure shall apply *mutatis mutandis* to the appeal proceedings.

Art. 77

*Suspensive effect*

Appeals against the order or refusal of an interim measure (Art. 61) shall not have suspensive effect.

VIII. Penal provisions

Art. 78

*Misdemeanor*

The district court shall punish with imprisonment for a term of up to three months or with a fine of up to 180 daily rates who:

- a) obtains his entry in the list of notaries or in the list of notary substitutes without fulfilling the requirements provided for in Article 4, Paragraph 2 or Article 8, Paragraph 2;
- b) fails to comply with the reporting obligation provided for in Art. 4 par. 4 or Art. 8 par. 4.

Art. 79

*Transgressions*

1) Wer die Bezeichnung "Notar", "öffentlicher Notar", "Notariatssubstitut", "Beglaubigungsperson", "Beurkundungsperson", "Legalisator" oder eine sonstige Bezeichnung, die den Anschein erweckt, zur Ausübung des Berufs als Notar oder der notariellen Tätigkeit berechtigt zu sein, in deutscher oder einer anderen Sprache unberechtigt führt, wird vom Landgericht mit einer Busse bis zu 50 000 Franken, im Nichteinbringlichkeitsfall mit einer Freiheitsstrafe bis zu sechs Monaten bestraft.

2) Likewise, anyone who, in the case of certification of a blank signature in accordance with Art. 42 Para. 3, fails to make a corresponding notation shall be punished.

IX. Transitional and final provisions Art. 80

*Executive Orders*

The Government shall issue the regulations necessary for the implementation of this Act.

Art. 81

*Transitional provisions*

- 1) Within one month after the entry into force of this Act, the Government shall appoint three members from the list of Liechtenstein lawyers to form the founding board of the Chamber of Notaries.
- 2) Within one year after the entry into force of this Act, the founding board shall convene a plenary meeting at which the ordinary board of the Chamber of Notaries shall be elected from among the notaries already registered in the list of notaries.
- 3) Until the election of the ordinary board of the Chamber of Notaries, the decisions on applications according to Art. 5, 6 and 9 and the keeping of the lists according to this law are incumbent on the founding board. Until the issuance of a schedule of fees according to Art. 71, the founding board shall apply the corresponding fee rates of the schedule of fees of the Liechtenstein Bar Association for these official acts.
- 4) Until the election of the regular board of the Chamber of Notaries, the Government shall appoint two members of the founding board, nominated by the founding board, as a member and as a substitute member of the examination commission pursuant to Art. 73.
- 5) The notarial activity may be started only after all measures for the establishment of the Chamber of Notaries have been taken and the necessary directives have been issued. The government shall announce this date in the official gazette.

Art. 82

*Entry into force*

Subject to the unused expiry of the referendum period, this Act shall enter into force on 1 January 2020, otherwise on the day following its promulgation.

## VII. Property law

from 31 December 1922

### Table of contents

#### Introduction

A. Application of law Art. [1](#)

B. Content of legal relations

I. Acting in good faith Art. [2](#)

II. Good faith Art. [3](#)

III. Judicial discretion Art. [4](#)

SR

C. General Provisions of the Law of Obligations Art. [5](#)

D. Rules of evidence

I. Burden of proof Art. [6](#)

II. Evidence by public document Art. [7](#)

E. Competent authorities Art. [8](#)

F. International Law

I. In general (repealed) Art. 9

II. Types of property (repealed) Art. 10

III. Immovable property (repealed) Art. 11, 12

IV. Movable property (repealed) Art. 13-18

V. Competence Art. [19](#)

1. Department The property

1. Title

General provisions

A. Property content

I. In general Art. [20](#)

II. Animals Art. [20a](#)

## Property law

---

### B. Scope of ownership

#### I. Components Art. [21](#)

#### II. Natural fruits Art. [22](#)

#### III. Belonging Art. [23](#) Art. [24](#)

### C. Community property

#### I. Co-ownership Art. [25-30](#)

#### II. Joint ownership Art. [31-33](#)

#### 1. Title

### The real estate

#### 1. Section

##### Subject, acquisition and loss of real property

#### A. Subject

##### I. In general Art. [34](#)

##### II. Definitions Art. [35](#)

##### III. Independent property Art. [36](#)

#### B. Form of legal transactions Art. [37](#)

#### C. Acquisition

##### I. Registration Art. [38](#)

##### II. Types of acquisition (Art. 39 repealed) Art. 39-44

##### III. Right to registration Art. [45](#)

#### D. Loss Art. [46](#)

#### E. Judicial measures

##### I. If the owner cannot be found Art. [46a](#)

##### II. In the absence of the prescribed organs Art. [46b](#)

#### 2. Section

##### Content and limitations of land ownership

#### A. Content

##### I. Scope Art. [47](#)

##### II. Delimitation (Art. 51 repealed) Art. 48-52



- III. Buildings on the land Art. [53-59](#)
- IV. Planting on the property Art. [60](#)
- V. Responsibility of the landowner Art. [61](#) Art. [61a](#)
- B. Restrictions
  - I. In general Art. [62](#)
  - II. Restrictions on disposal Art. [63-66](#)
  - III. Neighboring rights (art. 69-72, 74-79, 81-83. 86-88 repealed) art. 67-112
  - IV. Right of access and defense Art. [113-115](#)
  - V. Public survey marks (repealed) Art. 116-118
  - VI. Prevention of fragmentation of goods Art. [119-121](#)
  - VII. Heritage protection (Art. 122 repealed) Art. 122, 123
  - VIII. Land improvements (repealed) Art. 124-140
  - IX. Reallocation of construction area (repealed) Art. 141-147
  - X. Public works Art. [148](#)
- C. Rights to springs and wells
  - I. Source Ownership and Source Law Art. [149](#)
  - II. Out-of-country transportation Art. [150](#)
  - III. Digging of springs Art. [151](#) Art. [152](#)
  - IV. Source community Art. [153](#)
  - V. Use of external sources Art. [154](#)
  - VI. Emergency well Art. [155](#)
  - VII. Obligation to assign Art. [156](#) Art. [157](#)
- D. Alpine cooperative
  - I. Principle Art. [158](#)
  - II. Keeping of registers and legal remedies Art. [159](#)
  - III. Fees and costs Art. [160](#)
  - IV. General ledger Art. [161](#)
  - V. Registrations (Art. 164-166 repealed) Art. 162-169
  - VI. Maintenance of the computerized alpine register Art. [170](#)

3. Section

The condominium ownership

A. Content and subject

I. Content Art. [170a](#)

II. Subject Art. [170b](#)

III. Decree Art. [170c](#)

B. Justification and demise

I. Justification act Art. [170d](#)

II. Spatial segregation and value quotas Art. [170e](#)

III. Demise Art. [170f](#)

C. Management and use

I. The applicable provisions Art. 170g \_\_\_\_\_

II. Community costs and charges Art. 170h-170k \_\_\_\_\_

III. Capacity of the Community to act Art. [170l](#)

D. Organization

I. Assembly of condominium owners Art. [170m-170p](#)

II. The administrator Art. [170q-170t](#)

3. Title

The road property

A. Subject Art. [171](#)

B. Acquisition types

I. Transfer (Art. 173-186 repealed) Art. 172-187

II. Appropriation Art. [188](#)

III. Fund Art. [189-192](#)

IV. Feeding Art. [193](#)

V. Processing Art. [194](#)

VI. Joining and mixing Art. [195](#)

VII. Acquisition Art. [196](#)

C. Loss Art. [197](#)

## 2. Department

The limited rights in rem

### 4. title

The easements and land charges

### 1. Section

The easements

A. Subject Art. [198](#)

B. Establishment and demise

I. Establishment Art. [199](#) Art. [200](#)

II. Demise Art. [201-203](#)

C. Content

I. Scope Art. [204-211](#)

II. Burden of maintenance Art. [212](#)

III. Relocation of the load Art. [213](#)

IV. Partition of land Art. [214](#)

### 2. Section

Usufruct and other easements

A. Usufruct

I. Subject Art. [216](#)

II. Origin Art. [217](#) Art. [218](#)

III. Demise (Art. 223 repealed) Art. 219-226

IV. Content Art. [227-239](#)

V. Special cases Art. [240-247](#)

B. The right of residence

I. In general Art. [248](#)

II. Claims of the person entitled to the apartment Art. [249](#)

III. Loads Art. [250](#)

C. Building law

I. Subject matter and inclusion in the land register Art. [251](#)

## Property law

---

- II. Content, scope and reservation Art. [251a](#)
- III. Consequences of the expiry of the duration Art. [215b-251d](#)
- IV. Early reversion Art. [251e-251g](#)
- V. Liability for the building lease charge Art. [251h](#) Art. [251i](#)
- VI. Maximum duration Art. [251k](#)
- D. Source law Art. [252](#)
- E. Other easements Art. [253](#)
- F. Judicial measures Art. [253a](#)

### 3. Section

The basic loads

- A. Subject Art. [254](#)
- B. Establishment and demise
  - I. Establishment Art. [255-257](#)
  - II. Demise Art. [258-262](#)
- C. Content
  - I. Creditor's right Art. [263](#)
  - II. Debt obligation Art. [264](#)

### 5. Title

The real estate pledge

#### 1. Section

General provisions

- A. Requirements
  - I. Species Art. [265](#)
  - II. Form of the claim Art. [266](#) Art. [267](#)
  - III. Land (Art. 268 repealed) Art. 268-270
- B. Establishment and demise
  - I. Establishment Art. [271](#) Art. [272](#)
  - II. Demise Art. [273](#)

III. Real estate liens in case of consolidation of property Art. [274-276](#)

C. Effect

I. Scope of the pledge Art. [277](#)

II. Rent and lease payments Art. [278](#)

III. Limitation Art. [279](#)

IV. Security powers Art. [280-283](#)

V. Other load Art. [284](#)

VI. Pledge office Art. [285-287](#)

VII. Satisfaction from the pledge Art. [288-291](#)

VIII. Lien for land improvements (repealed) Art. 292, 293

IX. Entitlement to the sum insured Art. [294](#)

X. Untraceable creditor Art. [295](#)

2. Section

The mortgage bond

A. Purpose and form Art. [296](#)

B. Establishment and demise

I. Establishment Art. [297](#)

II. Demise (Art. 303-306 repealed) Art. 298-306

C. Effect

I. Ownership and debtorship Art. [307-309](#)

II. Transfer of the claim Art. [310](#)

D. Statutory lien on real property

I. Of public law Art. [311](#) Art. [312](#)

II. Private Law Art. [313-318](#)

3. Section register debt certificate

I. Purpose; relationship to the claim arising from the basic relationship Art. [319](#)

II. Establishment and demise Art. [320](#) Art. [321](#)

III. Transfer Art. [322](#)

IV. Pledge Art. [323](#)

- V. Position of the owner Art. [324](#)
- VI. Disposal Art. [325](#)
- VII. Division Art. [326](#)
- VIII. Debt certificate claim and ancillary agreements Art. [327](#) Art. [328](#)
- IX. Protection of good faith Art. [329](#)
- X. Defences of the debtor Art. [330](#)
- XI. Place of payment Art. [331](#)
- XII. Changes in the legal relationship Art. [332](#)
- XIII. Redemption Art. [333](#)
- XIV. Calling the creditor Art. [334](#)
- 4. Section
  - Issuance of bond titles with lien on real property
  - A. Bonds for bonds with lien Art. [356](#)
  - B. Issuance of promissory notes and gültls in series
- 6. Title
  - The deposit
  - 1. Section Pledge and Retention Right
    - A. Fist Pledge
    - I. Appointment (Art. 366, 367 repealed) Art. 365-369
    - II. Demise Art. [370-372](#)
    - III. Effect Art. [373-379](#)
    - B. Retention right
      - I. Requirements Art. [380](#)
      - II. Exceptions Art. [381](#)
      - III. In case of insolvency Art. [382](#)
      - IV. Effect Art. [383](#)
  - 2. Section
    - The lien on receivables and other rights
    - A. In general Art. [384](#)
    - B. Establishment

- I. For receivables with or without promissory bill Art. [385](#)
  - II. For securities Art. [386](#)
  - III. For commodity papers Art. [387](#)
  - IV. Subsequent pledge Art. [388](#)
  - C. Effect
    - I. Scope of lien Art. [389](#)
    - II. Representation of pledged shares Art. [390](#)
    - III. Management and payment Art. [391](#)
    - 3. Financial collateral section
      - I. In general Art. [392](#)
      - II. Order Art. [393](#)
      - III. Realization of financial collateral Art. [394](#) Art. [395](#)
      - IV. Right to dispose of financial collateral in the form of rights in rem Art. [396](#)
      - V. Recognition of the transfer of full rights Art. [397](#)
      - VI. Set-off in consequence of termination Art. [398](#)
      - VII. Principles of treatment and recovery Art. [399](#)
      - VIII. Waiver of rights of the debtor of credit claims Art. [400](#) (repealed) Art. 401-441
- 
7. Title
  - The rights to ownerless and public property
    - 1. Section
      - General provisions
        - A. Masterless things
          - I. Term Art. [442](#)
          - II. Vehicle Art. [443-445](#)
          - III. Land Art. [446-448](#)
        - B. Public things
          - I. In general Art. [449](#) Art. [450](#)

II. Administrative assets of the state and municipalities Art. [451](#)

III. Objects intended for public use Art. [452](#) Art. [453](#)

2. Section The water powers

(repealed) Art. 454-483

3. Section The Mines

A. Subject of the mines Art. [484](#)

B. Acquisition of the mines

I. Prospecting Art. [485-487](#)

II. The award Art. [488-490](#)

III. Settlement with the landowner Art. [491](#)

C. Loss of the mines

I. Expiry and renewal Art. [492](#)

II. Forfeiture Art. [493](#)

D. Mine content

I. Operating regulations Art. [494](#)

II. Expropriation Art. [495](#) Art. [496](#)

III. Obligations Art. [497](#)

3rd department

Possession and land register

8. Title

The

property

A. Concept and types

I. Term Art. [498](#)

II. Independent and dependent property Art. [499](#)

III. Temporary interruption Art. [500](#)

B. Transmission

I. Among present Art. [501](#)

II. Among absentees Art. [502](#)

III. Without delivery Art. [503](#)

IV. For commodity papers Art. [504](#)



---

### C. Meaning

I. Protection of property Art. [505-508](#)

II. Legal protection Art. [509-516](#)

III. Responsibility Art. [517-519](#)

IV. Acquisition Art. [520](#)

5. tel

The land register

A. nrichtung

I. tand Art. [521-527](#)

II. daccounting Art. [528-535](#)

B. ntragung

I. andbook entries Art. [536-541](#)

II. conditions of registration Art. [542-546](#)

III. er registration Art. [547](#) Art. [548](#)

IV. eigepflicht Art. [549](#)

V. dnung Art. [550](#)

C. publicity of the land register Art. [551](#)

D. rkung

I. Significance of non-registration Art. [552](#)

II. eterpretation of the registration Art. [553-555](#)

E. schung and modification of the entries

I. Art. [555a](#) Art. [555b](#)

II. unjustified entry Art. [556](#)

III. ichterred cancellation Art. [557-559](#)

IV. chtigations Art. [560](#)

F. ng of the land register by means of informatics

I. and rate Art. [561](#)

II. rdnung Art. [562](#)

III. nsecurity Art. [563](#)

- IV. Availability of data Art. [564](#)
- V. access in the retrieval procedure Art. [565](#)
- VI. ptbuch Art. [566](#)
- VII. book Art. [567](#)
- VIII. ag procedure Art. [568](#)
- IX. amendments, modifications and corrections Art. [569](#)
- X. effects Art. [570](#)
- XI. dnung Art. [571](#)

Final Title Transitional Provisions

A. General provisions

- I. gel of non-retroactivity in general Art. [1](#)
- II. keffect in general Art. [2-4](#)
- III. Rights in rem Art. [5](#)
- IV. request for entry in the land register Art. [6](#)

B.gentum

- I. General (Art. 8 repealed) Art. 7, 8
- II. d pieces Art. [9-14](#)
- III. nis Art. [15](#)

C.enstabilities

- I. New Art. [16](#)
- II. old Art. [17](#)

D. and liens

- I. Recognition of existing pledge titles Art. [18](#)
- II. Liens Art. [19](#)
- III. ough titles Art. [20](#)
- IV. ang of the pledge Art. [21](#)
- V. rights and obligations arising from the real estate lien Art. [22-24](#)
- VI. g Art. [25](#)
- VII. limitation according to the appraisal value (repealed) Art. 26
- VIII. zliche Pfandrechte des öffentlichen Rechts Art. [27](#)

- IX. Duration of the previous law for the previous types of pledge Art. [27a](#)
- X. rtdauer des bisherigen Rechts für bestehende Papier-Schuldbriefe Art. [27b](#)
- XI. andlung of the type of promissory note Art. [27c](#)
- E.hrnis liens
  - I. General Art. [28](#)
  - II. ntion right Art. [29](#)
- F.tz Art. [30](#)
- G.s land register
  - I. terführung der bisherigen Grundbucheinrichtungen Art. [31-60](#)
  - II. keeping of the land register (Art. 87-98 repealed) Art. 61-98
- H. ntroduction of the property right before the land register Art. [99](#)
- J. Limitation Art. [100](#)
- K. Amendment of applicable law
  - I. Applicable laws Art. [101](#)
  - II. Introduction of new law (Art. 102-137, 139 repealed) Art. 102-140
- L. Repeal of older provisions Art. [141](#)
- M. Final provisions Art. [142](#)

SR

Introducti  
on Art.  
1

A. Application of the law

- 1) The Act shall apply to all questions of law for which it contains a provision by its wording or interpretation.
- 2) If no rule can be inferred from the statute, the judge shall decide according to customary law and, where such a rule is lacking, according to the rule which he would establish as a legislator.
- 3) He follows proven doctrine and tradition.

*B. Content of legal relations*

Art. 2

I. Acting in good faith

- 1) Everyone shall act in good faith in the exercise of his rights and in the fulfillment of his obligations.
- 2) The manifest abuse of a right does not find legal protection.

Art. 3

II. Good faith

- 1) Where the law has attached a legal effect to a person's good faith, its existence is to be presumed.
- 2) A person who could not have been bona fide in paying attention as may be required of him under the circumstances is not entitled to plead good faith.

Art. 4

III. Judicial discretion

Where the law refers the judge to his discretion or to the appreciation of the circumstances or to important reasons, he must make his decision according to law and equity.

Art. 5

*C. General provisions of the law of obligations*

- 1) The general provisions applicable to the law of obligations shall also apply to civil law relations.
- 2) Where the law refers to practice or local usage, the prior law shall be deemed to be its expression unless a different practice is demonstrated.

D. Rules of

evidence

Art. 6

*I. Burden of proof*

Unless otherwise provided by law, the existence of an alleged fact shall be proved by the person who derives rights from it.

Art. 7

II. Evidence with public document

- 1) Public registers and public documents shall provide full proof of the facts attested to by them, unless the incorrectness of their contents is proven.

2) This proof is not bound to any particular form.

Art. 8

E. Competent authorities

- 1) Where the law does not provide otherwise, the district court shall have jurisdiction.
- 2) The court shall decide on disputes arising from the application of this Act, unless the non-litigation procedure is reserved or otherwise provided, in the litigation procedure.
- 3) The right to appeal its decisions or rulings to higher authorities is reserved.
- 4) Unless otherwise provided by law, decisions or orders of municipal bodies may be appealed to the Government, and those of the Government or other administrative authorities or bodies of the Land to the Administrative Court in administrative proceedings.

SR

F. International Law

Art. 9

*I. In general*

Repealed Art.

10

*II. Types of things*

Retrieved

III. Immovable property

Art. 11

*1. Substantive law*

Repealed Art.

12

*2. Form*

Retrieved

*IV. Movable property* Art. 13 to 18 Discontinued

Art. 19

V. Responsibility

The Liechtenstein authorities are responsible for all actions in rem, including the

The Court of Justice shall have jurisdiction in actions for possession relating to real property in Liechtenstein or to movable property situated in the Principality at the time the action is brought.

1. Departme  
nt The  
property

1. Title General provisions

A. Content of property

Art. 20

*1. In general*

- 1) A person who is the owner of a thing may dispose of it as he pleases within the limits of the law.
- 2) He has the right to demand it from anyone who withholds it from him and to repel any unjustified interference.
- 1) Animals are not things.

Art. 20a

*II. Animals*

2) Insofar as no special regulations exist for animals, the regulations applicable to objects shall apply to them.

B. Scope of ownership

Art. 21

*I. Components*

1) Whoever is the owner of a thing has the ownership of all its components.

2) A constituent part of a thing is everything which, according to the customary understanding at the place, belongs to its existence and cannot be detached without its destruction, damage or alteration.

Art. 22

*II. Natural fruits*

1) He who is the owner of a thing has the ownership also of its natural fruits.

2) Natural fruits are the temporally recurring products and the yields which, according to the common understanding, are obtained from a thing according to its purpose.

3) Until the separation, the natural fruits are part of the matter.

*III. Belongin*

*g Art. 23*

*1. Transcription*

1) Unless an exception is made, the disposition of an object shall also apply to its appurtenances, insofar as these are the property of the disposition party.

2) The movable property which, according to the local custom or the clear intention of the owner of the main property, is permanently intended for the management, use or safekeeping of the main property and which, by connection, adaptation or other means, has been brought into the relationship with the main property in which it is to serve it.

3) If a thing is an appurtenance, a temporary separation from the main thing does not deprive it of this property.

4) Ownership of immovable property may be recorded in the land register.

Art. 24

2. Exclusion

The term "appurtenances" shall never include movable objects which serve the owner of the principal object only for temporary use or consumption, or which have no relation to the nature of the principal object, as well as objects which are connected with the principal object only for safekeeping or for sale or lease.

C. Community property

*1. Joint ownership*

Art. 25

1. Relationship of the co-owners

- 1) If several persons own a thing according to fractions and without external division, they are co-owners. If it is not otherwise determined, they are co-owners in equal shares.
- 2) Each co-owner has the rights and obligations of an owner for his share, and this share can be sold and pledged by him and attached by his creditors.

Art. 26

*2. Regulations for use and management*

- 1) The co-owners may agree on rules of use and management that deviate from the statutory provisions and provide that they may be amended with the consent of the majority of all co-owners. The regulations of use and management may be recorded in the land register.
  - 1a) Any amendment to the provisions of the Regulations on the Use and Management of the Association concerning the allocation of exclusive rights of use shall also require the consent of the co-owners directly affected.
- 2) They cannot cancel or limit the powers of each co-owner:
  1. to demand that the administrative actions necessary for the preservation of the value and usability of the thing be carried out and, if necessary, ordered by the judge;
  2. to take, on its own initiative and at the expense of all co-owners, the measures that must be taken immediately to protect the property from imminent or growing damage.



## Art. 26a

3. *Ordinary administrative actions*

- 1) Each co-owner is authorized to perform ordinary administrative acts, in particular to carry out repairs, cultivation and harvesting work, short-term custody and supervision, as well as to conclude the contracts serving this purpose and to exercise the powers arising from them and from the rental, lease and work contracts, including the payment and receipt of sums of money for the entirety.
- 2) With the consent of the majority of all co-owners, the responsibility for these administrative acts may be regulated differently, subject to the provisions of the Law on Necessary and Urgent Measures.

## Art. 26b

4. *More important administrative activities*

- 1) With the consent of the majority of all the co-owners, representing at the same time the greater part of the property, more important administrative acts may be carried out, in particular the change of the type of cultivation or use, the conclusion and termination of rental and lease agreements, the participation in land improvements and the appointment of an administrator whose competence is not limited to ordinary administrative acts.
- 2) The provisions on the necessary structural measures remain reserved.

5. *Structural Measures*

## Art. 26c

a) *necessary*

Maintenance, restoration and renewal work necessary to preserve the value and serviceability of the item,

may be carried out with the consent of the majority of all co-owners, provided that they may not be carried out as ordinary administrative acts by each individual.

## Art. 26d

b) *useful*

- 1) Renewal and conversion work that is intended to increase the value or improve the economic efficiency or usability of the object requires the

Consent of the majority of all co-owners representing at the same time the greater part of the matter.

2) Changes that make it considerably and permanently more difficult or uneconomical for a co-owner to use the property for its previous purpose may not be carried out without the co-owner's consent.

3) If the change requires expenses from a co-owner which are not reasonable for him, in particular because they are disproportionate to the asset value of his share, it can only be carried out without his consent if the other co-owners bear his share of the costs to the extent that it exceeds the reasonable amount for him.

Art. 26e

c) serving the embellishment and convenience

1) Construction work that serves only to improve the appearance of the property or to make it more convenient to use may only be carried out with the consent of all co-owners.

2) If such work is ordered with the consent of the majority of all co-owners, who at the same time represent the greater part of the property, it may also be carried out against the will of a non-consenting co-owner, provided that he is not permanently impaired in his right of use and enjoyment by it, and the other co-owners compensate him for a merely temporary impairment and bear his share of the costs.

Art. 27

*6. Disposition of the matter*

1) Each co-owner is entitled to represent, use and enjoy the property to the extent that it is compatible with the rights of the others.

2) For the alienation or encumbrance of the thing as well as for the change of its purpose the agreement of all co-owners is required, as far as these have not unanimously agreed upon another order.

3) If there are mortgages or encumbrances on co-ownership shares, the co-owners may no longer encumber the item itself with such rights.

Art. 28

7. Carrying the costs and burdens

1) The administrative costs, taxes and other burdens arising from the co-ownership

or resting on the common property shall be borne by the co-owners in proportion to their shares, unless otherwise stipulated.

2) If a co-owner has borne such expenses in excess of this share, he may claim compensation from the others in the same proportion.

#### Art. 28a

##### *8. Binding nature of regulations and annotation in the land register*

1) The rules of use and management agreed upon by the co-owners and the administrative resolutions adopted by them, as well as judicial rulings and orders, are also binding on the legal successor of a co-owner and on the acquirer of a right in rem to a co-ownership share.

2) They can be noted in the land register in the case of co-ownership shares in land.

SR

#### 9. Exclusion from the Community

#### Art. 28b

##### *a) Co-owner*

1) A co-owner may be excluded from the community by a court decision if his conduct or the conduct of persons to whom he has entrusted the use of the property or for whom he is responsible violates obligations towards all or individual co-owners to such an extent that the continuation of the community cannot be expected of them.

2) If the community includes only two co-owners, each of them shall have the right of action; otherwise, unless otherwise agreed, the action shall require the authorization of a majority resolution of all co-owners with the exception of the defendant.

3) If the judge finds that the defendant is excluded, he shall order him to sell his share and, if the share is not sold within the set time limit, he shall, upon request, order its sale by public auction in accordance with the provisions on the forced sale of real property, excluding the provisions on the dissolution of co-ownership.

#### Art. 28c

##### *b) Other beneficiaries*

The provisions on the exclusion of a co-owner are applicable to the usufructuary and to the holder of another in rem or pre-

The provisions of the German Civil Code apply mutatis mutandis to the right of personal use of a co-ownership share.

#### 10. Suspension

##### Art. 29

##### a) Entitlement to division

- 1) Each co-owner has the right to demand the cancellation of the co-ownership if it is not excluded by a legal transaction, by division into condominiums or by the designation of the object for a permanent purpose.
- 2) The cancellation may be concluded for a maximum of thirty years by means of an agreement which, in the case of real property, must be in writing in order to be valid and may be recorded in the land register.
- 3) Repeal shall not be required at an inopportune time.

##### Art. 30

##### *b) Type of division*

- 1) The dissolution shall be effected by physical partition, by sale by private treaty or by auction with division of the proceeds, or by transfer of the whole thing to one or more of the co-owners with buy-out of the others.
- 2) If the co-owners are unable to agree on the manner of cancellation, the property shall, by order of the judge, be physically divided or, if this is not possible without a substantial reduction in its value, sold by public auction or by auction among the co-owners.
- 3) With the physical division, in case of unequal parts, an equalization of the parts in money can be connected.

##### Art. 30a

##### c) Animals of the domestic area

- 1) In the case of animals kept in the domestic sphere and not for the purpose of property or profit, in the event of a dispute, the court shall award sole ownership to the party who, from the point of view of animal welfare, provides the animal with the better accommodation.

2) The court may require the person awarded the animal to pay reasonable compensation to the other party; it shall determine the amount thereof in its discretion.

3) It shall take the necessary precautionary measures, in particular with regard to the temporary accommodation of the animal.

Art. 30b Discontinued

*II. joint ownership*

Art. 31

1. Prerequisite

If several persons, united by law or contract into a community, have ownership of a thing by virtue of their community, they are joint owners, and the right of each goes to the whole thing.

SR

Art. 32

*2. Effect*

1) The rights and obligations of the joint owners are governed by the rules under which their legal or contractual community stands.

2) In the absence of any other provision, the exercise of ownership and, in particular, the disposal of the property shall require the unanimous decision of all joint owners.

3) As long as the community lasts, a right to partition or to dispose of a fraction of the thing is excluded.

Art. 33

*3. Suspension*

1) The cancellation takes place with the sale of the object or the end of the community.

2) Unless otherwise provided, the division shall be made in accordance with the provisions on co-ownership.

2. Title

The real estate

1. Section

Subject, acquisition and loss of real property

A. Subject Art.

34

I. In general

- 1) The subject of the real property are the land plots.
- 2) Land plots within the meaning of this Act are:
  1. the properties,
  2. the independent and permanent rights recorded in the land register,
  3. the mines,
  4. the co-ownership shares in land.

Art. 35

II. Definitions

- 1) Property is any land area with sufficiently determined boundaries.
- 2) Independent and perpetual rights are easements or concessions over real property that are
  1. are neither established for the benefit of a dominant property nor exclusively for the benefit of a specific person, and
  2. are based on a minimum of 30 years or a maximum of 100 years.

Art. 36

III. Independant property

- 1) A plot of land can be linked to another plot of land in such a way that the respective owner of the main plot of land is also the owner of the plot of land belonging to it. The latter shares the legal fate of the main property and cannot be sold, pledged or encumbered separately.
- 2) If the linkage is for a permanent purpose, the statutory right of first refusal of the co-owners and the claim for cancellation cannot be asserted.
- 3) A contract within the meaning of paragraph 1 shall require official certification of the signatures.
- 4) Dependent ownership may be recorded in the land register.

Art. 37

B. Form of legal transactions

- 1) Legal transactions that have as their object a plot of land (on purchase, exchange,

limited rights in rem, right of first refusal, right of repurchase, right of sale, etc.), must be in writing in order to be valid.

2) The signatures must be officially certified for entry in the land register. The signature of the pledgee on the pledge agreement does not require official certification.

3) The dispositions upon death and the marriage contract require the forms prescribed by the law of succession and the matrimonial property law.

*C. Acquisition*

Art. 38

I. Registration

1) The acquisition of the real property requires the entry in the land register.

2) In the case of appropriation, inheritance, expropriation, compulsory execution or court judgment, however, the acquirer acquires ownership even before registration, but may not dispose of the property in the land register until registration has taken place.

SR

II. Types of

acquisition

Art. 39

Repealed Art.

40

1. Appropriation

Appropriation of land is subject to the provisions on ownerless property.

2. *Ground displacement*

Art. 41

a) *In general*

1) Movements of soil from one lot to another do not change the boundaries.

2) Parts of the soil and other objects that have been transferred from one property to the other in this process shall be subject to the provisions on the transferred materials or material connections.

Art. 41a

b) Permanent

- 1) The principle that land displacements do not affect boundary changes does not apply to areas with permanent land displacements if these areas have been designated as such by the government.
- 2) The designation of the areas shall take into account the nature of the land affected.
- 3) The fact that a plot of land belongs to such an area shall be recorded in the land register.

Art. 41b

*c) Redetermination of the border*

- 1) If a boundary becomes inappropriate due to a shift in the ground, any affected landowner may request that it be redefined.
- 2) Any additional or reduced value must be compensated.

d) Procedure

Art. 41c

*aa) When defining the perimeter for areas with permanent soil displacements.*

- 1) The perimeter for areas with permanent soil displacements shall be shown in a plan after determination by the government (Art. 41a) and shall be made available to the public for 30 days.
- 2) In all other respects, the provisions of the Land Surveying Act on the procedure for the issuance of public notices and objections shall apply *mutatis mutandis* to the determination of the perimeter of the area.

Art. 41d

*bb) in the event of redefinition of inappropriate limits*

- 1) If boundaries within an area perimeter defined by the government with permanent land shifts become inexpedient (Art. 41b), the competent municipality shall initiate a procedure for redefining the boundaries at the request of the landowners.
- 2) The municipality must first define a perimeter covering the area with the land affected by the land transfer. The perimeter of the area requires the approval of the government.
- 3) The redefinition and, if necessary, the remeasurement of the boundaries shall be carried out by the bodies of the official cadastral survey.
- 4) The plan with the newly established boundaries, together with the balance of the



and shortfall values for 30 days. The provisions of the Land Surveying Act shall apply accordingly to the publication and consultation procedure.

5) The municipality shall bear the costs of the procedure for redefining the boundaries; Art. 53 para. 1 let. b and para. 2 of the Surveying Act shall apply mutatis mutandis to the surveying costs. The costs of any remeasurement of the boundaries shall be borne by the Land.

6) Inappropriate boundaries of small extent are to be settled between the affected landowners in a simplified procedure.

7) The Government shall regulate the details of the procedure for redefining the boundaries, in particular the simplified procedure under subsection 6, by ordinance.

#### 4. Ersitzung

##### Art. 42

###### a) Ordinary acquisitive prescription

If a person is unjustifiably registered in the land register as the owner, his ownership may not be contested after he has owned the property in good faith for ten years without interruption and without contest since the registration in the land register.

##### Art. 43

###### b) Extraordinary attainder

1) If a person owns a plot of land, which is not recorded in the land register, uninterruptedly and unchallenged for 30 years, he may, if he is bona fide, demand that he be registered as the owner.

2) Under the same conditions, this right is available to the owner of a plot of land whose owner is not evident from the land register or was dead or declared missing at the commencement of the 30-year period of possession.

3) However, the entry may only be made by order of the District Court in a non-contentious procedure after no objection has been raised within a period set by official notice or after the objection has been rejected in the course of the proceedings.

##### Art. 44

###### c) Deadlines

For the calculation of time limits, interruption and standstill of prescription

the provisions on the limitation of claims shall apply accordingly.

Art. 45

III. Right to registration

- 1) The reason for acquisition gives the acquirer a personal claim against the owner for registration and, in the event of the owner's refusal, the right to judicial award of ownership.
- 2) In the event of appropriation, inheritance, expropriation, execution or judgment of the judge, the acquirer may obtain registration on his own initiative.

Art. 46

*D. Loss*

- 1) The land ownership ceases with the cancellation of the entry, as well as with the complete demise of the land.
- 2) The point in time at which the loss occurs in the case of expropriation is determined by the expropriation law.

E. Judicial Measures Art. 46a

*I. In case of untraceable owner*

- 1) If the owner entered in the land register cannot be identified, if his place of residence is unknown or if the name or place of residence of one or more of his heirs is unknown, the court may, on application, order the necessary measures.
- 2) In particular, the court may appoint a representative. Upon request, it shall determine the scope of the power of representation. If it does not determine otherwise, this is limited to preserving measures.
- 3) may submit a request for the ordering of measures:
  1. any person who has an interest worthy of protection;
  2. the Office of Justice.
- 4) The ordering of measures does not interrupt the period for extraordinary prescription.

Art. 46b

*II. In the absence of the prescribed organs*

If a legal entity registered in the land register as the owner no longer has the prescribed organs, any person who has an interest worthy of protection or the Office of Justice may apply to the court to order the necessary property-related measures.

## 2. Section

### Content and restrictions of land ownership

#### A. Content

##### Content Art.

##### 47

##### *I. Scope*

- 1) The ownership of land extends upward and downward to the airspace and ground, to the extent that there is an interest for the exercise of the ownership.
- 2) It includes, subject to legal limits, all structures and plants, as well as the springs.

SR

##### *II. Delimitation*

##### Art. 48

##### 1. Type of delimitation

- 1) The boundaries are indicated by the plans for the land registry and by the demarcations on the plot itself.
- 2) If the existing plans for the land register and the demarcations contradict each other, the correctness of the plans for the land register is presumed.
- 3) The presumption does not apply to government-designated areas of soil displacement.

##### Art. 49

##### *2. Delimitation obligation*

Every landowner is obliged to cooperate at the request of his neighbor to establish an uncertain boundary, be it by correcting the plans for the land register or by placing boundary signs.

##### Art. 50

##### 3. Boundary divorce action

If a neighboring landowner refuses to cooperate in determining

If there is a dispute about the boundary or the course of the boundary, an action may be brought before the court.

Art. 51

4. Costs

Suspended

Art. 52

*5. Co-ownership of devices for demarcation*

1) If devices for demarcation of two properties stand on the boundary, joint ownership of the two neighbors is presumed.

2) Art. 89 remains reserved.

III. Buildings on the property

*1. Soil and building material*

Art. 53

*a) Ownership*

1) If a person uses another person's material or his own material on another person's ground for a construction on his ground, it becomes part of the land.

2) However, the owner of the material is entitled, if the use has taken place without his will, to demand the separation of the material and its surrender at the expense of the landowner, insofar as this is possible without unreasonable damage.

3) Under the same condition, if the use has taken place without the will of the landowner, the landowner may demand the removal of the material at the expense of the builder.

Art. 54

*b) Replacement*

1) If the material is not separated from the soil, the landowner shall pay reasonable compensation for the material.

2) In the event of bad faith on the part of the constructing landowner, the judge may award full damages.

3) In the event of bad faith on the part of the owner of the building material, he may also award only that which the building is worth to the landowner at the very least.

Art. 55

*c) Allocation of the land ownership*

If the value of the construction apparently exceeds the value of the land, the person in good faith may demand that the ownership of the construction and land be assigned to the owner of the material in return for reasonable compensation.

Art. 56

2. Outstanding buildings

- 1) Structures and other devices projecting from one plot of land to another shall remain part of the plot of land from which they emanate if its owner has a right in rem to their existence.
- 2) The right to the superstructure may be entered in the land register as an easement.
- 3) If a superstructure is unjustified and the injured party does not object to it in due time, although this has become apparent to him, the right in rem to the superstructure or the ownership of the land may, if the circumstances justify it, be assigned to the superstructor who is in good faith, against appropriate compensation.

Art. 57

3. Building law

- 1) Structures and other devices that are buried, built on or otherwise permanently connected to the land on or under the ground surface may have a special owner if their existence is recorded as an easement in the land register.
- 2) The creation of a building right to individual floors of a building is excluded.

Art. 58

4. Lines

- 1) Pipelines for supply and disposal located outside the property they serve belong, where not otherwise ordered, to the owner of the plant and to the plant from which they originate or to which they are supplied.
- 2) Insofar as neighboring law does not apply, the in rem encumbrance of the third-party properties with such lines is effected by the establishment of an easement.
- 3) The easement comes into existence with the construction of the pipeline, if it is outwardly

is perceptible. Otherwise, it arises with the entry in the land register.

Art. 59

5. Fahrnisbauten

- 1) Huts, shacks, barracks and the like, if erected on other people's land without the intention of remaining connected, retain their special ownership.
- 2) Their existence is not registered in the land register.

Art. 60

IV. Plantings on the plot

- 1) If someone uses other people's plants on his own land, or his own plants on other people's land, the same rights and obligations arise as in the case of the use of building materials or in the case of the construction of vehicles.
- 2) The creation of an easement corresponding to the building right on plants and woods is excluded.

V. Responsibility of the landowner Art. 61

*1. When the right of ownership is exceeded*

- 1) If a person is harmed or threatened with harm by a landowner's encroachment on his or her property right, he or she may sue for removal of the harm or for protection against imminent harm and for damages.
- 2) If a building or a facility deprives a neighboring property of certain properties, the aforementioned claims shall only exist if the construction of the building or facility did not comply with the regulations in force at the time.

Art. 61a

*2. In the case of lawful management of the property*

If a landowner temporarily causes excessive and unavoidable disadvantages to a neighbor during the lawful management of his land, namely during construction, and causes damage as a result, the neighbor may only claim compensation from the landowner.

B. Restrictions Art.

62

*1. In general*

- 1) The legal restrictions on ownership exist without registration in the land register.
- 2) Their cancellation or amendment by legal transaction requires written form and entry in the land register in order to be valid.
- 3) The cancellation or amendment of restrictions on ownership under public law is excluded.

## *II. Disposal restrictions*

### *1. Statutory rights of first refusal*

#### Art. 63

##### *a) Principles*

- 1) Statutory rights of pre-emption may also be exercised at a compulsory auction, but only on the auction date and on the terms on which the property is awarded to the highest bidder; otherwise, statutory rights of pre-emption may be exercised subject to the conditions applicable to contractual rights of pre-emption.
- 2) The right of first refusal does not apply if the property is sold to a person who is entitled to a right of first refusal of the same or a higher rank.
- 3) Statutory rights of first refusal cannot be inherited or assigned. They take precedence over contractual rights of first refusal.

#### Art. 64

##### *b) Exercise*

- 1) The seller must notify the preemptors of the conclusion and content of the purchase agreement.
- 2) If the preemptor wishes to exercise his right, he must assert it within three months of becoming aware of the conclusion and content of the contract. The right may no longer be asserted after the expiry of two years from the entry of the new owner in the land register.
- 3) The preemptor may assert his claim within these time limits against any owner of the real property.

#### Art. 65

##### *c) Amendment, waiver*

- 1) An agreement excluding or modifying a statutory right of first refusal shall be valid only if it has been officially authenticated by the

Signatures. It may be recorded in the land register if the right of first refusal belongs to the respective owner of another property.

2) After the occurrence of the event of preemption, the beneficiary may waive the exercise of a statutory right of preemption in writing.

Art. 66

d) In the co-ownership and building lease relationship

1) Co-owners have a right of first refusal against any non-co-owner who acquires a share.

2) The owner of a plot of land encumbered with an independent and permanent building right and the holder of this right to the encumbered plot of land shall also have a right of first refusal vis-à-vis any purchaser, insofar as this is claimed by the exercise of his right.

3) Agreements on the cancellation or amendment of the right of first refusal may be recorded in the land register.

Art. 66a

*2. Contractual rights of first refusal*

1) If a right of first refusal is registered in the land register, it shall exist for the period specified in the registration against each owner under the conditions specified or, in the absence of such conditions, under the conditions under which the land was sold to the third party.

2) The right of first refusal may be asserted if the property is sold and in the case of any other legal transaction that is economically equivalent to a sale (case of first refusal). In particular, acquisition by way of inheritance, compulsory auction and acquisition for the performance of public duties do not qualify as cases of preemption if the conditions for expropriation are met.

3) The seller must inform the preemptor about the conclusion and the content of the purchase agreement.

4) The right of first refusal shall expire three months after the beneficiary has become aware of the sale; it shall in any case expire 25 years after the priority notice has been given, unless a longer period has been contractually agreed.

Art. 66b

3. Purchase and repurchase rights



1) If a right of purchase or a right of redemption is registered in the land register, it shall exist against each owner for the period specified in the registration.

2) Unless a longer period has been contractually agreed, the right of purchase shall expire in any case upon the expiry of ten years, and the right of repurchase shall expire in any case upon the expiry of 25 years from the date of the priority notice.

### III. Neighboring

right Art. 67

#### 1. Excessive Effects

1) Everyone is obliged, when exercising his property, namely when operating a trade on his property, to be aware of

refrain from all excessive interference with the property of neighbors.

2) In particular, all harmful effects that are not justified by the location and condition of the land or by local usage, such as air pollution, bad odors, noise, sound, vibration, radiation, or the deprivation of sunlight or daylight, are prohibited.

#### 2. Buildings

Art. 68

##### a) Rule

1) In the case of structures, the owner shall not damage neighboring properties by moving or endangering their earth or interfering with existing fixtures.

2) The provisions concerning overhanging structures shall apply to structures that conflict with the provisions of neighboring law.

3) Otherwise, subject to the special provisions of public law, the following restrictions shall apply.

##### b) Legal distances Art.

69

##### aa) *In general*

Repealed Art.

70

##### bb) *Opposite roads and paths*

Retrieved

c) Profile

s Art.

71

*aa) Procedure*

Repealed

Art. 72

*bb) Effects*

Repealed

Art. 73

d) Deprivation of the light

1) If a new building or an elevation deprives a neighboring property of sunlight or a neighboring building of light and thereby causes considerable damage, the neighbor is entitled to demand compensation for the damage within one year after the construction of the external building.

2) In the case of connected rows of houses, this provision is applicable only with reference to the higher building.

Art. 74

e) Reconstruction

Lifted

Art. 75

Repealed

Art. 76 to 79 Discontinued

*3. Excavations*

Art. 80

a) In general

When excavating, the owner shall not damage neighboring properties by moving or endangering their soil or interfering with existing fixtures.

*b) Peat cutting* Art. 81 to 83 Discontinued

*4. Plants*

## Art. 84

*a) Rule*

- 1) Overhanging branches and encroaching roots, if they damage his property and are not removed upon his complaint within a reasonable time, the neighbor may cut them and keep them for himself.
- 2) If a landowner tolerates the overhanging of branches on built-up or overbuilt ground, he has a right to the fruits growing on them (anries).
- 3) These regulations do not apply to adjoining forest land and to cases where branches overhang onto land in public use.
- 4) In case of doubt, trees on the boundary are to be considered as joint property of the two landowners.

## Art. 85

*b) Distances*

- 1) Tall trees other than fruit trees and nut trees may not be planted closer than six meters to the boundary, other fruit trees no closer than four meters, dwarf and terrain trees and shrubs no closer than 50 centimeters, and vines no closer than 30 centimeters. If the neighboring property is a vineyard, tall trees may not be planted closer than eight meters to the same.
- 2) The right to object to the close planting of trees expires after five years from the date of planting.
- 3) The above distances do not need to be observed in relation to woodland.

## 5. Boundary devices

## Art. 86

*a) Type*

Retrieved

*b) Distances*

## Art. 87

*aa) Opposite the neighboring property*

Repealed Art.

bb) Opposite roads, paths, etc. Lifted

Art. 89

c) Property

- 1) In case of doubt, enclosures on the boundary of two plots of land are to be considered as joint property of the two landowners.
- 2) For enclosures of fully enclosed properties, if the adjoining property is not also an enclosure, there is a presumption that they belong to the enclosed property.
- 3) Enclosures which close off properties from roads, public places, woods and commons are presumed to belong to the enclosed properties.

*d) Enclosure obligation*

Art. 90

aa) In general

- 1) Bridges, ponds, ditches, pits, and similar hazardous locations shall be fenced or covered.
- 2) The municipal council shall see to the implementation of this provision, and the government as supervisory authority shall make the necessary decrees, if necessary, in the administrative procedure.
- 3) In other cases, in case of dispute, the Municipal Council shall decide on the need and the type of fencing.

Art. 91

bb) In case of mutual grazing

- 1) Where grazing takes place on both sides of adjoining properties, each adjoining owner may demand fencing at the expense of both parts.
- 2) Each abutting owner shall construct and maintain a section of fencing appropriate to his interest.
- 3) If plots of land with grazing operations are separated from each other by footpaths or estate roads, there is no obligation to fence them in the absence of a special agreement or local practice to the contrary.

Art. 92

*cc) For one-sided grazing*

1) Any property on which grazing takes place must be protected from neighboring properties without grazing at the owner's expense.

mers, unless a different local practice can be proven.

2) Each property is to be fenced in from other properties where general grazing takes place, with the exception of public roads and paths, subject to local practice to the contrary.

3) The cost of such fencing shall be borne by the owners of all properties protected thereby in proportion to their interest.

Art. 93

6. Water drain

1) Each landowner is obligated to receive the water that naturally flows from the property above, such as rainwater, snowmelt, and water from springs that are not captured.

2) No one may alter the natural course of events to the detriment of the neighbor.

3) The wastewater necessary for the lower property may be withdrawn from it only to the extent that it is indispensable for the upper property.

Art. 94

7. Drainages

1) In the case of drainage, the owner of the underlying property must take the water that has already flowed to him naturally without compensation.

2) If he is damaged by the supply line, he may demand that the upper owner continue the line through the lower property at his own expense.

8. Feedthroughs

Art. 95

a) Duty to tolerate

1) Each landowner is obliged to allow the passage of pipes and conduits for supply and disposal against full compensation

if another property cannot otherwise be developed or can only be developed at disproportionate cost.

2) The right of transit under neighboring law cannot be claimed in cases where the law of expropriation is applicable.

3) If the entitled party or the encumbered party so requests, the conduits shall be entered in the land register as an easement at the expense of the entitled party. The right of passage may also be withheld from a bona fide purchaser without registration.

Art. 96

*b) Safeguarding the interests of the burdened party*

1) The encumbered landowner has the right to have his interests taken into account in a reasonable manner.

2) Where exceptional circumstances so justify, the owner may, in the case of above-ground lines, demand that the piece of land over which these lines are to be laid be taken from him to a reasonable extent in return for full compensation.

Art. 97

*c) Change of circumstances*

1) If the circumstances change, the burdened party may demand that the line be relocated in accordance with its interests.

2) As a rule, the costs of relocation shall be borne by the beneficiary.

3) However, where special circumstances justify it, an appropriate part of the costs may be imposed on the party charged.

*d) The*

*procedure*

Art. 98

*aa) Wanted*

1) Whoever wishes to use the neighbor's land for such pipelines may, if no agreement can be reached with the owner of the same, submit a request for permission to pipeline to the municipal council.

2) The application must be justified in writing. The plan to be attached shall specify the exact location and extent of the right of way claimed, as well as the location of the strip of land occupied by the pipeline.

3) The municipal council shall notify the mortgagees of the request in order to protect their rights.

Art. 99

bb) Decision

- 1) The Municipal Council shall grant the party claimed to be subject to the obligation to pass through a destructive objection period of 14 days.
- 2) In the event of an objection, the municipal council shall decide whether the legal requirements for toleration of the pipeline are met and to what extent and in what form it is to be carried out.
- 3) The municipal council may obtain the opinion of experts at the expense of the applicant.
- 4) Compensation for the established pass-through obligation shall be determined at the same time.

Art. 100

cc) *Appeals*

Within one month from the date of notification of this decision, either party may bring an action before the Regional Court with regard to both the obligation to pass through and the compensation.

Art. 101

dd) Procedure for relocations

- 1) If it is not possible to reach an agreement with the owner of the property, requests for the relocation of a pipeline due to a change in circumstances must be submitted to the municipal council by the party affected, stating the reasons.
- 2) The municipal council shall decide whether and in what manner the relocation shall take place and whether a part of the relocation costs shall be borne by the burdened party.
- 3) Within one month from the date of notification of this decision, either party may bring an action before the District Court.

9. Rights of way

Art. 102

a) Emergency route

- 1) If a landowner has no sufficient way from his property to a public road, he may claim that the neighbors grant him an emergency way against full compensation.
- 2) This provision shall also apply, in particular, if, as a result of cultural improvements and the like, a path is necessary or the existing right of way

becomes insufficient.

3) The claim is primarily directed against the neighbor to whom the granting of the emergency route can be expected the soonest due to the previous ownership and route relationships, and further against the neighbor for whom the emergency route is least harmful.

4) When determining the emergency route, the interests of both parties shall be taken into consideration.

5) Disputes are to be settled in extrajudicial proceedings.

b) Right to  
stretch Art.  
103

*aa) Stock*

1) The right to extend is recognized where appropriate practice can be demonstrated.

2) If owners of neighboring fields are mutually entitled to it, it shall cease to exist without compensation as soon as it is officially terminated by one part.

3) If it encumbers a property on one side, it is redeemable for half the value of the four-meter wide footprint.

Art. 104

bb) Scope

1) Reaching out shall be limited to four feet everywhere.

2) In municipalities where the right to extend is exercised, the municipal council shall determine each spring and late year when the exercise of this right may begin and when it shall cease. The decision is not subject to further appeal.

3) On field paths and field roads, the right to extend may be exercised at any time while avoiding damage.

Art. 105

c) Giant

1) The owner of a forest, as well as the owner of the timber cut there, for which there are no or only unsuitable transport possibilities, is entitled to demand from the owners of neighboring properties the passage of the timber at a suitable place, if necessary also by means of reams, sledges or special devices, such as wire ropes and timber lines, against full compensation.



- 2) After all, the giant has to be done, if possible, in winter and with the least possible damage to the deeper land.
- 3) In the event of disputes, both the obligation to allow passage and the obligation to pay damages are decided by the Regional Court in the first instance on an expedited basis in out-of-court proceedings.
- 4) The granting of such rights may be requested and approved both for the individual case and permanently for all future cases.

Art. 106

d) Public field and footpaths

- 1) The owners of properties over which public field and footpaths pass shall permit the use of the same at all times.
- 2) The municipality shall maintain them in such a way that they can be used in accordance with their purpose.
- 3) For violation of the right of use, a complaint may be filed with the municipal council.

Art. 107

e) Winterweg

- 1) The usual winter trails shall be used, contrary practices or contracts reserved, as a rule, only when the track is slippery or the ground is frozen.
- 2) If there is urgency and another suitable route is not available, then exceptionally from mid-February to the first of March it is possible to drive over snow-free and non-frozen ground.
- 3) If this results in substantial damage to the landowner, the same must be compensated.

Art. 108

f) Local exercise

- 1) These rights shall be exercised with the greatest possible care for the land claimed.
- 2) For the rest, the existing local practices are decisive for the type and extent of the exercise of the same, in particular watering trails, winter trails, giants, travels and the like.

Art. 109

g) Note in the land register

- 1) Rights of way established directly by law, as well as the usual winter roads, exist rightfully without registration.
- 2) However, if they are of permanent nature, they shall be recorded in the land register.

Art. 110

10. Emergency logging

- 1) If an alp has neither its own timber nor sufficient timbering rights, the owner of the adjoining forest that is most suitable for this purpose is obliged to provide, against full compensation, the timber required for the construction and maintenance of the stables and alpine huts, insofar as no other material can be used for these purposes without excessive costs.
- 2) The District Court shall decide on the existence and the scope of this obligation as well as on the obligation to pay compensation in extrajudicial proceedings.

Art. 111

11. *Snow escape right*

The right to snow evacuation is maintained in accordance with previous contracts, custom or practice.

Art. 112

12. Maintenance obligation

Landowners shall contribute to the costs of devices for exercising neighboring rights in proportion to their interest.

*IV. Right of access and defense*

Art. 113

1. *Access*

- 1) Access to forests and pastures and the appropriation of wild berries, mushrooms and the like are permitted to everyone to the extent customary in the locality, unless, in the interest of the crops, the municipal council issues individual, specifically defined prohibitions in the official prohibition procedure.
- 2) The right to enter the property of others for hunting and fishing purposes is reserved by the public law provisions of the hunting and fishing legislation.

Art. 114

## 2. Removal of supplied items and the like

- 1) If objects are brought onto another person's property by water, wind, avalanches or other natural forces or accidental events, or if animals, such as large and small livestock, swarms of bees, poultry and fish, get onto another person's property, the landowner must allow the entitled person to find and remove them.
- 2) He may claim compensation for the damage resulting therefrom and shall have a right of retention in respect of such items.

### Art. 115

## 3. Defense against danger and damage

- 1) If a person can only avert imminent damage or a present danger from himself or others by interfering with the real property of a third party, the latter is obliged to tolerate the interference as soon as the danger or damage is disproportionately greater than the impairment caused by the interference.
- 2) Such an obligation to tolerate exists in particular for the making of the necessary improvements to neighboring buildings, the erection of the scaffolding necessary for this purpose, for which, however, a strip of ground no more than one meter wide may be used, the cutting and repairing of fences and similar work, and for the passage and the drive-through, insofar as the usual path has become unusable for any reason.
- 3) Reasonable compensation shall be paid for any resulting damage.

SR

### *V. Public survey marks*

#### Art. 116 to 118 Discontinued

## VI. Prevention of fragmentation of goods

### Art. 119

Repealed Art.

120

Repealed Art.

121

Retrieved

### *VII. Homeland Security*

Art. 122

1. Duty of the municipal council Repealed

Art. 123

2. *Expropriation*

The right of expropriation may be asserted for the purpose of preserving artistically or historically valuable buildings or components as well as natural monuments.

*VIII. Ground improvements*

Art. 124 to 140 Deleted

IX. Reallocation of building

area Art. 141 to

147 Revoked

Art. 148

X. Public works

- 1) The regulation of the river flow to be carried out by public authorities.

The right to make decisions on the construction of dams, stream and riparian embankments, associated drainage and similar works is reserved for special legislation.

- 2) In case of doubt, the government decides whether a planned company should be subject to this special legislation.

C. Rights to springs and wells Art.

149

*I. Source ownership and source law*

- 1) Springs are integral parts of land plots and can only be acquired for ownership at the same time as the land from which they spring.
- 2) The right to springs on land owned by others is established as an easement by registration in the land register.

- 3) Retrieved

Art. 150

*II. Out of country transportation*

The provisions established for the discharge of public waters outside the country shall apply to the discharge of sources across the national border.

*III. Digging sources*

Art. 151

1. Damages

1) If springs and wells, which have been used in a considerable manner or have been collected for the purpose of exploitation, are dug up, impaired or polluted to the detriment of the owner or person entitled to use them by buildings, installations or precautions of any other kind, compensation may be claimed.

2) If the damage was not caused intentionally or negligently, or if the injured party himself is at fault, the district court shall determine at its discretion whether, to what extent and in what manner compensation is to be paid.

Art. 152

2. Recovery

1) If springs and wells, which are indispensable for the cultivation or habitation of a property or for drinking water supplies, are dug or polluted, the restoration of the former condition may be demanded, if at all possible.

2) In other cases, such restoration may be required only where special circumstances justify it.

Art. 153

IV. Source community

1) If adjacent sources of different owners form together a source group as an outflow of a common collection area, each owner may request that they be collected jointly and supplied to the rightholders in proportion to the previous source strength.

2) The costs of the common facility shall be borne by the beneficiaries in proportion to their interest.

3) If one of the entitled parties opposes this, each of them shall be entitled to the proper capture and diversion of its source even if the strength of the other sources is thereby impaired, and shall be compensated for this only to the extent that its source has been strengthened by the new devices.

Art. 154

*V. Use of external sources*

1) Wells, springs and streams which are privately owned may, in times of exceptional water shortage, or when the owner of a parcel of land is temporarily unable to use his own well due to the onset of cold weather or for similar reasons, be used by

be used by anyone for the needs in the house and yard, as far as this can be done without significant disadvantage to the owner.

2) In this case, the user is obliged to contribute to the cleaning and, in the case of longer joint use, also to the maintenance of the well to a reasonable extent.

3) The use of other people's water must be done with the greatest possible consideration for the interests of the owner. Any damage resulting from such use shall be compensated.

4) In case of dispute, the Municipal Council shall decide on the right to draw water.

#### Art. 155

#### VI. Emergency well

1) If a plot of land lacks the water necessary for house and yard and if this cannot be obtained from elsewhere without quite disproportionate effort and expense, the owner may demand from the neighbor, who is able to provide it without his own need, the assignment of a share in wells or springs in extrajudicial proceedings against full compensation and is entitled to use the access necessary for this purpose.

2) When determining the emergency well, preference shall be given to the interest of the person obligated to pay.

3) If the circumstances change, an amendment to the order made may be requested.

#### VII. Obligation to assign

#### Art. 156

#### 1. Of the water

1) If springs, wells or streams are of no use to their owner or of very little use in relation to their usability, the owner may be required to cede them in return for full compensation for drinking water supplies, hydrant systems or other undertakings for the general welfare.

2) This compensation may consist of the supply of water from the new plant.

## Art. 157

## 2. Of the ground

Owners of drinking water supplies may require, by way of eminent domain, the cession of surrounding land to the extent necessary to protect their sources from contamination.

## D. Alpine cooperative

## Art. 158

*I. Principle*

- 1) For each alp belonging to a cooperative, which is divided into partial rights such as cow rights or grazing rights, which form independent objects of traffic, an alp book (Seybuch) is kept.
- 2) The existence of an alpine register must be recorded in the land register on the land belonging to the alpine cooperative.

## Art. 159

## II. Registry management and legal remedies

- 1) The alpine book is kept by the Office of Justice.
- 2) The Office of Justice may assign the keeping of the alpine register to a member of the board of the alpine cooperative. The Office of Justice is responsible for the direct supervision of the person entrusted with the management of the register. The Office of Justice shall withdraw the management of the register if the proper management of the register is no longer guaranteed.
- 3) Appeals against decisions of the Office of Justice and the person responsible for keeping the register may be lodged with the Appeals Commission for Administrative Matters within 14 days.

## Art. 160

*III. Fees and costs*

If the keeping of the alpine register is delegated, the alpine cooperative shall bear the costs for the keeping of the alpine register itself. The alpine cooperative may charge fees in accordance with the regulations applicable to the keeping of the land register.

## Art. 161

*IV. General ledger*

- 1) The alpine book consists of a general ledger.

- 2) A separate sheet with a separate number must be opened for each partial right.
- 3) Only whole partial rights can be included.

V. Entries Art.

162

*1. In general*

- 1) The transfer of ownership and the creation of limited rights in rem to partial rights shall be entered in the general ledger.
- 2) Contracts concerning partial rights require the same form for their validity as is prescribed for contracts concerning real property.

Art. 163

*2. Registration*

- 1) The registrations are made on the basis of a written application and proof of the legal ground.
- 2) For the legitimation for the registration the regulations about the basic book are valid.

Art. 164 to 166 Deleted Art.

167

*3. Effect*

- 1) The alienation of a partial right and the creation of a limited ding- lic right to such a right shall become effective in rem only upon entry in the general ledger.
- 2) A person who relies in good faith on an entry in the general ledger shall have his rights protected.
- 3) The objection that someone was not aware of an entry in the general ledger is excluded.

4. Relationship to the land

register Art. 168

a) Effect

- 1) Ownership and limited rights in rem to the alp as a unit are determined by the entries in the land register.
- 2) The rights acquired to the alp as a unit according to the land register law take precedence over the rights acquired to the partial rights.



## Art. 169

*b) Applicable law*

In all other respects, the provisions of land register law concerning the procedure for entries and deletions shall apply *mutatis mutandis* to the alpine register.

## Art. 170

## VI. Keeping of the computerized alp book

- 1) The alp book can be kept by means of information technology (EDP alp book).
- 2) The provisions on keeping the computerized land register shall apply *mutatis mutandis*.
- 3) The Government shall regulate the details of the registration procedure and the keeping of the register by ordinance.

## 3. Section

The condominium ownership

*A. Content and subject*

## Art. 170a

## I. Content

- 1) Condominium ownership is the co-ownership share in a property that gives the co-owner the special right to use certain parts of a building exclusively and to develop them internally.
- 2) The condominium owner is free in the management, use and structural design of his own premises, but may not impede any other condominium owner in the exercise of the same right and may not damage the common components, installations and facilities in any way or impair their function and external appearance.
- 3) He shall maintain his premises in such manner as is necessary to keep the building in good repair and appearance.

## Art. 170b

*II. Subject*

- 1) The subject of the special right may be individual floors or parts of floors, which must be self-contained as apartments or units of rooms for business or other purposes with their own access, but may include separate adjoining rooms.

2) The condominium owner can not be granted special rights:

1. the land of the property and the building right by virtue of which, if any, the building is constructed;

2. the building components that are important for the existence, structural arrangement and strength of the building or the premises of other floor owners or determine the external shape and appearance of the building;

3. the facilities and equipment that also serve the other floor owners for the use of their premises.

3) Other components of the building may be declared common in the act of creation and in the same form also by subsequent agreement of the condominium owners; if this is not done, the presumption applies that they are segregated by special right.

Art. 170c

*III. Order*

1) By law, the condominium owner does not have a right of first refusal against any third party acquiring a share, but it may be established in the deed of creation or by subsequent agreement and recorded in the land register.

2) In the same way, it may be stipulated that the sale of a condominium, its encumbrance with a usufruct or a residential right, as well as its rental, shall only be legally valid if the other condominium owners have not objected thereto on the basis of a resolution adopted by them within 14 days of the notice given to them.

3) The objection shall be invalid if it has been raised without good cause, which shall be decided by the judge at the request of the objector.

B. Establishment and  
extinction Art. 170d

I. Justification act

1) Condominium ownership is established by registration in the land register.

2) The registration may be required:

1. based on an agreement of the co-owners on the arrangement of their shares into condominium ownership;

2. on the basis of a declaration by the owner of the property or the holder of an independent and permanent building right on the formation of co-ownership shares and their arrangement into condominium ownership.

- 3) In order to be valid, the legal transaction must be publicly certified by the Office of Justice or, if it is a disposition upon death or a contract for the division of an estate, the form prescribed by the law of succession.

## Art. 170e

*II. Spatial separation and value quotas*

- 1) In addition to the spatial demarcation, the justification act shall indicate the share of each floor in hundredths or thousandths of the value of the real estate or the building lease.
- 2) Changes in the value quotas require the consent of all those directly involved and the approval of the assembly of condominium owners; however, each condominium owner is entitled to correction if his quota was incorrectly determined due to error or has become incorrect as a result of structural changes to the building or its surroundings.

## Art. 170f

*III. Downfall*

- 1) Condominium ownership ends with the demise of the property or the building right and with its deletion from the land register.
- 2) The cancellation may be requested on the basis of a cancellation agreement and without such agreement by a condominium owner who unites all shares in his hand, but requires the consent of the persons entitled in rem to the individual condominiums, whose rights cannot be transferred to the real estate without disadvantage.
- 3) The cancellation can be requested by any condominium owner if the building:
1. destroyed to more than half of its value and reconstruction is not possible without a burden that is difficult for it to bear; or
  2. has been divided into condominiums for more than 50 years and can no longer be used as intended due to its poor structural condition.
- 4) The condominium owners who wish to continue the community can avert the cancellation by compensating the others.

## C. Administration and use Art.

## 170g

I. The applicable provisions

- 1) The provisions on co-ownership shall apply to the responsibility for administrative acts and structural measures. Insofar as these provisions do not exclude it themselves, they may be replaced by another order, but only in the act of justification or with the unanimous decision of all condominium owners.
- 2) In addition, each condominium owner may request that a regulation on the management and use of the condominium be drawn up and recorded in the land register, which, in order to be binding on him, may be adopted by a resolution passed by a majority of the condominium owners, more than half of whom are entitled to a share in the condominium, and may be amended by this majority, even if it has been drawn up in the agreement on the creation of the condominium.
- 3) A change in the allocation of exclusive rights of use under the regulations also requires the consent of the condominium owners directly affected.

*II. Joint costs and charges*

Art. 170h

1. Inventory and distribution

- 1) The condominium owners shall contribute to the burdens of the common property and to the costs of the common administration in accordance with their share in the value of the common property.
- 2) Such burdens and costs are namely:
  1. the expenses for the current maintenance, repairs and renewals of the common parts of the land and building as well as the common facilities and equipment;
  2. the costs of administrative activities, including the compensation of the administrator;
  3. the public law contributions and taxes imposed on the condominium owners as a whole;
  4. interest and amortization payments to pledgees to whom the property is liable or to whom the condominium owners are jointly and severally obligated.
- 3) If certain common components, installations or facilities do not serve individual condominium units or serve them only to a very limited extent, this shall be taken into account when allocating the costs.

*2. Liability for contributions*

Art. 170i

*a) Legal lien*

1) The community is entitled to a lien on each condominium owner's share of the contributions due for the last three years.

2) Registration may be effected by the administrator or, if no such administrator has been appointed, by any person appointed for that purpose by majority vote or by the

The claim may be demanded by the owner of the condominium authorized by the judge and by the creditor on whose behalf the claim for contribution is attached.

3) In all other respects, the provisions on the establishment of the construction lien shall apply *mutatis mutandis*.

Art. 170k

*b) Retention right*

1) The Community shall have a right of recourse, like a landlord, for the last three years' dues due on the movable property located on the premises of a condominium owner and forming part of its furnishings or use.

Art. 170l

III. Community capacity to act

1) Under its own name, the Community acquires the assets resulting from its administrative activity, such as, in particular, the contribution claims and the available funds obtained from them, such as the renewal fund.

2) The community of condominium owners may sue and operate under its name as well as be sued and operated at the location of the situated thing.

D. Organization

*I. Meeting of the condominium owners*

Art. 170m

*1. Competence and legal status*

1) In addition to the powers provided for in other provisions, the Assembly of Stockholders shall have the following powers:

1. to decide on all administrative matters that are not the responsibility of the administrator;

2. appoint the administrator and supervise his activities;
  3. To elect a committee or deputy to whom it may delegate administrative matters, such as, by name, the task,  
to assist the administrator in an advisory capacity, to audit the administrator's management and to report thereon to the meeting and to submit motions;
  4. annually approve the estimate, invoice and distribution of costs among the owners;
  5. to decide on the creation of a renewal fund for maintenance and renewal work;
  6. to insure the building against fire and other hazards and to take out the usual liability insurances, furthermore to oblige the condominium owner who has structurally designed his rooms with extraordinary expenses to pay an additional premium share if he does not take out a supplementary insurance on his own account.
- 2) Unless the law contains special provisions, the provisions on the bodies of the association and on the contestation of association resolutions shall apply to the assembly of condominium owners and to the committee.

Art. 170n

*2. Convening and management*

- 1) The meeting of the condominium owners shall be convened and chaired by the administrator, unless it has decided otherwise.
- 2) The resolutions shall be recorded and the minutes shall be kept by the administrator or by the condominium owner presiding over the meeting.

Art. 170o

*3. Exercise of voting rights*

- 1) Several persons jointly entitled to a floor have only one vote, which they cast through a representative.
- 2) Likewise, the owner and the usufructuary of a floor shall agree on the exercise of the right to vote, otherwise the usufructuary shall be deemed to have the right to vote in all matters of administration with the exception of merely useful constructional measures or those serving the improvement and comfort.

Art. 170p

#### 4. Quorum

- 1) The meeting of the condominium owners shall constitute a quorum if half of all condominium owners who are also entitled to a half share, but at least two condominium owners, are present or represented.
- 2) In case of insufficient participation, a second meeting shall be convened, which shall not be held before the expiry of ten days from the first meeting.
- 3) The second meeting shall constitute a quorum if the third part of all condominium owners, but at least two, are present or represented.

#### II. The

administrato

r Art. 170q

##### 1. Order

- 1) If the appointment of the administrator by the assembly of condominium owners does not take place, each condominium owner may request the appointment of the administrator by the judge.
- 2) The same right is also available to those who have a legitimate interest in it, such as the pledgee and the insurer.

Art. 170r

##### 2. Recall

- 1) By resolution of the assembly of condominium owners, the administrator may be dismissed at any time, subject to any claims for compensation.
- 2) If the assembly of condominium owners rejects the dismissal of the administrator in disregard of important reasons, each condominium owner may demand the dismissal by a court within one month.
- 3) An administrator who has been appointed by the judge may not be removed without the judge's approval before the expiration of the period for which he is appointed.

##### 3. Tasks

Art. 170s

###### *a) Implementation of the provisions and resolutions on management and use*

- 1) The administrator shall perform all acts of common management in accordance with the provisions of the law and the regulations, as well as in accordance with the resolutions of the assembly of condominium owners, and shall take all urgent measures on his own initiative to prevent or remedy any damage.

2) It distributes the common costs and burdens among the individual condominium owners, invoices them, collects the contributions and is responsible for the administration and proper use of the available funds.

3) He shall ensure that in the exercise of the special rights and in the use of the common parts of the land and building as well as of the common facilities, the provisions of the law, the regulations and the provisions of the law are complied with.  
of the house rules are followed.

Art. 170t

*b) External representation*

1) The manager represents both the community and the condominium owners externally in all matters of community management that fall within the scope of his or her legal duties.

2) In order to conduct civil proceedings to be instituted or instituted by the opposing party, the administrator shall require the prior authorization of the assembly of condominium owners, subject to urgent cases in which the authorization may be made up for.

3) Declarations, requests, judgments and orders addressed to the condominium owners as a whole may be validly communicated by service on the administrator at his place of residence or at the place where the property is located.

3. Title

Ownership of the  
vehicle Art.  
171

A. Subject

The subject of the road property are the physical things movable by their nature as well as the natural forces, which can be subjected to the legal dominion and do not belong to the real estate.

B. Acquisition types

*I. Transmission*

Art. 172

1. Transfer of ownership

1) The transfer of ownership of the vehicle requires the transfer of possession to the purchaser.

2) Who in good faith receives a movable thing transferred to property,



becomes its owner, even if the transferor is not authorized to transfer ownership, as soon as he is protected in possession of the thing according to the rules of possession.

2. *Retention of title*

Art. 173 to 186 Deleted Art.

187

3. Acquisition without possession

1) If the object remains with the transferor as a result of a special legal relationship, the transfer of ownership shall be invalid vis-à-vis third parties if it is intended to disadvantage them or to circumvent the provisions on the pledge.

2) The district court shall decide on this at its discretion.

Art. 188

II. Appropriation

By appropriation only ownerless things can be acquired to property.

III. Fund

1. *Announcement, demand*

Art. 189

a) In general

1) Whoever finds a lost property shall notify the owner thereof and, if he does not know him, shall either notify the municipality or the provincial police of the finding or shall himself provide for an announcement and inquiry appropriate to the circumstances.

2) He is obliged to report if the value of the item obviously exceeds 100 francs.

3) Whoever finds a thing in an inhabited house or in an institution serving the public use or traffic, has to deliver it to the landlord, tenant or the persons entrusted with the supervision.

Art. 189a

b) For animals

Whoever finds a lost animal shall, subject to Art. 189, para. 3, notify the owner thereof and, if he does not know him, report the find to the national police.

Art. 190

2. Storage and auction

- 1) The found object shall be stored in an appropriate manner.
- 2) It may be sold by public auction by the municipality or the national police, after prior notification, if it requires expensive maintenance or is subject to rapid deterioration, or if it has been kept by the authority for more than one year.
- 3) The proceeds of the increase shall take the place of the item.

Art. 191

3. Acquisition of ownership and surrender

- 1) Whoever fulfills his duties as finder acquires ownership of the thing if the owner cannot be determined for five years from the announcement or notification.
  - 1a) In the case of animals kept in the domestic sphere and not for property or profit purposes, the period shall be two months.
  - 1b) If the finder entrusts the animal to an animal shelter with the intention to give up the possession of it definitively, the animal shelter may freely dispose of the animal after the expiration of two months since the animal was entrusted to it.
- 2) If the item is returned, the finder is entitled to compensation for all expenses and a reasonable finder's fee.
- 3) In the case of a find in an inhabited house or in an institution serving public use or traffic, the owner of the house, the tenant or the institution shall be considered the finder, but shall not be entitled to a finder's fee.
- 4) The special provisions applicable to public transport institutions remain reserved.

Art. 192

4. Treasure and scientific objects

The acquisition of ownership of a treasure and of found ownerless natural bodies and antiquities shall be governed by the provisions on ownerless objects.

Art. 193

IV. Feed

- 1) If someone is injured by water, wind, avalanches or other natural forces or

If a person finds movable property by accident, or if foreign animals come into his or her custody, he or she has the rights and obligations of a finder.

2) If a swarm of bees flies into another person's populated hive, it falls to the owner of that hive without any obligation to compensate.

Art. 194

V. Processing

1) If someone has processed or transformed another person's thing, the new thing belongs to the processor if the work is more valuable than the substance, otherwise it belongs to the owner of the substance.

2) If the fabricator has not acted in good faith, the district court may, even if the work is more valuable, award the new item to the owner of the fabric.

3) Claims for damages and for enrichment remain reserved.

Art. 195

VI. Connection and mixing

1) If movable objects of different owners are mixed or combined in such a way that they can no longer be separated without substantial damage or disproportionate work and expenses, the parties involved shall acquire co-ownership of the new object in proportion to the value of the individual parts at the time of combination.

2) If a movable thing is mixed or combined with another in such a way that it appears as its secondary component, the whole thing belongs to the owner of the main component.

3) Claims for damages and for enrichment remain reserved.

Art. 196

VII. Ersitzung

1) If a person has held another person's movable property in good faith for an uninterrupted and unchallenged period of five years, he shall become the owner by adverse possession.

1a) In the case of animals kept in the domestic sphere and not for property or profit purposes, the period shall be two months.

2) Involuntary loss of possession does not interrupt the right of possession if the owner, within a period of one year or by means of an action brought during this period, requests the

thing regained.

3) The provisions on the limitation of claims shall apply mutatis mutandis to the calculation of the periods, the interruption and the standstill of the replacement.

Art. 197

C. Loss

The ownership of the vehicle, despite the loss of possession, ceases only when the owner relinquishes his right or another person subsequently acquires ownership.

2. Department

The limited rights in rem

4. Title

Easements and encumbrances The

1. Section

easements

Art. 198

A. Subject

1) A plot of land may be encumbered for the benefit of another plot of land in such a way that its owner must put up with certain encroachments by the owner of the other plot of land or may not exercise his right of ownership in its favor according to certain directions.

2) An obligation to perform acts may only be incidentally connected with the easement. For the acquirer of the entitled or encumbered real property, such an obligation is only binding if it results from the entry in the land register.

B. Establishment and demise

*1. Establishment*

Art. 199

*1. Registration*

1) In order to establish an easement, it must be entered in the land register.

1a) If the exercise of an easement is limited to a part of the real property and the local location in the statement of the legal ground is insufficient, the easement may be exercised only on a part of the real property.

determinably circumscribed, it shall be shown graphically in an extract of the plan for the land register.

2) Unless otherwise provided, the provisions on land ownership shall apply to acquisition and registration.

3) Seizure is possible only to the detriment of land in which the ownership can be seized.

Art. 200

2. Establishment at own expense

The owner is entitled to establish an easement on his property in favor of another property belonging to him.

II. Demise

Art. 201

1. *In general*

Any easement shall cease to exist upon the deletion of the entry, as well as upon the complete destruction of the encumbered or the entitled property.

Art. 202

2. Association

1) If the beneficiary becomes the owner of the encumbered property, he may have the easement extinguished.

2) As long as the deletion has not taken place, the easement remains in existence as a right in rem.

Art. 203

3. *Replacement*

1) If an easement has lost all interest for the entitled property, the encumbered party may demand its cancellation.

2) If an interest of the beneficiary still exists but is of disproportionately minor importance compared to the encumbrance, the easement may be redeemed in whole or in part against compensation.

C. Content

1. *Scope*

Art. 204

1. *In general*

- 1) The beneficiary is authorized to do everything necessary to maintain and exercise the easement.
- 2) However, he is obliged to exercise his right in the gentlest possible manner.
- 3) The encumbered party may not do anything that prevents or complicates the exercise of the easement.
- 4) The easement shall take precedence over all limited rights in rem which have come into existence after it or whose beneficiaries have consented to its establishment.

Art. 205

2. After the entry

- 1) Insofar as rights and obligations clearly result from the entry, this shall be decisive for the content of the easement.
- 2) Within the scope of the entry, the content of the easement may result from its ground of acquisition or from the manner in which it has been exercised unchallenged and in good faith for a longer period of time.

Art. 206

3. With changed need

If the needs of the entitled property change, the obligated party may not be expected to bear an additional burden.

4. Rights of way

Art. 207

a) *Footpath*

- 1) Unless the land register entry or the supporting documents indicate otherwise, the following presumptions apply to the content of the rights of way.
- 2) The right of way includes the right to walk over the servient estate or the footpath designated for this purpose, but not the right to ride, drive or herd livestock.
- 3) The width of the footpath is 50 centimeters in case of doubt.
- 4) The airspace must be clear to a height of two meters.

Art. 208

b) Other limited rights of way

- 1) A person who has a restricted livestock right of way may drive detained livestock across the

Lead way and also ride over the same.

- 2) The width of this path is two meters in case of doubt.
- 3) The winter right of way and the riding right of way can be used from mid-November to mid-March.

Art. 209

*c) General guideway*

- 1) Whoever has a general right of way may drive over the way and also ride over the same and drive uncaptured cattle.
- 2) The width of the path, if the same is fenced on both sides, is, in case of doubt, the width provided for in the Building Code.

Art. 210

5. Grazing rights

- 1) In case of doubt, the right of grazing can be used only with the cattle wintered from the fodder of the dominating property.
- 2) Despite the existence of the easement, the encumbered party is entitled to take the measures necessary for the management of his property. If the party entitled to the easement suffers considerable damage as a result, he may claim damages.

Art. 211

6. Local use

Otherwise, the content of rights of way, such as footpaths, paved roads, driveways, tent paths, winter paths, logging roads, grazing rights, logging rights, watering rights, and the like, insofar as they are not regulated for the individual case, shall be determined by practice and local usage.

Art. 211a

*7. In case of multiple beneficiaries*

- 1) If several beneficiaries participate in a common device on the basis of the same easement and nothing to the contrary has been agreed, the provisions applicable to co-owners shall apply *mutatis mutandis*.
- 2) The right to withdraw from the community by waiving the easement may be excluded for a maximum of 30 years by agreement in the form provided for the easement agreement. The agreement may be recorded in the land register.

Art. 212

*II. Maintenance burden*

1) If a device is part of the exercise of the easement, the beneficiary shall maintain it.

2) If the device also serves the interests of the burdened party, both shall bear the burden of maintenance in proportion to their interests. A deviating agreement is not possible for the acquirer of the entitled and the

The land register shall be binding on the purchaser of the encumbered property if it can be deduced from the documents in the land register.

3) Unless the land register entry, the documents or the previous exercise of the right indicate otherwise, the easement holder shall clear the real estate of wood, stones, etc., which have come onto the real estate as a result of the exercise of his right.

Art. 213

*III. Laying the load*

1) If only a portion of the land is taken up by the exercise of the easement, the owner may, if he proves an interest and pays the costs, require that the easement be moved to another location no less convenient to the grantee.

2) He shall be authorized to do so even if the easement has been assigned to a specific place in the land register.

3) Retrieved

Art. 214

*IV. Partition of a plot of land*

1) If the entitled property or the encumbered property is divided, the servitude shall continue to exist on all parts.

2) If the exercise of the easement is limited to individual parts according to the evidence or the circumstances, it shall be deleted on the parts not affected.

3) The adjustment procedure shall be governed by the provisions on cancellation and amendment of land register entries.

Art. 215

Retrieved

2. Section



Usufruct and other easements

A. *Usufruct*

Art. 216

I. Subject

- 1) The usufruct may be granted in respect of movable property, land, rights or assets.
- 2) It confers the full enjoyment of the subject matter on the beneficiary, where not otherwise provided.

II. *Origin*

Art. 217

1. *In general*

- 1) In order to create a usufruct, the transfer to the acquirer is required in the case of movable property or receivables, and the entry in the land register is required in the case of real property.
- 2) Unless otherwise provided, the provisions on ownership shall apply to the acquisition of movable property and land, as well as to registration.

Art. 218

2. For law provision

- 1) The legal usufruct of real property exists vis-à-vis third parties who are aware of the entitlement, without entry in the land register.
- 2) The entry makes it effective against everyone.

III. *Demise*

Art. 219

1. *Reasons*

- 1) The usufruct expires with the complete destruction of its subject matter and, moreover, in the case of real property, with the deletion of the entry where this was necessary for the creation.
- 2) In the case of real property, other grounds for loss, such as lapse of time, renunciation or death of the beneficiary, only entitle the owner to cancellation of the entry.
- 3) The legal usufruct ceases when the reason for it ceases to exist.

Art. 220

2. Duration

- 1) The usufruct ends with the death of the beneficiary and for legal entities with their dissolution.
- 2) However, it can last a maximum of 100 years for them.

Art. 221

3. Replacement in case of sinking

- 1) The owner is not obliged to restore the lost property.
- 2) If he restores it, the usufruct is also restored.
- 3) If a replacement is provided for the lost object, as in the case of expropriation and insurance, the beneficial interest in the replacement object shall continue.

4. Reverse power

Art. 222

a) *Duty*

If the usufruct is terminated, the owner shall return the object to the owner.

Art. 223

Repealed Art.

224

b) *Responsibility*

- 1) The usufructuary is liable for the loss and the reduced value of the object, unless he proves that this damage occurred without his fault.
- 2) He has to replace used up objects, the consumption of which is not part of the use.
- 3) He does not have to compensate for the reduced value of the items that has occurred due to the proper use of the item.

Art. 225

c) *Uses*

- 1) If the usufructuary has made uses or innovations to which he was not obligated, he may demand compensation at the time of restitution

like a business manager without a job.

2) He may take away devices which he has made but for which the owner does not want to compensate him, but he is obliged to restore them to their previous state.

#### Art. 226

#### 5. Limitation of claims for compensation

The owner's claims for compensation due to alteration or loss of value of the object, as well as the usufructuary's claims for compensation for use or removal of devices, shall become statute-barred upon expiry of one year from the return of the object.

### IV. Content

#### 1. *Rights of the usufructuary*

#### Art. 227

##### a) In general

- 1) The usufructuary has the right to possession, use and enjoyment of the thing.
- 2) He is responsible for their administration.
- 3) In exercising this right, he shall act in accordance with the rules of prudent management.

#### Art. 228

##### b) *Natural fruits*

- 1) Natural fruits belong to the beneficiary if they have ripened during the period of his entitlement.
- 2) The person who cultivates the field shall be entitled to reasonable compensation for his uses against the person who receives the ripe fruit, but such compensation shall not exceed the value of the ripe fruit.
- 3) Components that are not products or proceeds remain with the owner of the item.

#### Art. 229

##### c) Interest

Interest on usufructuary capital and other periodic payments belong to the usufructuary from the day on which his right begins until the time when

it stops, even if they are not due until later.

Art. 230

d) Transferability of the exercise

- 1) The usufruct, if it is not a highly personal right, may be transferred to another person for exercise.
- 2) The owner is authorized to assert his rights directly against the latter.

2. *Rights of the owner*

Art. 231

a) Supervision

The owner may object to any use that is unlawful or inappropriate to the object.

b) Securing Art.

232

*aa) In general*

- 1) The owner is entitled to demand security from the usufructuary as soon as he proves that his rights are at risk.
- 2) Without such proof and even before the transfer of the object, he may demand security if consumable objects or securities form the object of the usufruct.
- 3) For the collateralization of securities, their deposit is sufficient.

Art. 233

bb) In case of donation and legal usufruct

- 1) The right to security shall not exist against the person who gave the object to the owner under reservation of usufruct.
- 2) In the case of legal usufruct, the claim is subject to the special order of the legal relationship.

Art. 234

cc) Consequence of failure to provide security

If the usufructuary fails to provide security within a reasonable period of time set for this purpose, or if, despite the owner's objection, the usufructuary has the security provided by a third party, the usufructuary shall be liable for the loss of the usufructuary.

If the person concerned does not refrain from using the object in accordance with the law, the district court shall deprive him of possession of the object until further notice and appoint a custodian.

Art. 235

*3. Inventory obligation*

The owner and the usufructuary have the right to demand at any time in out-of-court proceedings that a written inventory of the objects of the usufruct be drawn up at joint expense.

*4. Loads*

Art. 236

*a) Preservation of the thing*

- 1) The usufructuary must maintain the object in its condition and carry out improvements and renewals of his own accord that are part of normal maintenance.
- 2) If more important work or precautions are necessary for the protection of the object, the usufructuary shall notify the owner thereof and permit them to be carried out.
- 3) If the owner does not remedy the situation, the usufructuary is entitled to help himself at the owner's expense.

Art. 237

*b) Maintenance and management*

- 1) The expenses for the ordinary maintenance and the management of the land, the interest for the capital debts liable thereon, as well as the taxes and duties shall be borne by the usufructuary in proportion to the duration of his entitlement.
- 2) If the taxes and duties are levied on the owner, the usufructuary shall compensate him to the same extent.
- 3) All other burdens shall be borne by the owner, but if the usufructuary does not advance the necessary funds to him free of charge upon request, he may utilize objects of the usufruct for this purpose.

Art. 238

*c) Interest obligation in the case of usufruct of an asset*

If a property is in usufruct, the usufructuary shall pay interest on the principal debt, but may, where the circumstances justify it, demand to be released from this usufruct.

The Company is entitled to be released from its interest obligation by limiting its usufructuary rights to the remaining surplus of assets after repayment of the debt.

Art. 239

d) Insurance

- 1) The usufructuary shall insure the object for the benefit of the owner against fire and other dangers, insofar as this insurance is considered to be part of the duties of prudent business according to local custom.
- 2) In this case, as well as if an already insured object is put to use, the usufructuary has to bear the insurance premiums for the period of his usufruct.

V. Special cases

1. Land

Art. 240

a) Fruits

- 1) The usufructuary of a plot of land must ensure that the nature of the usufruct does not take up more than the usual amount.
- 2) As far as fruits have been obtained beyond this measure, they belong to the owner.

Art. 241

b) Economic destination

- 1) The usufructuary may not make any changes to the economic purpose of the land that are of significant disadvantage to the owner.
- 2) He may not transform or substantially change the thing itself.
- 3) The construction of new quarries, marl pits, peat pits and the like shall be permitted only after prior notification of the owner and provided that the economic purpose of the land is not substantially changed thereby.

Art. 242

c) Forest

- 1) If a forest is the subject of a usufruct, the usufructuary may claim its use to the extent justified by a proper economic plan.
- 2) Both the owner and the usufructuary may demand compliance with a plan

require that does not affect their rights.

3) If in case of storm, snow damage, fire, insect infestation or other reasons a considerable overuse occurs, it shall be gradually saved again or the economic plan shall be adjusted to the new conditions, but the proceeds of the overuse shall be invested interest-bearing and serve to compensate for the loss.

Art. 243

d) Mines

The provisions on the usufruct of forests shall apply *mutatis mutandis* to the usufruct of objects whose use consists in the extraction of mining components, such as mines.

Art. 244

## 2. Consumable and valued things

1) Unless otherwise stipulated, the usufructuary acquires ownership of consumable items, but is liable to pay compensation for the value they had at the beginning of the usufruct.

2) If other movable property is transferred under an appraisal, the usufructuary may freely dispose of it, unless otherwise stipulated, but shall be liable to pay compensation if he exercises this right.

3) Replacement may be made for agricultural equipment, stoves, warehouses and the like in items of like kind and quality.

## 3. Receivables

Art. 245

a) *Content*

1) If there are claims in usufruct, the usufructuary may collect their amount.

2) Notices to the debtor as well as dispositions of securities must be given by the creditor and the usufructuary, notices by the debtor must be given to both.

3) The creditor and the usufructuary have a mutual right to consent to the measures that are part of prudent management in the event that the claim is endangered.

Art. 246

b) Repayments and new investment

- 1) If the debtor is not authorized to repay the creditor or the usufructuary, he shall either pay to both jointly or deposit.
- 2) The object of performance, such as repaid capital, is subject to usufruct.
- 3) Both the creditor and the beneficiary are entitled to secure and interest-bearing reinvestment of the capital.

Art. 247

c) Right of assignment

- 1) The usufructuary has the right to demand the assignment of the claims and securities subject to his usufruct within three months after the beginning of the usufruct.
- 2) If they are assigned, he shall be liable to the previous creditor for the value they have at the time of assignment and shall provide security in this amount, unless this is waived.
- 3) In the absence of a waiver, the transfer shall not take place until security is provided.

B. The right of

residence

Art. 248

*I. In general*

- 1) The right of residence consists in the authority to take up residence in a building or in a part of such a building.
- 2) It is non-transferable and non-inheritable.
- 3) Unless otherwise provided by law, it is subject to the provisions on usufruct.

Art. 249

II. Claims of the person entitled to the apartment

- 1) The right of residence is generally measured according to the personal needs of the beneficiary.
- 2) However, if the right is not expressly limited to his person, he may admit his family members and household members to join him in the apartment.



3) If the residential right is limited to a part of a building, the beneficiary may also use the facilities intended for common use.

Art. 250

III. Loads

1) If the beneficiary is entitled to an exclusive right of residence, he shall bear the burdens of ordinary maintenance.

2) If the owner only has a right of joint use, the maintenance costs fall to the owner.

*C. Building law*

Art. 251

*I. Subject matter and inclusion in the land register*

1) A land plot may be encumbered with an easement giving someone the right to erect or maintain a structure on or under the ground surface.

2) Unless otherwise agreed, this right is transferable and heritable.

3) If the building right is independent and permanent, it can be recorded in the land register as a plot of land. The entry is made on the basis of a mutation plan of the engineer surveyor. Such a plan is also required for the cancellation of the building right.

Art. 251a

*II. Content, scope and reservation*

1) The contractual provisions on the content and scope of the building right, namely on the location, shape, extent and purpose of the buildings, as well as on the use of areas not built over which are occupied by the exercise of the building right, shall be binding on any purchaser of the building right and of the encumbered property.

2) Further contractual provisions may be recorded in the land register if the parties so agree.

III. Consequences of the expiry

of the duration Art.

251b

*1. Heimfall*

If the building right expires, the existing structures fall to the landowner as they become part of his land.

Art. 251c

2. *Compensation*

1) The landowner shall pay to the previous owner of the building right an appropriate compensation for the buildings falling home, which, however, shall be liable to the creditors to whom the building right was pledged for their still existing claims and may not be paid to the previous owner of the building right without their consent.

2) If the compensation is not paid or secured, the previous building owner or a creditor to whom the building right was pledged may demand that a real estate lien with the same rank be registered in place of the cancelled building right to secure the compensation claim.

3) The registration must be made no later than three months after the expiration of the building right.

Art. 251d

Repealed

IV. *Early reversion*

Art. 251e

1. Requirements

If the owner of the building right grossly exceeds his real right or violates contractual obligations, the landowner may bring about early reversion by demanding the transfer of the building right with all rights and encumbrances to himself.

Art. 251f

2. Exercise of the right of reversion

1) The right of reversion may only be exercised if appropriate compensation is paid for the reverting structures, in the assessment of which the culpable conduct of the building owner may be taken into account as a reason for reduction.

2) The transfer of the building right to the landowner shall not take place until the compensation has been paid or secured.

Art. 251g

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### 3. Other use cases

Any right reserved by the landowner for early cancellation or reassignment of the building right due to breach of duty by the building owner shall be subject to the provisions on the exercise of the right of reversion.

#### V. Liability for the building lease

##### charge Art. 251h

##### 1. Entitlement to the establishment of a lien

1) In order to secure the building lease interest, the landowner is entitled to the establishment of a pledge against the respective building beneficiary.

right to the building right recorded in the land register in the maximum amount of three annual payments.

2) If the consideration is not determined in equal annual payments, the claim to the statutory lien shall exist for the amount that is due if it is distributed equally over three years.

##### Art. 251i

##### 2. Registration

1) The lien may be registered at any time as long as the building right exists and is exempt from cancellation in compulsory liquidation proceedings.

2) In all other respects, the provisions on the establishment of the construction lien shall apply *mutatis mutandis*.

##### Art. 251k

#### VI. Maximum duration

1) The building right may be established as an independent right for a maximum of 100 years.

2) It may be renewed at any time in the form prescribed for its establishment for a new term of not more than 100 years, but any prior commitment to do so shall not be binding.

##### Art. 252

#### D. Source right

1) The right to a spring on another's property encumbers the spring property with the easement of appropriation and discharge of the spring water.

2) It is transferable and inheritable, unless otherwise agreed.

3) If the source right is independent and permanent, it may be recorded in the land register as real property.

Art. 253

E. Other easements

- 1) Other types of easements may be granted to any person or community for the use of land, as often as it can be used by someone in a certain way, such as for shooting practice or for a road and a footbridge.
- 2) Unless otherwise agreed, they are non-transferable and their content is determined by the ordinary needs of the beneficiaries.
- 3) Otherwise, they are subject to the provisions on easements. Art. 253a

F. Judicial Measures

For beneficiaries of an easement registered in the land register, the provisions on judicial measures in the event that the owner cannot be found or in the absence of the prescribed organs of a legal entity apply *mutatis mutandis*.

3. Section The basic charges

Art. 254

A. Subject

- 1) The land charge obligates the respective owner of a plot of land to make a payment to a beneficiary, for which he is liable exclusively with the land.
- 2) The respective owner of another property may be designated as the beneficiary.
- 3) Subject to public-law land charges, a land charge may only involve a service that results from the economic nature of the encumbered property or that is intended for the economic needs of an entitled property.

B. Establishment and demise

*1. Establishment*

Art. 255

*1. Registration and method of acquisition*

- 1) The land charge requires entry in the land register in order to be established.

- 2) When registering, a certain amount shall be indicated as its total value in national coin, namely, in the case of recurring benefits, in the absence of any other agreement, twenty times the amount of the annual benefit.
- 3) The provisions on real property apply to acquisition and registration, unless otherwise provided.

## Art. 256

*2. Public-law land charges*

The provisions on statutory liens under public law shall apply mutatis mutandis to the creation of public-law land charges and their effect vis-à-vis third parties acting in good faith.

## Art. 257

Retrieved

*II. Downfall*

## Art. 258

## 1. In general

- 1) The land charge expires with the deletion of the entry, as well as with the complete destruction of the encumbered property.
- 2) In the event of a waiver or redemption or for other reasons of loss, the party encumbered shall have a claim against the beneficiary for the deletion of the entry.

*2. Replacement*

## Art. 259

*a) By the creditor*

- 1) The creditor may demand the redemption of the land charge by agreement and otherwise:
  1. if the encumbered land is divided and he does not accept the transfer of the debt to the partitions;
  2. if the owner reduces the value of the land and does not provide other security to replace it;
  3. if the debtor is in arrears with three annual payments.
- 2) If he demands the redemption due to division of the land, he must terminate the land charge for one year within one month after the transfer has become legally effective.

Art. 260

*b) By the debtor*

- 1) The debtor may demand redemption by agreement and further:
  1. if the contract on which the basic load is based is not held by the beneficiary;
  2. after thirty years of existence of the basic charge, even if a longer duration or irrevocability has been agreed.
- 2) If the redemption takes place after a period of thirty years, it must in all cases be preceded by an annual notice of termination.
- 3) This redemption is excluded if the land charge is connected with an irremovable easement.

Art. 261

*c) Redemption amount*

The redemption shall be made for the amount entered in the land register as the total value of the land charge, subject to proof that the real value of the land charge is lower.

Art. 262

3. Limitation

- 1) The basic charge is not subject to any statute of limitations.
- 2) The individual performance is subject to the statute of limitations from the moment it becomes the personal debt of the obligor.

C. Cont

ent Art.

263

I. Creditor right

- 1) The creditor of the land charge has no personal claim against the debtor, but only a right to satisfaction from the value of the encumbered piece of land.
- 2) However, the individual benefit becomes a personal debt for which the property is no longer liable upon the expiration of three years from the date on which it became due.

Art. 264

*II. Debt obligation*

- 1) If the property changes ownership, the acquirer shall without further

Debtor of the land charge.

2) If the land is divided, the owners of the partial parcels shall become debtors of the land charge. The debt shall be transferred to the partial parcels in accordance with the provisions on land charges.

3) If a land charge exists in favor of an entitled property and the property is divided into parts, the land charge shall continue to exist in favor of the individual parts in proportion to their size.

4) However, if the performance is indivisible, the debtor may perform only to all beneficiaries jointly, and each creditor may claim performance only to all of them.

## 5. Title

### The real estate pledge

#### 1. Section General Provisions

##### A. Requirements

##### Art. 265

##### I. Types

1) The real estate lien is created as a real estate lien bond or as a registered debt certificate.

2) It is not allowed to order other types of the real estate pledge.

##### II. Form of the claim Art.

##### 266

##### 1. Amount

1) In all cases, a certain amount of the claim in national coin must be specified when the real estate pledge is created.

2) If the amount of the claim is indeterminate, a maximum amount is specified up to which the property is liable for all claims of the creditor.

##### Art. 267

##### 2. Interest

The interest obligation may be set in any way within the limits established against abuses in the interest system.

##### III. Property

##### Art. 268

*1. Pledgeability*

Retrieved

*2. Determination*

Art. 269

a) For individual properties

- 1) When establishing the real estate pledge, the land plot that is pledged shall be specified.
- 2) Parts of a property cannot be pledged as long as its division in the land register has not taken place.

Art. 270

b) In case of multiple properties

- 1) A security right over real property may be created on several properties for one claim if they belong to the same owner or are owned by debtors with a solid obligation.
- 2) In all other cases, if several properties are pledged for the same claim, each of them shall be charged with a certain partial amount.
- 3) Unless otherwise agreed, this charge is based on the value of the land.

B. Establishment and demise

*1. Establishment*

Art. 271

1. Registration

Subject to the statutory exceptions, the real estate lien shall come into existence upon registration in the land register.

Art. 272

*2. For joint property*

- 1) If a property is co-owned, each owner may pledge his or her share.
- 2) If a property is jointly owned, it can only be pledged as a whole and in the name of all owners.

Art. 273



## II. Downfall

- 1) The real estate lien ceases to exist with the deletion of the entry as well as with the complete destruction of the real estate.
- 2) Extinction due to expropriation is governed by special legislation.

### III. Real estate liens in the case of

consolidation of property

Art. 274

#### 1. *Transfer of liens*

- 1) In the event of the consolidation and remeasurement of real property, the liens on the real property to be assigned shall be transferred to the real property assigned for replacement to the same extent as before.
- 2) If a property takes the place of several individual properties pledged for different claims, or if not all of them are encumbered, the liens shall be assigned to the property to the new extent, with the utmost care to preserve their previous rank.
- 3) The lien creditor may not be expected to deteriorate his lien in relation to the previous lien insofar as the lien no longer appears to be covered in the first half of the value of the official valuation as a result of its rank or its amount.

Art. 275

#### 2. *Termination by the debtor*

The debtor is authorized to redeem liens on real property included in a property pooling as of the date of execution of this undertaking with a notice period of three months.

Art. 276

#### 3. *Compensation in money*

- 1) To the extent that a landowner is compensated in whole or in part by money for his or her mortgaged land included in the consolidation

If the lien on the land in question is damaged, this monetary compensation shall be liable for the liens existing on the land in question up to the amount thereof and shall be paid to the creditors in accordance with their ranking or, in the event of equal ranking, in accordance with the size of their claim.

- 2) Such monetary compensation may only be paid to the landowner if there are no encumbrances on the land in question,

or if an express written waiver by the mortgagee(s) is presented.

C. Effect

Art. 277

I. Scope of the pledge

- 1) The real property lien encumbers the real property including all components and all appurtenances.
- 2) If items are expressly listed as belonging to the pledge and recorded in the land register, such as machinery and hotel furniture, they shall be deemed to belong to the pledge unless it is shown that they cannot have this property in accordance with the provisions of the law.
- 3) The rights of third parties to the belonging remain reserved.

Art. 278

II. Rents and leases

- 1) If the pledged real property is rented or leased, the pledge liability shall also extend to the rent or leasehold interest receivables accruing from the time of the granting of forced administration or from the time of the opening of insolvency proceedings against the debtor until the time of liquidation or, in the event of confirmation of the reorganization plan, until such time.
- 2) This pledge shall only be effective against the interest debtors after they have been notified of the forced administration or the opening of the insolvency proceedings has been published in the Official Gazette.
- 3) Legal transactions of the landowner concerning unexpired claims to rent or leasehold interest as well as seizure by other creditors are not permitted against a mortgagee who is subject to compulsory administration.

The pledge shall not be effective if the pledgee has been granted bankruptcy or insolvency proceedings have been instituted in respect of the pledgee's assets.

Art. 279

III. Limitation

Claims for which a real estate lien has been registered are not subject to a statute of limitations.

IV. Backup powers

1. *Measures in the event of a reduction in value*

## Art. 280

## a) Prohibition and self-help

- 1) If the owner reduces the value of the pledged property, the creditor may have the district court prohibit him from any further detrimental action.
- 2) The creditor may be authorized by the district court to make the appropriate arrangements and may make such arrangements without authorization if there is imminent danger.
- 3) He can demand compensation from the owner for the costs of the precautions and has a lien on the property for this. This lien arises without registration in the land register and takes precedence over any registered encumbrance.
- 4) If the amount of this lien exceeds 1,000 francs and if it is not entered in the land register within six months of the completion of the arrangements, it cannot be held against third parties who rely in good faith on the land register.
- 5) The out-of-court procedure shall apply.

## Art. 281

## b) Backup, restore, pay off

- 1) If a reduction in value has occurred, the creditor may require the debtor to secure his claims or to restore the previous condition.
- 2) If there is a risk of a reduction in value, he may demand that the security be provided.
- 3) If the request is not complied with within a period set by the district court, the creditor may claim payment of the debt sufficient to secure it.
- 4) The out-of-court procedure shall apply.

## Art. 282

## 2. Impairment through no fault of the company

- 1) Decreases in value that occur through no fault of the owner give the creditor a right to security or payment only to the extent that the owner is covered for the loss.
- 2) However, the creditor may take precautions to eliminate or avert the reduction in value. The creditor has a lien on the property for the cost of such measures without any obligation on the part of the owner. This lien arises without entry in the land register and takes precedence over any registered encumbrance.

3) If the amount of this lien exceeds 1,000 francs and if it is not entered in the land register within six months of the completion of the arrangements, it cannot be held against third parties who rely in good faith on the land register.

4) The out-of-court procedure shall apply.

Art. 283

3. Separation of small pieces

1) If a part of the real estate which is to be valued at less than one-twentieth of the pledge claim is sold, the creditor may not refuse the release of this part from the pledge as soon as a proportionate payment is made or the remainder of the real estate offers him sufficient security.

2) The dismissal may be asserted in the extrajudicial proceedings.

Art. 284

V. More load

1) A waiver by the owner of the right to place further encumbrances on the pledged property is not binding.

2) If, after the establishment of the mortgage, an easement or charge is placed on the land without the consent of the pledgee, the mortgage shall take precedence over the later charge and the latter shall be extinguished as soon as, in the course of the realization of the pledge, its existence harms the pledgee who has precedence.

3) However, the beneficiary of the easement or charge shall be entitled to prior satisfaction from the proceeds for the value of the charge against the subsequent grantees.

VI. Depository

Art. 285

1. *Effect of the pledges*

1) The lien security is limited to the lien location specified in the entry.

2) Real estate liens may be established in second or any rank as soon as a certain amount is reserved as an operation upon registration.

Art. 286

## 2. Deposits among each other

- 1) If mortgages of different ranks have been established on a property, the subsequent mortgagee shall not be entitled to move up into the gap if one mortgage is cancelled.
- 2) Another mortgage may be established in place of the redeemed prior mortgage.
- 3) Agreements on the subordination of mortgagees shall only have effect in rem if they have been registered.

### Art. 287

## 3. Empty deposit

If a security right over real property has been established in a later rank without the existence of a preceding one, if the debtor has not disposed of a preceding title to a security right over real property, or if the preceding claim amounts to less than has been registered, the proceeds from the pledge shall be allocated to the actual pledgees in accordance with their rank when the pledge is realized, irrespective of the empty pledges.

SR

## VII. Satisfaction from the pledge

### Art. 288

#### 1. Satisfaction type

- 1) The creditor has a right to be paid from the proceeds of the property in case of non-satisfaction.
- 2) The agreement according to which the real estate lien is to accrue to the creditor as property if he is not satisfied is invalid.
- 3) If several properties are pledged for the same claim, the execution for the realization of the pledge shall be directed against all of them at the same time, but the realization shall be carried out only to the extent necessary according to the order of the district court.

### Art. 289

#### 2. Distribution of proceeds

- 1) The proceeds from the sale of the land shall be distributed among the mortgagees according to their rank.
- 2) Creditors of equal rank are entitled to equal satisfaction among themselves.

### Art. 290

*3. Scope of the backup*

- 1) The real estate lien provides security for the creditor:
  1. for the capital receivable;
  2. for the costs of enforcement and interest on arrears;
  3. for three annual interest payments expired at the time of the opening of the insolvency proceedings or the petition for compulsory enforcement and the interest accruing since the last interest payment date; in the case of the registered debt certificate, only the interest actually owed shall be secured by lien.
- 2) The originally agreed interest rate may not be increased above 5% to the detriment of subsequent lienholders.
- 3) Any increase in the interest rate requires the consent of the subordinate lienholders.

Art. 291

*4. Backup for expenses received*

- 1) If the pledgee has made necessary expenses for the maintenance of the pledged property, in particular paid the insurance premiums owed by the owner, he shall have a lien on the property for this. This lien arises without entry in the land register and takes precedence over any registered encumbrance.
- 2) If the amount of this lien exceeds 1,000 francs and if it is not entered in the land register within six months after the substitute act has been performed, it cannot be held against third parties who rely in good faith on the land register.

VIII. Lien for land improvements Art. 292

and 293 Repealed

Art. 294

*IX. Entitlement to the sum insured*

- 1) An insured sum that has become due may only be paid out to the owner of the insured property with the consent of all mortgagees.
- 2) However, against appropriate security, it shall be surrendered to the owner for the purpose of restoring the pledge.

Art. 295

*X. Untraceable creditor*

If a mortgagee cannot be identified or if his place of residence is unknown, the court may order the necessary measures at the request of the debtor or other parties in cases where the law provides for the creditor's personal attendance and such attendance is urgently required.

2. Section

The mortgage bond Art. 296

A. Purpose and shape

1) A mortgage bond can be used to secure any current or future or merely possible claim.

2) Retrieved

3) The pledged property need not be owned by the debtor.

B. Establishment and demise

Art. 297

*I. Establishment*

1) The mortgage bond shall also be established for claims with an indefinite or changing amount on a specific pledge and shall retain its rank after the entry irrespective of all fluctuations.

2) The registration of the mortgage bond shall be certified to the creditor on a co-piece of the contract deed.

3) In addition to the certificate of registration, an extract from the land register shall be issued to the creditor upon request.

4) Retrieved

5) Retrieved

II. Demise

Art. 298

1. Right to deletion

1) If the claim has ceased to exist, the owner of the encumbered property may request the creditor to grant the cancellation of the entry.

2) Retrieved

Art. 299

2. *Position of the owner*

- 1) If the landowner is not the debtor of the lien claim, he may redeem the lien under the same conditions under which the debtor is entitled to redeem the claim.
- 2) If he satisfies the creditor, the latter's rights shall pass to him by operation of law.

3. Unilateral detachment

Art. 300

a) *Prerequisite and assertion*

- 1) The purchaser of real property who is not personally liable for the debts encumbering it may, as long as no execution has been instituted, discharge the liens on the property if they exceed the value of the property by paying the creditors the purchase price or, in the case of acquisition free of charge, the amount to which he values the property.
- 2) He shall notify the creditors of the intended redemption in writing with six months' notice.
- 3) The redemption amount is distributed among the creditors according to their rank.

Art. 301

b) *Public auction*

- 1) In the case of such redemption, the creditors shall have the right to demand a public auction of the pledge against advance payment of the costs within one month after the notification of the acquisition, which auction shall be held after public announcement within another month after it has been demanded.
- 2) If a higher price is achieved in the process, this shall be deemed to be the redemption amount.
- 3) The costs of the auction shall be borne by the purchaser if a higher price is obtained, otherwise by the creditor who requested it.

Art. 302

4. Cancellation

- 1) A notice of termination of the claim by the creditor shall be effective against the owner of the pledged property who is not the debtor only if it is given against the debtor and the owner.
- 2) The notice of termination by the debtor shall be addressed to the person who, in the



moment of termination is its creditor.

3) If the creditor is not known to him, he may address the notice of termination to the last creditor known to him.

4) Any subsequent acquirer of the claim must accept this termination against him.

5. Declaration of  
invalidity Art. 303 to  
306 Discontinued

C. Effect

*I. Ownership and debtorship*

Art. 307

*1. Disposal*

1) If the real property encumbered with a mortgage bond is sold, the liability of the mortgagee and the debtor shall remain unchanged unless otherwise agreed.

2) If, however, the new owner has assumed the debt obligation for the pledge claim, the former debtor shall be released if the creditor does not declare in writing within one year that he wishes to retain him.

Art. 308

2. Dismemberment

1) If part of the real estate encumbered with a pledge or one of several pledged real estates of the same owner is sold, or if the sub-pledge is dismembered, the pledge liability shall, in the absence of any other agreement, be distributed in such a way that each of the parts is proportionately encumbered according to its value.

2) If a creditor does not wish to accept this distribution, he may, within one month after it has become final, demand that his pledge claim be redeemed within one year.

3) If the purchasers have assumed the debt obligation for the lien claims encumbering their properties, the former debtor shall be released if the creditor does not declare in writing within one year that he wishes to retain him.

Art. 309

3. Display of the assumption of debt

- 1) The Office of Justice shall notify the creditor of the assumption of the debt by the acquirer.
- 2) The one-year period for the creditor's declaration runs from this notification.

Art. 310

II. Transfer of the claim

lien follows the claim.

*D. Statutory lien on real property*

*I. Of public law*

Art. 311

1. In general

1) If the public right is granted to the creditor for claims directly related to the encumbered property,

a claim to a lien, the lien shall arise upon entry in the land register.

2) If statutory liens in the amount of more than 1,000 francs arise on the basis of public law without being entered in the land register and if they are not entered in the land register within six months of the due date of the underlying claim, but at the latest within two years of the claim arising, they may no longer be invoked against third parties who rely in good faith on the land register after the expiry of the registration period.

3) Art. 312 remains reserved.

Art. 312

2. Without registration

A statutory lien exists without entry in the land register:

1. in favor of the State, prior to any other lien, for the taxes due on the properties for the last year elapsed at the time of the bankruptcy or the request for liquidation and for the current year, on the properties subject to the tax;

2. in favor of the Municipalities, solely to satisfy the aforesaid tax claim of the State, for the taxes due on real property for the last year elapsed at the time of the bankruptcy proceedings or the request for liquidation and for the current year, on the real property subject to the tax;

3. in favor of building insurance companies, only following the aforementioned tax demands of the state and municipalities, for the last expired and the current annual premium;
4. for the contributions to public undertakings (such as land improvements, etc.) attributable to real estate and buildings, subject only to the aforementioned tax claims of the State and the municipalities and to the premium claims of the building insurers, for the contribution obligation during the last five years.

## II. Of private law

### Art. 313

#### 1. Cases

1) The right to establish a statutory lien on real property shall have effect vis-à-vis any subsequent owner of the real property and vis-à-vis creditors in bankruptcy:

1. for the seller's claim on the sold property;
2. for the claim of co-heirs and commoners from division on the land plots belonging to the community;
3. for the claims of craftsmen or contractors who have supplied material and labor or labor alone on a plot of land for buildings or other works, for demolition work, for scaffolding, for securing excavation pits or the like, on this plot of land, whether they are the landowner, a craftsman or contractor,  
have a tenant, lessee or other person entitled to the land as a debtor.

2) If a tenant, leaseholder or other person entitled to the land is the debtor of the claims of the craftsmen or contractors, the claim exists only if the landowner has given his consent to the execution of the work.

3) Legal liens under this Article may not be waived in advance by the beneficiary.

### Art. 314

#### 2. Seller, co-heirs and commoners

The right to registration shall expire if the registration of the lien of the seller, co-heirs or commoners is not effected not later than three months after the

Transfer of ownership takes place.

3. Craftsmen and contractors Art.

315

a) Registration

- 1) The lien of craftsmen and contractors may be registered in the land register from the moment they have undertaken to perform work.
- 2) The registration must be made no later than four months after the completion of the work.

Art. 316

*b) Establishment of the claim and securing*

- 1) Registration may only take place if the claim is recognized by the owner or has been established by a court and cannot be requested if the owner provides sufficient security for the claim filed.
- 2) In the event of disputes concerning the determination of claims entitled to a lien and the provision of sufficient security for such claims, a provisional order of the Regional Court may be demanded in the course of the proceedings for the registration of such claims in the land register.
- 3) If necessary, the provisionally established claim and the entry in the land register may be contested in court.

Art. 317

c) Rank

If several statutory liens of craftsmen and entrepreneurs are registered, they shall have the same claim to satisfaction from the lien, even if they are of different dates.

Art. 318

d) Privilege

- 1) If the claims of the craftsmen and contractors are lost in the course of the realization of the pledge, the loss shall be compensated from the share of the realization of the preceding pledgees in excess of the value of the land, provided that the property has been encumbered by their liens in a manner recognizable to them to the detriment of the craftsmen and contractors.

- 2) If the prior pledgee sells its pledge title, it must compensate the tradesmen and entrepreneurs for what they are thereby deprived of.
  - 3) As soon as the commencement of the work has been recorded in the land register upon notification of an entitled person, liens may only be recorded as real property liens until the expiry of the registration period.
3. Section register debt certificate

Art. 319

I. Purpose; relationship to the claim from the basic relationship

- 1) The registered certificate of indebtedness creates a personal claim that is secured by real estate lien.
- 2) Unless otherwise agreed, the claim under the promissory note shall be subordinated to the claim to be secured to which the creditor may be entitled vis-à-vis the debtor under the basic relationship.
- 3) The debtor may invoke the personal defenses arising from the basic relationship against the creditor and against legal successors who are not in good faith.

II. Establishment and demise

Art. 320

1. Establishment

- 1) The registered debt certificate comes into existence upon entry in the land register.
- 2) It shall be registered in the name of the creditor or the landowner. Art. 321

2. Downfall

- 1) If there is no creditor or if the creditor waives the lien, the debtor has the choice to delete the entry in the land register or to let it stand.
- 2) The debtor is also authorized to continue using the registered debt certificate.

Art. 322

III. Transmission

- 1) The transfer of the registered promissory note shall be effected by registration of the new

creditor in the land register on the basis of a written declaration by the previous creditor.

2) Only payments made by the debtor to the person entered as creditor in the land register at the time of payment shall have a discharging effect. The debtor must be notified of a change of creditor.

Art. 323

*IV. Pledge*

The pledge of the registered deed of debt is made by entering the lien creditor in the land register on the basis of a written declaration of the creditor entered in the land register.

Art. 324

V. Position of the owner

1) The position of the owner of the pledged property who is not the debtor shall be determined in accordance with the provisions on the mortgage bond.

2) In the case of a registered certificate of indebtedness, the debtor's defenses are also available to the owner of the pledged item.

Art. 325

VI. Disposal

1) If the real property encumbered with a registered mortgage is sold, the liability of the mortgagee and the debtor shall remain unchanged unless otherwise agreed.

2) If the new owner has given an undertaking to the transferor to assume the debt obligation for the pledge claim, the liability of the new owner and the release of the transferor shall not come into effect until the creditor of the mortgage note has consented to the assumption of the debt. This consent must be given within one year.

3) The transferor and the new owner may set a time limit for acceptance by the creditor, after the expiry of which acceptance shall be deemed to have been refused if the creditor remains silent.

Art. 326

*VII. Division*

1) For the consequences of the division of the land plot, the provisions on the land pledge shall apply.

2) However, any assumption of debt associated with this shall be assessed in accordance with Art. 325.

### VIII. Debt certificate claim and ancillary agreements

#### Art. 327

##### *1. In general*

1) The promissory note receivable may neither refer to the basic relationship nor contain conditions or consideration.

2) The registered borrower's note may contain ancillary agreements under the law of obligations on interest, repayment and termination as well as other ancillary provisions relating to the borrower's note claim. A reference to a separate agreement is permissible.

#### Art. 328

##### *2. Cancellation*

1) The registered debt certificate may be terminated by the creditor or the debtor with six months' notice to the end of any month, unless otherwise agreed.

2) Such an agreement may not provide for a shorter notice period than three months for the creditor, unless the debtor is in default with the payment of the amortizations or the interest.

#### Art. 329

### IX. Good faith protection

According to the entry, the debt claim and the lien exist rightfully for any person who has relied in good faith on the land register.

#### Art. 330

##### *X. Defences of the debtor*

1) The debtor may only assert defenses resulting from the entry in the land register or to which he is personally entitled against the creditor suing him.

2) Agreements containing ancillary provisions to the promissory note claim can only be held against a bona fide purchaser of the registered promissory note if they result from the land register.

#### Art. 331

### XI. Place of payment

1) The debtor shall make all payments at the creditor's domicile or registered office, unless otherwise agreed.

2) If the creditor's domicile or registered office is not known or has been transferred to the detriment of the debtor, the latter may discharge himself by depositing the debt with the competent authority at his own domicile or registered office or at the former domicile or registered office of the creditor.

Art. 332

*XII. Changes in the legal relationship*

1) If the legal relationship is changed in favor of the debtor, namely by payment of the debt, the debtor may require the creditor to consent to the entry of the change in the land register.

2) Without such entry, a bona fide acquirer of the registered promissory note does not have to oppose the effect of the change in the legal relationship.

Art. 333

XIII. Repayment

If the debt certificate claim has been settled, the debtor may request the creditor to agree to the transfer of the registered debt certificate into the debtor's name.

Art. 334

*XIV. Calling the creditor*

1) If the creditor of a registered mortgage note has been unknown for ten years and no interest has been claimed during this period, the owner of the seized property may demand that the creditor be summoned by the district court to come forward by three public notices, failing which the lien shall be deleted from the land register.

Art. 335 to 355 Discontinued

4. Section

Issue of bond titles with lien on real property Art. 356

A. Bonds for bonds with lien

Bonds that are registered in the name of the creditors or in the name of the bearer can be secured with a real estate lien:

1. by establishing a mortgage bond or a borrower's note for



the whole borrowing and the designation of a representative for the creditors and the debtor;

2. by establishing a lien on the entire bond in favor of the issuing office and creating a lien on this lien for the bond creditors.

B. Issuance of promissory notes and gültis in series

Art. 357 to 364 Cancelled

6th title

The deposit

1. Section Pledge and Retention Right

A. Fist Pledge

*I. Order*

Art. 365

*1. Possession of the creditor*

1) Where the law does not make an exception, property can only be pledged by transferring possession of the pledged item to the pledgee.

2) The bona fide recipient of the pledged item shall receive the lien, unless third parties are entitled to rights from previous possession, even if the pledger was not authorized to dispose of the item.

3) The lien is not established as long as the pledger retains exclusive power over the thing.

*2. Statutory lien for savings deposits*

Art. 366

*a) In general*

Repealed Art.

367

*b) Cover*

Repealed Art.

368

3. Post-pledge

A trailing pledge is created by the fact that the pledgee has

notified in writing of the rehypothecation and

is instructed to surrender the pledge to the subsequent creditor after he has been satisfied.

Art. 369

4. Pledge by the pledgee

The creditor may pledge the pledged item further only with the pledger's consent.

II. Demise

Art. 370

*1. Loss of possession*

- 1) The lien expires as soon as the creditor no longer owns the pledged item and cannot reclaim it from third parties.
- 2) It has no effect as long as the pledge is in the exclusive power of the pledger with the will of the creditor.
- 3) The lien shall expire as soon as the claim for which it was created has expired.

Art. 371

2. Obligation to return

- 1) If the lien is extinguished as a result of the settlement of the claim or for any other reason, the creditor shall return the pledged property to the beneficiary.
- 2) The provisions on the right of retention shall remain reserved.
- 3) Prior to its full satisfaction, he shall not be obliged to surrender the pledge in whole or in part.

Art. 372

*3. Liability of the creditor*

- 1) The creditor shall be liable for the loss resulting from the reduction in value or from the destruction of the pledged item, unless he proves that such loss occurred without his fault.
- 2) If the creditor has disposed of the pledge on his own authority or has further pledged it, he shall be liable for all damage arising therefrom.

III. Effect

Art. 373

1. Rights of the creditor

1) In the event of non-satisfaction, the creditor shall have the right to be paid from the proceeds of the pledge by private sale, even without judicial authorization or cooperation.

2) Retrieved

3) The lien provides security for the claim, including interest on the contract, enforcement costs and interest on arrears.

Art. 374

2. Scope of the pledge

1) The lien encumbers the pledged property including the appurtenances.

2) Unless otherwise agreed, the creditor shall return the natural fruits of the pledged property to the owner, subject to the right of retention, as soon as they cease to be part of the property.

3) Fruits that are part of the pledged property at the time of pledging are subject to pledge liability.

Art. 375

3. Rank of the liens

1) If there are several liens on the same thing, the creditors shall be satisfied according to their rank.

2) The rank of liens is determined by the time of their creation.

Art. 376

4. Forfeiture contract

Any agreement according to which the pledged property is to accrue to the creditor as property if he is not satisfied is invalid.

Art. 377

5. Pledge in favor of a third party

1) If the thing is pledged for the debt of a third party, the owner may redeem the lien under the same conditions under which the debtor is authorized to redeem the claim.

2) If he satisfies the creditor, the creditor's rights are transferred to him.

6. Impairment

Art. 378

a) Rights of the owner

1) If the pledgee substantially infringes the rights of the pledgee and continues the infringing relationship despite the owner's warning, the owner may demand in extrajudicial proceedings that the pledged property be deposited at the pledgee's expense.

2) If the spoilage of the pledged property or a substantial reduction of its value is to be feared, the owner may demand in the non-contentious proceedings that the pledged property be returned against the provision of corresponding security elsewhere.

Art. 379

b) Rights of the creditor

1) If the pledged claim is no longer covered due to a reduction in value, the pledgee may demand further security.

2) If this request is not complied with within a reasonable period of time, the creditor may demand the realization of the pledge without regard to the maturity of the claim.

B. Retention right

Art. 380

*I. Requirements*

1) Movable property and securities which are in the possession of the creditor with the debtor's will may be retained by the creditor until satisfaction of his claim if the claim is due and is related in nature to the subject matter of the retention.

2) Among merchants, this connection exists as soon as both the possession and the claim arise from their business dealings.

3) The creditor shall have the right of retention, unless third parties are entitled to rights from previous possession, even if the thing received in good faith does not belong to the debtor.

Art. 381

*II. Exceptions*

1) The right of retention may not be exercised in respect of items whose nature does not permit realization.

2) Likewise, retention is excluded if it is opposed by an obligation assumed by the creditor, or a regulation issued by the debtor before or at the time of transfer of the thing, or public policy.

Art. 382

III. In case of insolvency

1) In the event of insolvency of the debtor, the creditor has the right of retention even if his claim is not due.

2) If the insolvency occurred or became known to the creditor only after the transfer of the object, the creditor may exercise the retention even if it is precluded by an obligation previously assumed by him or by a special provision of the debtor.

Art. 383

IV. Effect

1) If the debtor fails to comply with his obligation, the creditor may, if he is not adequately secured, realize the retained object like a pledge against collateral after giving prior notice to the debtor.

2) The district court shall do what is necessary on behalf of the debtor for the realization of retained registered securities.

2. Section

Lien on receivables and other rights Art. 384

A. In general

1) Receivables and other rights may be pledged if they are transferable.

2) The lien on them shall be subject to the provisions on the pledge of fist, unless otherwise provided for.

B. Establish

ment Art.

385

*1. For receivables with or without a promissory bill*

1) In order to pledge a claim for which no deed or only a promissory bill exists, the pledge agreement must be drawn up in writing and, if necessary, the promissory bill must be handed over.

2) Retrieved

- 3) The pledgee and the pledgor may notify the debtor of the pledge order.
- 4) In order to pledge other rights, in addition to a written pledge agreement, it is necessary to observe the form provided for the transfer.

Art. 386

*II. For securities*

- 1) In the case of bearer instruments, the transfer of the instrument to the pledgee is sufficient for pledging.
- 2) In the case of other securities, the delivery of the deed in connection with an endorsement or with a declaration of assignment is required.
- 3) The right to assert the right of retention on invalidly pledged securities is reserved.

Art. 387

*III. For commodity papers*

- 1) If there are securities representing goods, a lien is created on the goods by pledging the securities.
- 2) If, in addition to a commodity paper, there is also a special warrant, the pledge of the warrant is sufficient for the pledge order as soon as the pledge is entered on the commodity paper itself with the amount of the claim and the expiry date.

Art. 388

*IV. Post-pledge*

A subordinate lien on a claim is valid only if the prior lienor is notified in writing of the subordinate lien by the creditor of the claim or by the subordinate lienor.

*C. Effect*

Art. 389

*I. Scope of the pledge*

- 1) In the case of a lien on an interest-bearing claim or on a claim with other temporarily recurring ancillary benefits, such as dividends, unless otherwise agreed, only the current claim shall be deemed to be co-pledged, and the creditor shall have no claim to the forfeited benefits.

2) If, however, special papers exist for such ancillary rights, they shall, unless otherwise agreed, be deemed to be co-pledged insofar as the lien on them is created in the correct form.

Art. 390

*II. Representation of pledged shares*

Pledged shares are represented at the General Meeting by the shareholders and not by the pledgees.

Art. 391

*III. Management and payment*

1) If prudent management requires the termination and collection of the garnished claim, its creditor may carry it out and the pledgee may demand that it be carried out.

2) As soon as the debtor has been notified of the pledge, he may make payments to one of the parties only with the consent of the other party.

3) Where this is missing, he shall deposit the amount owed with the district court.

4) Retrieved

3. Financial collateral section

Art. 392

*I. In general*

1) Financial collateral may be provided to secure liabilities on the basis of an agreement between a collateral taker and a collateral provider within the meaning of Article 1(2)(a) to (e) of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (EEA Supplement: Annex XXII 4.01), as amended by Directive 2009/44/EC.

1a) Corresponding collateral takers and collateral providers from a third country shall be deemed equivalent to collateral takers and collateral providers within the meaning of paragraph 1.

2) For the purposes of this Act shall be deemed to include:

1. "Financial Collateral": Cash collateral, financial instruments or credit claims that are provided as collateral in the form of a title transfer or a security interest, whether or not based on a master agreement or general terms and conditions;

2. "title transfer financial collateral arrangement" means the full transfer or assignment of financial collateral or the transfer of all rights thereto for the purpose of providing collateral or otherwise covering liabilities, including repurchase agreements;

3. "security financial collateral arrangement" means a security interest in financial collateral under which title to or ownership of the financial collateral remains vested in the collateral provider on a full or contingent or otherwise limited basis at the time the financial collateral is provided;

4. "Cash collateral" means a deposit credited in any currency to an account or a comparable monetary claim, such as a money market sight deposit, but does not include cash;

5. "Financial Instruments": Shares and other securities equivalent thereto, debt securities and other securitized or uncertificated

Debt securities which may be traded on the capital market and any other securities normally traded which give the right to acquire such shares, debt securities or other securities by subscription, purchase or exchange or which give rise to a cash payment (other than cash), including units in collective investment undertakings, money market instruments and any right or claim in respect of any of the aforementioned assets;

6. "relevant obligation" means an obligation secured by financial collateral that gives rise to a right to receive cash or financial instruments and that may consist, in whole or in part, of present or future, contingent or unconditional, matured or aged obligations (including those arising under a master agreement or similar arrangement), obligations of a person other than the collateral provider to the collateral taker, and obligations that are merely general or determinable in nature and arise from time to time;

7. "book entry securities" means financial collateral in the form of financial instruments recorded in a register or booked to a custody account maintained by or on behalf of an intermediary;

8. "Relevant Account" means the register or securities account in which the entry or entry is made by virtue of which the Collateral Agent obtains Financial Collateral pursuant to Clause 7, even if the register or account is maintained by the Collateral Agent itself;

9. "Bankruptcy and liquidation proceedings": a bankruptcy proceeding and a comparative-



A collective proceeding in which a court or an authority takes action, the assets are realized and the proceeds are distributed appropriately among the creditors, shareholders or members, irrespective of whether the proceeding is initiated on account of insolvency or voluntarily or compulsorily. This also includes overall proceedings that are concluded by means of a reorganization plan or a similar measure;

10. "Reorganization proceedings" shall mean reorganization proceedings and comparable judicial or administrative measures aimed at securing or restoring the financial situation by interfering with the rights of third parties, including in particular measures involving the suspension of

payments or of enforcement measures or provide for a reduction of the claims;

11. "Close Out Netting" means a contractual provision under a financial collateral arrangement or a financial collateral arrangement that includes the provision of financial collateral or, if the parties have not entered into an agreement, a provision of law under which, in the event of liquidation or termination, the financial collateral is to be provided by way of set-off, netting or otherwise:

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a) the corresponding obligations either become immediately due and payable and are converted into a payment obligation in the amount of their estimated current value or are terminated and replaced by a corresponding payment claim; or

b) the value of the financial obligations due to both parties is determined and the party with the higher liabilities must pay the calculated net balance to the other party.

12. "Credit claims": Monetary claims arising from an agreement under which a bank, an electronic money institution or an institution referred to in Art. 2(5) of Directive 2013/36/EU grants credit in the form of a loan; institutions from Switzerland are treated in the same way as these institutions;

13. "order" means the delivery of financial collateral to the collateral taker or its agent, the crediting by way of book entry, and any other provision of possession or control of the financial collateral (to the extent that the collateral taker does not already have such possession or control), even if the collateral provider is entitled to the retransfer of ordered collateral in exchange for other collateral or is entitled to the retransfer of excess collateral or, in the case of credit claims, is entitled to collect the proceeds of such claims until further notice.

3) In addition, the definitions of Directive 2002/47/EC, as amended by Directive 2009/44/EC, shall apply.

Art. 393

*II. Order*

1) The order of financial collateral must be verifiable in writing. The evidence of the order must allow the identification of the corresponding financial collateral.

2) For the purposes of proof pursuant to para. 1, it shall be sufficient if securities transferred under current securities account have been credited to the relevant account or if there is a corresponding credit balance in such securities or if cash collateral has been credited to a designated account or if there is a corresponding cash credit balance.

2a) In the case of credit claims, inclusion in a list of credit claims provided to the collateral taker in writing or in a legally equivalent form shall be sufficient to identify the claim and to evidence its creation as financial collateral between the parties and vis-à-vis the debtor and/or third parties.

3) The ownership and other rights in rem of securities transferable in book-entry form may also be transferred by means of an entry in the register or an entry in the securities account.

*III. Realization of financial collateral*

Art. 394

1. In general

1) The collateral taker may, on the basis of a corresponding agreement, realize any financial collateral in the form of a limited right in rem in the event of liquidation or termination by:

1. The Group sells or acquires financial instruments and subsequently offsets their value against the relevant liabilities or uses them in lieu of payment;

2. cash collateral against the relevant liabilities or uses it in lieu of payment.

3. The Group sells or collects credit receivables and subsequently offsets their value against the relevant liabilities or uses them in lieu of payment.

2) However, an appropriation is permissible only if the parties have the authority to an-

The Group has entered into a collateralization agreement with a counterparty that has agreed on the suitability of the collateral when the security interest is created and the collateralization agreement allows the financial instruments and loan receivables to be measured.

#### Art. 395

##### 2. Procedure

- 1) Subject to the security agreement, financial collateral may be realized in the manner described in Art. 394 without prior warning, without court authorization or involvement, without auction and without a waiting period.
- 2) Financial collateral may also be realized on the basis of a corresponding agreement if bankruptcy or liquidation proceedings or reorganization proceedings have been instituted against the assets of the collateral provider.

##### *IV. Right of disposal over financial collateral in the form of limited rights in rem*

#### Art. 396

- 1) The collateral taker may exercise the right of disposal over financial collateral in the form of a limited right in rem on the basis of a corresponding agreement.
- 2) If a collateral taker exercises the right of disposal, it shall procure collateral of the same type which must replace the original collateral at the latest when the relevant liability falls due. The collateral taker has the option to either return collateral of the same type or, if provided for in the collateral agreement, to set off the value of the collateral of the same type against the relevant liabilities or to use the collateral in lieu of payment when the liability becomes due.
- 3) The security procured as a substitute in accordance with paragraph 2 shall be treated as if it were the original security.
- 4) The collateral taker's agreed rights to collateral provided by it under the first sentence of paragraph 2 shall not be rendered ineffective by the fact that it disposes of the financial collateral in accordance with the terms of the agreement.
- 5) If a liquidation or termination event occurs before the secured party has fulfilled its obligation described in the first sentence of paragraph 2, such obligation may be included in the set-off due to termination.
- 6) This Article shall not apply to credit claims.

#### Art. 397

*V. Recognition of the transfer of full rights*

- 1) Financial collateral may also be validly provided in the form of a transfer of full rights on the basis of a corresponding agreement.
- 2) If, in the case of a transfer of full rights, a liquidation or termination event occurs before the secured party has fulfilled its agreed obligation to transfer back collateral of the same type, this obligation may be included in the charge following termination.

Art. 398

*VI. Offsetting as a result of termination*

- 1) The set-off as a result of termination shall also be effective on the basis of a corresponding agreement if:
  1. bankruptcy or liquidation proceedings or reorganization proceedings have been instituted against the assets of the collateral provider or the collateral taker; and
  2. the rights subject to set-off as a result of termination have been assigned or attached by court order or otherwise or have been otherwise disposed of.
- 2) Unless otherwise agreed by the parties, the contractual charge in consequence of termination may be made without prior warning, without judicial authorization or participation, without auction and without waiting period.

Art. 399

*VII. Processing and recovery principles*

In exercising the powers conferred on it by this section, the collateral taker shall value or realize financial collateral and determine the amount of the relevant liabilities in accordance with the principles of fair dealing and in accordance with the agreement concluded between the parties. In doing so, he shall take into account in particular the estimated, market or market value of the financial collateral. Any surplus shall be surrendered to the collateral provider or charged to his account.

Art. 400

*VIII. Waiver of rights of the debtor of credit claims*

1) Without prejudice to the provisions on unfair contract terms, debtors of credit claims may legally waive the following rights in writing or in a legally equivalent form:

1. their rights of set-off against the creditor of the credit claim and against persons to whom the creditor has assigned, pledged or otherwise given security for the credit claim; and

2. their rights under banking secrecy provisions that would otherwise prevent or limit the ability of the creditor of the credit claims to provide information about the credit claim or the debtor with a view to using the credit claim as collateral.

2) The provisions of the Consumer Credit Act remain reserved.

Art. 401 to 441 Deleted

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## 7. Title

### The rights to ownerless and public property

#### 1. Section General Provisions

##### A. Unowned property

###### Art. 442

###### I. Term

1) Masterless are those things to which no ownership can be proven.

2) Captured animals become ownerless if they regain freedom and their owner does not immediately and continuously search for them and try to catch them again.

3) Tamed animals become masterless as soon as they return to a state of wildness and do not return to their master.

4) Bee swarms do not become ownerless by entering foreign soil.

###### II. Vehicle

###### Art. 443

###### 1. In general

1) An ownerless movable thing is acquired by the fact that someone takes possession of it with the will to become its owner.

2) The provisions of public law remain reserved.

Art. 444

*2. Honey*

1) If an object of value is found which, according to circumstances, can be assumed with certainty to have been buried or hidden for a long time and no longer has an owner, it shall be considered treasure.

2) The treasure, subject to the provision on objects of scientific value, shall fall to the owner of the land or movable property in which it was found.

3) The finder shall be entitled to reasonable compensation, which, however, shall not exceed half of the value of the treasure.

Art. 445

*3. Scientific items*

1) Unowned natural bodies or antiquities of scientific value are the property of the country.

1a) Such things cannot be alienated without the permission of the Office of Culture. They can neither be possessed nor acquired in good faith. The claim for restitution is not subject to the statute of limitations.

2) The owner, in whose property such objects are found, and the finder are obliged to notify the Office of Culture

to be informed of this. The owner of the property must tolerate their excavation in return for compensation for the damage caused.

3) The finder and, in the case of treasure, the owner shall be entitled to reasonable compensation, which shall not, however, exceed the value of the items as a whole.

*III. Land*

Art. 446

*1. Use cases*

Unless otherwise proven, there is no private ownership of public waters or of land incapable of cultivation, such as rocks and scree slopes, firs and glaciers, and the springs arising therefrom.

1) Lifted

## Art. 447

*2. Appropriation*

- 2) The appropriation of a property registered in the land register can only take place if the property is ownerless according to the land register.
- 3) In the case of such land, it is effected by entering the occupier as the owner in the land register.
- 4) Appropriation of a plot of land not recorded in the land register is effected by taking possession of the plot of land and recording it in the land register.
- 5) Art. 43 par. 3 shall apply to the entry in the land register.

## Art. 448

*3. Formation new land*

- 1) If land capable of exploitation is created from ownerless land by alluvion, filling, soil shifting, changes in the course or status of a public watercourse or in any other way, it shall belong to the Principality of Liechtenstein.
- 2) If a person can prove that parts of the ground have been taken from his property, he may recover them within a reasonable period of time.

## B. Public things

*1. In general*

## Art. 449

*1. Term*

- 1) Public property is deemed to be property that is directly intended to serve public purposes.
- 2) Public property does not include property owned by the state and municipalities, as well as property owned by public corporations or institutions. They are treated as private property.

## Art. 450

*2. Application of the law of property*

- 1) The provisions of this Act shall apply mutatis mutandis to public property, unless special rules are established for them.

2) Easements and encumbrances may be granted both in favor of and to the detriment of public property.

3) Retrieved

4) On the other hand, no rights may be acquired to public real estate. Art. 451

*II. Administrative assets of the state and municipalities*

1) The administrative assets of the Land and of the municipalities shall include those items owned by the Land or by a municipality which, by virtue of their direct utility value, are intended to serve the Land or a municipality in the performance of its public-law duties, in particular for the operation of public institutions.

2) The sale of real estate belonging to the administrative assets of a municipality shall require the consent of the member of the government responsible in accordance with the allocation of responsibilities.

3) The pledging of land belonging to the administrative assets of the state or a municipality is excluded.

*III. Things intended for public use*

Art. 452

1. In general

1) Water bodies, roads, squares, bridges and land that is not demonstrably privately owned shall be subject to public use.

2) Any person may freely use objects in public use to the extent customary in the locality and within the framework of the legal system.

3) The provisions for the purpose of regulating the use of the same shall remain reserved.

Art. 453

2. *Special rights*

1) As long as these things are for public use, private rights to them can only be acquired from the community by express concession, but not by appropriation or possession.

2) A person who has acquired a special right to an object in the public domain may exercise the same only to the extent permitted by his concession (conferment) and



his need requires it. It shall not unnecessarily restrict the public use.

3) If the use and exploitation prejudice public interests, the government may prohibit it.

## 2. Section The water forces

Art. 454 to 483A Revoked

## 3. Section The Mines

Art. 484

### A. Subject of the mines

The regulations on mines shall apply to any arrangements for the exploration and commercial extraction of the following raw materials: metallic ores, fossil fuels, luminous and related materials, as graphite, anthracite, hard coal, lignite, shale coal, asphalt, bitumen and mineral oils, sulfur, sulfur ores, rock salt and brine springs, but not peat.

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### B. Acquisition of the mines

#### 1. *The prospecting*

Art. 485

#### 1. Issuance of the prospecting license

1) Anyone who wishes to explore for materials to be mined or to resume earlier mining operations, even if he is the landowner himself, requires a prospecting permit from the government, which is issued after consultation with the landowners.

2) The prospecting permit may be denied only if the prospecting would be contrary to the public welfare or would injure such interests as appear to far exceed the profit to be expected from the mine.

Art. 486

#### 2. *Content of the prospectus*

1) The prospecting license is issued for one or more commodities, but for the same commodity and the same area to only one applicant.

2) It confers on the latter the right to mine for a certain period of time and in a specific location, to be determined in accordance with the technical mining circumstances and economic interests.

- 3) It loses its effectiveness if the purposeful prospecting work has not been carried out at all or has been carried out unsuccessfully during the set period.
- 4) For good cause, both the area and the duration of the mining permit may be extended.

Art. 487

3. Effect of prospecting

- 1) The acquirer of the mining permit shall have his find officially determined, in particular with regard to its probable suitability for construction, and shall thereupon apply to the government for the award of the mine within a period of three months.
- 2) The government may grant an additional period for good cause.

II. The award Art.

488

1. Requirements

- 1) If a raw material subject to mining regulations has been found, exploitation requires a concession, which is issued by the government and may be refused for the same reasons as the issuance of a prospecting permit. Applications for concessions must be made public and objections may be lodged within 14 days.
- 2) In the event that fossils other than those specified in the prospecting permit have been found, the award shall precisely regulate the relationship with other entitled parties.
- 3) The rights of the state arising from the mining regulations shall remain reserved.

Art. 489

2. Determination of the beneficiary

- 1) The award is made to a specific person, company, corporation or institution.
  - 1a) In particular, the applicant must prove that professional operation is guaranteed.
- 2) Neither the mining permit nor the award can be transferred without the consent of the government.

Art. 490

3. Contents of the award certificate

The mine is granted for one or more raw materials and for an extension in time and place to be determined according to the circumstances, whereby consideration is to be given to enabling rational exploitation.

Art. 491

III. The settlement with the landowner

- 1) The landowner on whose land prospecting or mining is carried out is entitled to compensation for the area of land taken up and to compensation for any further damage.
- 2) Compensation shall be determined in accordance with the provisions on compulsory expropriation.
- 3) Prior to the commencement of the damaging measures, the owner may demand security.

C. Loss of mines Art. 492

*I. Time lapse and renewal*

- 1) The award expires at the end of the award period, but may be renewed upon request.
- 2) The renewal shall be based on the same principles as the award, taking into account the changed circumstances, but shall not substantially burden the owner of the mine.
- 3) If the renewal is refused, the Land shall compensate the holder for the value of the assets on the basis of a judicial appraisal in an equitable manner.

Art. 493

II. Forfeiture

- 1) The award shall be declared forfeited by the government if the owner of the mine grossly violates the terms of the award.
- 2) It expires automatically if the mine is not opened within the period to be specified in the award, and if operations are suspended for five consecutive years.

D. Content of mines Art.

494

*I. Operating regulations*

- 1) The mine must be designed and operated in a technically correct manner and in accordance with the regulations issued for the protection of persons and property.
- 2) For the protection of property, buildings, roads and watercourses, the owner of the mine must observe all the precautionary measures provided by technology and take the necessary precautions.

## II. Right of compulsory

expropriation Art.

495

### 1. *Subject of the expropriation*

The owner of the mine may be allocated by way of compulsory expropriation:

1. the land which he needs for prospecting or construction or for any operational purposes which cannot be easily avoided, or in respect of which damage which substantially reduces the value of the land cannot be avoided as a result of the operation;
2. the water tapped by the mine, as well as the wood that comes to felling at the plant, to the extent necessary for mining.

Art. 496

### 2. Restrictions

- 1) The compulsory expropriation shall be refused if its benefit for mining is obviously not equal to the value of the land claimed.
- 2) It may also be refused if traffic routes, public buildings or works of higher public or economic importance would be disturbed or endangered as a result.

Art. 497

## III. Commitments

- 1) The owner of the mine is obligated to provide all the facilities that the concession and the law require him to provide at his own expense.
- 2) He shall compensate for all damage caused directly or indirectly to third parties as a result of the prospecting or operation of the work.

3. Department of  
property and land  
register

8. Title The  
property

*A. Concept and types*

Art. 498

*I. Term*

- 1) Whoever has actual power over a thing is its owner.
- 2) In the case of easements and charges over real property, the actual exercise of the right is treated as equivalent to ownership in kind.

Art. 499

*II. Independent and dependent property*

- 1) If one owner has transferred the thing to another for a limited right in rem or a personal right, they are both owners.
- 2) The one who owns a thing has independent possession, the other dependent possession.

Art. 500

*III. Temporary interruption*

Temporary prevention or omission of the exercise of actual power shall not, by its nature, invalidate possession.

*B. Transfer Art.*

501

*I. Among present*

- 1) Possession is transferred by handing over the thing itself or the means that provide the recipient with the power over the thing.
- 2) The transfer is completed as soon as the recipient is able to exercise the power over the thing with the will of the previous owner.

3) Retrieved

Art. 502

*II. Among absentees*

If the handover is made in absentia, it shall be deemed to be completed when the item is handed over to the recipient or his representative.

Art. 503

*III. Without transfer*

- 1) Possession of an object may be acquired without transfer if a third party or the transferor himself remains in possession of the object on the basis of a special legal relationship.
- 2) This transfer of possession shall not be effective vis-à-vis the third party until the transferor has notified him thereof.
- 3) The third party may refuse to surrender the property to the acquirer for the same reasons for which he could have refused to surrender it to the transferor.

Art. 504

IV. For commodity papers

- 1) If securities representing goods handed over to a carrier or a warehouse are issued for them, the transfer of such a document shall be deemed to be a transfer of the goods themselves.
- 2) However, if the bona fide recipient of the commercial document is opposed by a bona fide recipient of the goods, the latter shall have priority over the former.

C. Meaning

*I. Property protection*

Art. 505

1. Defense against attacks

- 1) Each owner is allowed to use force to defend himself against forbidden self-power.
- 2) If the property is seized from him by force or secretly, he may immediately seize the property again by expelling the offender and take the movable property back from the offender who is caught in the act and pursued directly.
- 3) In doing so, he must refrain from using any force that is not justified under the circumstances.

Art. 506

*2. Action from deprivation of possession*

- 1) A person who has taken a thing from another by unlawful interference is obliged to return it, even if he claims a better right to the thing.
- 2) If the defendant immediately proves his better right and on the basis of the same he could demand the thing from the plaintiff again, he can refuse the return.

3) The claim is for return of the item and damages.

Art. 507

3. Action from interference with possession

1) If possession is disturbed by unlawful interference, the owner may bring an action against the interferer, even if the latter claims to have a right.

2) The claim is for removal of the interference, omission of further interference and damages.

Art. 508

4. Admissibility and limitation of the action

1) An action for unlawful interference with the owner's own right shall be admissible only if the owner, immediately after becoming aware of the interference and the perpetrator, reclaims the thing or demands removal of the interference.

2) The action is barred by the statute of limitations after the expiration of one year beginning with the deprivation or interference, even if the owner did not become aware of the interference and the perpetrator until later.

*II. Legal protection*

Art. 509

1. Presumption of ownership

1) The owner of a movable thing is presumed to be its owner.

2) Each former owner is presumed to have been the owner of the thing during the time of his possession.

Art. 510

*2. Presumption of independent possession*

1) If a person possesses a movable thing without intending to be its owner, he may invoke the presumption of ownership of the person from whom he received it in good faith.

2) If a person owns a movable thing with a claim to a limited right in rem or a personal right, the existence of this right shall be presumed, but he may not invoke this presumption against the person from whom he received the thing.

Art. 511

3. Action against the owner

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The owner of a movable thing may invoke the presumption in favor of his better right against any action, subject to the determination of arbitrary deprivation or interference with possession.

4. Right of disposal and recovery

Art. 512

*a) For entrusted property*

A person who in good faith receives a movable thing as property or as a limited right in rem shall be protected in his acquisition even if it was entrusted to the alienator without any authorization to transfer it.

Art. 513

*b) In case of lost property*

1) The owner to whom a movable item is stolen or lost or otherwise goes missing against his will may claim it from any recipient for a period of five years. Art. 191 remains reserved.

2) If the thing has been sold by public auction or transferred on the market or by a merchant dealing in goods of the same kind, it may be claimed from the first and any subsequent bona fide recipient only against remuneration of the price paid by him.

3) The restitution shall be made in accordance with the provisions governing the claims of the bona fide owner.

Art. 514

*c) For cash and bearer instruments*

Money and bearer instruments, even if they have been lost by the owner against his will, cannot be claimed from the bona fide recipient.

Art. 515

*d) In bad faith*

1) A person who has not acquired possession of a movable thing in good faith may be sued for restitution by the former owner at any time.

2) However, if the former owner had also not acquired in good faith, he cannot claim the thing from a later owner.

Art. 516



### 5. Presumption for land

- 1) With regard to the land plots entered in the land register, there is a presumption of the right and an action from the possession only for the one who is registered.
- 2) However, whoever has the actual power over the land may bring an action for self-deprivation or interference with possession.

#### *III. Responsibility*

##### 1. Bona fide owner

###### Art. 517

###### *a) Use*

- 1) A person who possesses a thing in good faith shall not be liable to pay compensation to the person entitled to it if he uses it in accordance with his presumed rights.
- 2) He does not have to compensate for anything that is lost or damaged in the process.

###### Art. 518

###### *b) Replacement claims*

- 1) If the entitled party demands delivery of the item, the bona fide owner may claim compensation for the necessary and useful expenses and refuse delivery until compensation is made.
- 2) He cannot demand compensation for other uses, but if such is not offered to him, he may take away what he has used before returning the thing, insofar as this can be done without damaging the thing itself.
- 3) Fruits received by the owner shall be credited against the claim for the uses.

###### Art. 519

##### 2. Bad faith owner

- 1) A person who possesses a thing in bad faith must surrender it to the person entitled to it and pay compensation for all damage caused by the withholding and for the fruits received or forfeited.
- 2) He has a claim for expenses only if such expenses would also have been necessary for the beneficiary.

3) As long as the owner does not know to whom he should hand over the thing, he is liable only for the damage he is responsible for.

Art. 520

#### IV. Ersitzung

The owner who is entitled to the right of subrogation may take into account the possession of his predecessor insofar as the latter's possession was also suitable for subrogation.

### 9. Title

The land register

#### A. *Establishment*

##### I. *Stock*

Art. 521

#### 1. In general

- 1) A land register is kept on the rights to the land plots, which is to be subdivided according to municipalities.
- 2) The land register consists of the general ledger and the plans, documents, land descriptions and the diary supplementing the general ledger.
- 3) The land register can be kept on paper or by means of information technology.

Art. 522

#### 2. *Recording*

1) As land plots are recorded in the land register:

1. the properties;
2. the independent and permanent rights to real estate;
3. the mines;
4. the co-ownership shares in land.

2) The inclusion of independent and permanent rights shall take place upon application by the entitled person. The inclusion of other types of real estate is done ex officio.

#### 3. General ledger

Art. 523

#### a) In general

- 1) Each plot of land is given its own sheet and number in the general ledger.
- 2) Independent and permanent rights, mines and co-ownership shares in land may be numbered separately nationwide.

Art. 524

*b) General ledger sheet*

Each general ledger sheet shall contain special sections on:

1. the property;
2. the easements and encumbrances connected with the land plot or resting on it;
3. the liens with which it is encumbered;
4. the reservations;
5. the notes;
6. the property description.

Art. 525

*c) Diary, receipts*

- 1) Applications for entry in the land register shall be entered in the diary in chronological order without delay, indicating the applicant and his or her request.
- 2) The documents upon whose presentation the entries in the land register are made shall be properly arranged and kept.

Art. 526

4. Plans for the land register

The recording and description of individual land plots in the land register is based on a plan, which is based on the official cadastral survey.

Art. 527

*5. Regulation*

The Government shall issue the necessary ordinance on the organization of the land register, in particular on:

1. the recording of the land plots and the creation of the general ledger;

2. the separate numbering for independent and permanent rights, mining and co-ownership interests in real estate;
3. the form of the general ledger;
4. the auxiliary registers and the data to be included in them;
5. the measures to be taken in the event of destruction or loss of a ledger sheet;
6. the preservation of books, registers and land registry files.

II. Land register

management

Art. 528

1. *In general*

1) The Office of Justice is responsible for creating and maintaining the land register.

2) Retrieved

2. *Fees*

Art. 529

a) Principle

1) Fees are charged for the official acts to be performed by the Office of Justice.

2) The value-based fees are:

1. for the registration of ownership, ownership shares and building rights: 6 ‰ of the value of the consideration, in the absence of such of the tax assessed value, however, at least 200 francs per change of ownership; in the case of acquisition in the course of decisions of the courts that shape the law: 200 francs per change of ownership;

2. for registration of property as a result of merger of companies or merger-related similar facts: 1 ‰ of the value of the consideration;

3. for the establishment or increase of a lien on real property: 2 ‰ of the lien sum or the amount of the increase;

4. for the establishment or modification of an independent and permanent right or a base load: 2 ‰ of the value of the right.

3) The Government may, by ordinance, set minimum and maximum amounts for the value-based fees under subsection 2.

4) For other official acts, the Government shall set the fees by ordinance. They shall be adapted to the time required and the importance of the transaction.

5) The Government shall regulate the procedure for charging fees, securing fees and receiving fees by ordinance.

Art. 529a

Repealed

Art. 530

*b) Fee exemption*

1) Entries, reservations, annotations or deletions in the land register made ex officio are free of charge, as are excerpts from the land register intended for official use.

2) The Principality of Liechtenstein, the municipalities, the domestic authorities and courts, and the Reigning Prince are exempt from the obligation to pay fees.

3) The government may, by ordinance, exempt further facts from the obligation to pay fees and regulate the procedure.

Art. 531

*c) Fee debtor*

1) The fees are owed by the person who requests the official act. In the case of changes of ownership, they are owed equally by both parties.

2) If the request is made by several persons, they are jointly and severally liable. In the case of changes in the ownership of land, joint and several liability also applies to the purchaser of the land.

3) The parties reserve the right of recourse and deviating agreements.

Art. 532

*3. Liability*

1) The country is responsible for all damage arising from the maintenance of the land register and from the maintenance of the plan for the land register.

2) The provisions of the Public Liability Act shall apply.

*4. Complaint and procedure*

Art. 533

*a) Appeal against the rejection of an application*

1) The applicant may appeal against the rejection of a land register application, as well as against

all others who are affected by the dismissal, within 14 days from the date of service, make presentation to the Office of Justice or appeal to the Administrative Appeals Commission.

2) Appeals against decisions of the Appeals Commission for Administrative Matters may be lodged with the Administrative Court within 14 days of notification.

Art. 534

b) Complaint in other cases

1) Anyone who is affected by a decision of the Office of Justice, which does not have as its object the rejection of an application, may, within 14 days from the date of notification, file a representation with the Office of Justice or an appeal with the Appeals Commission for Administrative Matters.

2) Appeals against decisions of the Appeals Commission for Administrative Matters may be lodged with the Administrative Court within 14 days of notification.

Art. 535

*c) Procedure*

1) The procedure shall be governed by the provisions of the Act on the General Administration of the Republic of Poland.

2) The Office of Justice shall have the right of reply in the appeal proceedings.

*B. Registration*

I. Land register

entries Art.

536

*1. Ownership and limited rights in rem*

The following rights to land plots are entered in the land register:

1. the property;
2. the easements and mortgages;
3. the liens.

2. Prior notices

Art. 537

a) Personal rights

- 1) Personal rights may be registered in the land register if their registration is expressly provided for by law, as in the case of right of first refusal and right of repurchase, right of purchase, lease and rent.
- 2) The priority notice shall have effect vis-à-vis any rights acquired at a later date.

Art. 538

*b) Restrictions on disposal*

- 1) Restrictions on disposal can be preregistered:
  1. to secure disputed or enforceable claims;
  2. to secure a prohibition of sale, encumbrance or pledge in accordance with section 97a(1)(4) of the Code of Criminal Procedure;
  3. in the cases provided for by law.
- 2) The court shall allow the priority notice to secure disputed or enforceable claims if the existence of a compulsory claim is proven.  
claim for registration, deletion or amendment of a right in rem is substantiated.
- 3) The restrictions on disposal are given effect by the priority notice in relation to any rights acquired later.

Art. 539

*c) Preliminary entries*

- 1) Provisional entries can be pre-registered:
  1. to secure asserted rights in rem;
  2. in case of the addition to the ID card allowed by the law.
- 2) They shall be made with the written consent of all parties or by order of the court, with the result that the right shall become effective in rem from the time of the priority notice in the event of its subsequent establishment.
- 3) The court shall, after the claimant has substantiated his entitlement, grant the priority notice by determining its effect precisely in terms of time and subject matter and, if necessary, by setting a time limit for the judicial assertion of the claims.

Art. 540

d) Registration of subsequent rights

A priority notice does not prevent the registration of a subordinate right.

Art. 541

*3. Notes*

- 1) Legal relationships under private law may be recorded in the land register only in the cases provided for by law.
- 2) In addition, the Ordinance to this Act may provide for annotations resulting from the land registry.
- 3) The municipality or another public body responsible for a public task must have a restriction of title under public law imposed on a specific plot of land, which imposes a permanent restriction of use or disposal or a land-related obligation on the owner, recorded in the land register.
- 4) The government shall determine by ordinance which additional restrictions on title under public law must be recorded in the land register.
- 5) If the restriction on ownership ceases to apply, the community or the other holder of a public function must arrange for the deletion of the entry in the land register. If the municipality or the other holder of a public duty fails to act, the Office of Justice may ex officio delete the entry.

*II. Requirements for registration*

*1. Registrations*

Art. 542

*a) For entries*

- 1) Entries are made on the basis of a written declaration by the owner of the land to which the order relates.
- 2) No declaration by the owner shall be required if the acquirer is able to invoke a provision of law, a final judgment or a document equivalent to the judgment.
- 3) Ex officio registrations shall be permitted only in the cases provided for in this Act or the ordinance issued thereunder.

Art. 543

*b) For deletions*



The deletion or modification of an entry requires a written declaration by the persons entitled to the entry.

*2. ID cards*

Art. 544

a) Valid ID card

1) Dispositions in the land register, such as registration, amendment, deletion may in all cases only be made on the basis of an identification of the right of disposal and the legal ground.

2) The proof of the right of disposal lies in the proof that the applicant is the person authorized to dispose of the property according to the land register or has received a power of attorney from this person. The power of attorney must be a precautionary power of attorney (§ 284b ABGB), a general power of attorney (§ 1006 ABGB), which may not be older than two years at the time of the application, or a power of attorney issued for a specific transaction (§ 1008 ABGB).

3) The proof of the legal ground lies in the proof that the conditions necessary for its validity are met.

Art. 545

*b) Supplement to the ID card*

If the legal basis has been established and it is only a question of supplementing the proof of the right of disposal, a provisional entry may be made with the consent of the owner or by court order.

Art. 545a-545g

Repealed Art.

546

c) Insufficient ID

If the documents required for a land register disposition are not provided, the application shall be rejected.

III. Type of

registration

Art. 547

1. In general

1) Entries in the general ledger are made in the order in which the applications were filed.

2) An extract of all entries shall be issued to the parties concerned at their request and on payment of the fee provided for this purpose.

Art. 548

*2. Easements and encumbrances*

The registration and deletion of easements and real encumbrances shall be made on the sheet of the entitled and encumbered land.

Art. 549

IV. Duty of disclosure

The Office of Justice shall notify the parties involved of the land register dispositions made without their knowledge.

Art. 550

V. Regulation

The Government shall issue the necessary regulations concerning the keeping of the land register, in particular:

1. the registration and enrollment in the diary;
2. the requirements and the nature of the registrations, reservations and annotations;
3. issuance of pledge titles and pledge certificates;
4. the amendment and cancellation as well as invalidation of the lien titles;
5. the division, unification and transfer of land plots;
6. the extracts.

Art. 551

*C. Publicity of the land register*

- 1) The land register is public.
- 2) Anyone who can credibly demonstrate an interest is entitled to be granted access to the land register or to be provided with an extract from it.
- 3) Any person is entitled to receive the following information even without such interest:
  1. the name and description of the land plot;
  2. the name and identification of the owner;

3. the form of ownership and the date of acquisition;
4. the easements and land charges as well as the notes.
- 4) The government may, by ordinance, determine that further information may be made available to certain persons without a prima facie case of interest.
- 4a) Information or an extract may only be provided in respect of a specific item of land. A person-related query is not permitted.
- 5) The objection that someone was not aware of a land register entry is excluded.

*D. Effect*

Art. 552

I. Meaning of non-registration

- 1) Insofar as entry in the land register is provided for the creation of a right in rem, such right shall exist as a right in rem only if it is evident from the land register.
- 2) Within the scope of the entry, the content of a right may be proved by the supporting documents or by other means.

II. Significance of the  
registration Art.

553

*1. In general*

- 1) The rights in rem shall come into existence and obtain their rank and date by registration in the general ledger.
- 2) Their effect is referred back to the date of inscription in the diary, provided that the legal documents of identification are attached to the registration or, in the case of provisional registrations, are subsequently provided in due time.

Art. 554

*2. Towards bona fide third parties*

- 1) Anyone who has relied in good faith on an entry in the land register and thereupon acquired property or other rights in rem shall be protected in this acquisition.
- 2) This provision does not apply to boundaries of land plots in the areas designated by the government with soil displacements.

Art. 555

3. Towards third parties acting in bad faith

- 1) If the entry of a right in rem is unjustified, the third party who knows or should know of the defect may not invoke the entry.
- 2) An unjustified entry is one that has been made without legal grounds or on the basis of a non-binding legal transaction.
- 3) A person whose right in rem is infringed by such an entry may invoke the defectiveness of the entry directly against the third party acting in bad faith.

E. Deletion and modification of entries

*I. Cleanup*

Art. 555a

*1. When dividing the land plot*

- 1) If a plot of land is divided, the easements, priority notices and annotations must be cleared up for each part.
- 2) The owner of the property to be divided must apply to the Office of Justice to determine which entries are to be deleted and which are to be transferred to the partitions. Otherwise, the application must be rejected.
- 3) If, according to the evidence or circumstances, an entry does not relate to a part, it shall be deleted thereon. The procedure shall be governed by the provisions relating to the deletion of an entry.

Art. 555b

*2. In the case of the association of land*

- 1) Several plots of land belonging to one owner may only be united if no mortgages or encumbrances have to be transferred from the individual plots of land to the united plot of land or if the creditors consent to this.
- 2) If easements, priority notices or annotations are registered in respect of the real property, these may only be combined if the entitled parties consent thereto or if the nature of the encumbrance means that their rights are not impaired thereby.
- 3) If easements, priority notices or annotations are registered in favor of the real property, they may be united only if the owners

of the encumbered properties agree to this or the encumbrance does not increase as a result of the settlement.

4) The provisions on the adjustment in case of division of the land shall apply *mutatis mutandis*.

Art. 556

II. In case of unjustified entry

1) If the entry of a right in rem is unjustified or if a correct entry has been unjustifiably deleted or modified, any person whose rights in rem have been infringed may sue for the deletion or modification of the entry.

2) Rights in rem acquired by bona fide third parties through registration and claims for damages are reserved.

III. *Facilitated deletion*

Art. 557

*1. In the case of entries that are undoubtedly insignificant or the extinction of a right in rem*

1) The Office of Justice may ex officio delete an entry if it:

1. is limited in time and has lost its legal significance as a result of the expiry of the time limit;
2. concerns a non-transferable or non-inheritable right of a deceased person;
3. cannot affect the property because of the local location;
4. concerns a submerged property.

2) The Office of Justice may ex officio request a judicial investigation and determination of the extinction of a right in rem and, upon order of the district court, carry out the extinction.

Art. 557a

Repealed

*2. For other entries*

Art. 558

a) In general

1) If an entry most probably has no legal significance, in particular because according to the evidence or circumstances it does not relate to the property, any person burdened thereby may request that it be deleted.

2) If the Office of Justice considers the request to be well-founded, it shall notify the justified

person that it will delete the entry if he or she does not object to it at the Office of Justice within 30 days.

Art. 559

*b) With objection*

- 1) If the entitled person raises an objection, the Office of Justice shall reconsider the request for cancellation at the request of the incriminated person.
- 2) If the Office of Justice comes to the conclusion that the request is to be granted despite the objection, it shall notify the entitled person that it will delete the entry in the land register if he or she does not file an action with the district court within three months for a declaration that the entry has legal significance.

Art. 560

*IV. Corrections*

- 1) The Office of Justice shall correct the incorrect execution of an application. In the absence of the written consent of the parties, it shall issue a decision on the correction.
- 2) Instead of a correction, the incorrect entry can be deleted and a new entry made.
- 3) The Office of Justice may correct mere clerical errors at any time on its own initiative.

F. Keeping the land register by means of  
information technology Art.

561

*I. Principle*

- 1) The land register can be kept by means of information technology ("EDP land register").
- 2) The data of the general ledger, the diary, the land description and the auxiliary registers are kept together in one system and related to each other.
- 3) Insofar as the provisions on the keeping of the land register by means of information technology do not contain any special regulation, the other provisions of this Act shall apply.

Art. 562

*II. Arrangement*

- 1) The Government shall order the keeping of the computerized land register and determine the system to be used for it.

2) In doing so, it checks whether the system meets the legal requirements.

Art. 563

*III. Data security*

1) The data of the computerized land register shall be maintained in such a way that they are preserved in terms of inventory and quality. They must be protected and secured on an ongoing basis in accordance with generally accepted standards.

2) The government shall issue the necessary orders.

Art. 564

*IV. Data availability*

1) It must be possible to retrieve the following data from the computerized land register at short notice:

1. the current data of the ledger on the owners, as well as the deleted data of the legal predecessor and its predecessor, but always the data of all owners in a period to be determined by decree;

2. the current data of the general ledger on the easements, charges on real property, liens on real property, priority notices and annotations, as well as the corresponding deleted data in the state at the time of their deletion;

3. the diary data on all pending registration procedures and on all registrations in a period to be determined by decree.

2) The remaining data must be retrievable within a reasonable period of time.

Art. 565

*V. Data access in the retrieval procedure*

1) The Office of Justice may grant access to the data of the general ledger, the diary and the auxiliary registers to the following persons upon request, without having to show a credible interest in each individual case:

a) Engineer-Governors, state and local government agencies, and courts and law enforcement agencies to the data they need to perform their legal duties;

b) banks to the data they need to fulfill their mortgage business tasks;

c) specific persons to the data:

1. of the land they own; or

2. of the properties to which they have rights, provided that they require the data for the exercise of their business activities or the exercise of their rights.

2) Retrieved

3) The Office of Justice may allow a person to access the relevant data on a case-by-case basis after reviewing the proof of interest.

4) Each query by a person accessing the land register data must be recorded electronically and must be retrievable at short notice during one year.

5) The Government may regulate further details by ordinance.

Art. 566

*VI. General ledger*

1) The written and numerical data on the land plot readable on the equipment of the Office of Justice shall have the meaning of the ledger if they can be changed only by a new registration procedure. The same meaning shall be given to the printout of such data made on the equipment of the Office of Justice and confirmed by the signature of the Office of Justice.

2) It must be evident from the presentation of the data that it is information about a specific property at a specific time.

3) The inscriptions on the general ledger sheet must be legible in writing and numbers, arranged according to the applicable divisions. Easements and land charges may be shown separately.

Art. 567

*VII. Diary*

1) The information on the applications and on the proceedings initiated ex officio, which can be read in writing and in figures on the equipment of the Office of Justice, has the meaning of the diary.

2) The final command to enter the data into the diary application has the legal effect of enrollment into the diary. The same effect is given to the printout of these data made on the equipment of the Office of Justice and confirmed by the signature of the Office of Justice.

3) It must be evident from the presentation of the data that it is information from the diary at a specific point in time.

4) The system must be set up so that the data cannot be changed once enrollment is complete.



## Art. 568

*VIII. Registration procedure*

- 1) The registration procedure is initiated with the enrollment in the diary.
- 2) The registration procedure is completed by entering special commands:
  1. the enrollment, the modification or the deletion of data of the main bu-ches is declared to be legally effective;
  2. the application is designated as legally rejected;
  3. the application is designated as withdrawn;
4. an accidental enrollment in the diary is declared invalid.

## Art. 569

*IX. Deletions, changes and corrections*

- 1) Entries are deleted by transferring the data from the stock of legally effective data to the stock of data that is no longer legally effective.
- 2) In the event of an amendment or correction, the new data shall be included in the inventory of legally effective data of the general ledger and the amended or corrected data shall be transferred to the inventory of data no longer legally effective.
- 3) Data that is no longer legally effective must be identified as such. Art. 570

*X. Legal effects*

- 1) The triggering of the entry order in the registration procedure, according to which the registration, amendment or deletion of data on rights in rem is declared legally effective, has the legal effect of the entry in the general ledger.
- 2) The written and numerical information on the rights in rem that can be read on the equipment of the Office of Justice shall have the legal effect of the entry. The same effects are given to the printout of these data made on the equipment of the Office of Justice and confirmed by the signature of the Office of Justice.

## Art. 571

*XI. Regulation*

The Government shall issue the necessary ordinance on the keeping of the computerized land register, in particular on:

1. the verification of the system to be applied;
2. data security;
3. the availability of the data;
4. the data access;
5. the registration procedure;
6. electronic commerce and the use of signatures in accordance with Regulation (EU) No. 910/2014 of the European Parliament and of the Council of July 23, 2014 on electronic identification and trust services for electronic transactions in the internal market.

Art. 572 to 632 Discontinued

Final Title Transitional  
Provisions

A. General provisions Art. 1

I. Rule of non-retroactivity in general

- 1) The legal effects of facts that occurred before the entry into force of this Act shall continue to be judged in accordance with the provisions of the previous law that applied at the time of the occurrence of these facts.
- 2) Accordingly, the acts performed before this date shall be subject to the provisions in force at the time of their performance with regard to their legal obligation and their legal consequences also in the future.
- 3) On the other hand, facts occurring after that date shall be judged according to the new law, unless the law provides for an exception.

II. Retroactivity in general Art. 2

1. Public order and morality

- 1) The provisions of this Act, established for the sake of public order and morality, shall apply to all facts upon its entry into force, unless the Act has provided for an exception.

2) Accordingly, provisions of the previous law which, in the opinion of the new law, are contrary to public order or morality shall cease to apply after its entry into force.

Art. 3

2. Content of legal relations by operation of law

Legal relationships, the content of which is defined by law irrespective of the will of the parties involved, shall be judged according to the new law after the entry into force of this Act, even if they were established before that time.

Art. 4

3. Non-acquired rights

Facts which occurred under the previous law, but which did not give rise to a legally protected claim at the time of the entry into force of the new law, shall, after that time, be subject to the new law with regard to their effect.

Art. 5

III. Acquired rights in rem

- 1) The rights in rem existing at the time of the entry into force of this Act shall remain recognized under the new law, subject to the provisions on the land register.
- 2) However, with respect to their content, the property and limited ding- lich rights after the entry into force of this Act, unless it provides for an exception, shall be subject to the new right.
- 3) If their establishment would no longer be possible under the new law, they shall remain under the previous law.

Art. 6

IV. Entitlement to registration in the land register

- 1) Claims for the establishment of a right in rem established before the entry into force of this Act shall be recognized as valid if they comply with the form of the previous or the new right.
- 2) A relationship in rem established by a legal transaction before the entry into force of this Act shall remain recognized under the new law, unless it is incompatible with it.

B. Property

*I. In general*

Art. 7

*1. Ersitzung*

1) The right of subrogation shall be governed by the new law as from the entry into force of this Act.

2) If, however, a right of subrogation which also corresponds to the new right has commenced under the previous right, the time which has elapsed up to the entry into force of this Act shall be proportionately credited against the period of subrogation.

3) For the calculation of the time limits, the interruption and the standstill of the replacement, §§ 1452 et seq. of the Austrian Civil Code shall apply until the revision of the law of general obligations.

Art. 8

Repealed

*II. Land*

Art. 9

1. Repurchase and grandfathering rights

Repurchase and grandfathering rights of the previous right to real property continue to be recognized.

*2. Endowments*

Art. 10

a) before 1 February 1923

1) The new law shall apply to foundations as of the effective date of this Act.

2) The foundations existing at the time of the entry into force of this Act shall continue to be recognized.

Art. 10bis

*b) before the new law comes into force*

1) For foundations existing at the time of the entry into force of the Law of 24 April 2008 on the Amendment of Property Law, the previous law shall apply.

2) The plots of land are recorded individually in the land register. The foundation will be noted.

Art. 11

### 3. Trees on foreign soil

The existing property rights to trees on other people's land will continue to be recognized under the existing law.

#### Art. 11bis

##### *3bis Condominium ownership*

Condominium ownership governed by the previous law is subject to the new provisions of this Act, even if the floors or parts of floors are not self-contained as apartments or commercial space units.

#### Art. 11ter

##### 3ter Cleanup of the land register

For the registration of the existing condominium ownership, the government may order the cleaning of the land register and issue special procedural regulations for this purpose.

SR

### 4. *Seybooks attachment*

#### Art. 12

Repealed

#### Art. 13

Repealed

#### Art. 14

Repealed

#### Art. 15

### III. Vehicle

1) Retentions of title established under the old law with effect in rem shall continue to be recognized.

2) However, they must be entered in the register of reservations of title within one year of the entry into force of this Act. They become ineffective upon the unused expiry of this period, but may still be entered later.

#### C. Easements Art.

#### 16

##### *I. New*

The easements established since the entry into force of this Act shall require

for their in rem effect of entry in the land register, insofar as this is required under the new law.

Art. 17

II. Old

1) The easements existing at the moment of the entry into force of this Act shall continue to retain their effect in rem without being entered in the land register.

2) To the extent that their registration would be required under the new law, they are

a) with respect to land in municipalities or parts of municipalities in which the survey within the meaning of the Law on Land Surveying of February 1, 1945, has been legally completed or will be completed by December 31, 1965, by January 1, 1966,

b) if the requirements under a) are not fulfilled, in the course of the survey, but at the latest by the time of the execution of the relevant legally binding survey in the land register, provided that the public summons procedure (Art. 87 and 88 SchlT altSR) has been carried out,

c) if the requirements under b) are not fulfilled, on the basis of the adjustment procedure under the new law (Art. 61 ff. SchlT SR),

in the previous land register facilities or, with regard to subparagraph (c), in the land register, failing which the easements shall lapse.

3) Obligations incidentally connected with easements that were created before the amendment to the Act of August 31, 2016 came into force and that can only be derived from the land register documents may continue to be held against third parties who rely in good faith on the land register.

*D. Real estate liens*

Art. 18

I. Recognition of existing pledge titles

1) The liens on real property existing at the time of the entry into force of this Act shall remain recognized without their adaptation to the new law.

2) The mortgages established under the previous law are equal to the mortgage bonds under the new law.

3) The provisions of the new law on mortgage bonds shall apply to the old-law mortgages, unless an exception is provided for.

Art. 19

II. New liens

- 1) New mortgages may be established after the effective date of this Act only in the types and forms recognized by this Act.
- 2) The statutory liens of Articles 312 and 313 arising within five years after the entry into force of this Act shall rank after the registered liens.

Art. 20

*III. Repayment of titles*

- 1) The redemption and modification of liens, the release of liens and the like shall be governed by the provisions of the new law after its entry into force.
- 2) In place of the declaration of disappearance provided for in this Act, the provisions of the previous law concerning the declaration of death shall apply until the introduction of a new law on disappearance, with the exception of the provisions concerning time limits.
- 3) The invalidation of old-law mortgages may also be effected under the provisions of the old law within five years after the entry into force of this Act.

Art. 21

IV. Scope of the pledge

- 1) The scope of the lien shall be determined for all real estate liens in accordance with the new right.
- 2) If, however, by virtue of a special agreement, the creditor has received certain objects pledged with the property in a legally valid manner, the right of pledge on these objects remains in force, even if they would not be pledged under the new law.

V. Rights and obligations arising from the real

estate lien Art. 22

1. In general

- 1) The rights and obligations of the creditor and the debtor shall be assessed, insofar as contractual effects are concerned, for the liens existing at the time of the entry into force of this Act according to the previous law.

2) With regard to the effects that come into force by operation of law and cannot be altered by contract, the new law shall also apply to the already existing liens from this point in time.

3) If the lien extends to several properties, the lien shall continue to exist in accordance with the previous law.

Art. 23

2. Security rights

The rights of the pledgee during the existing relationship, such as, in particular, security interests, and likewise the rights of the debtor.

shall be subject to the new right for all liens from the time of the entry into force of this Act.

Art. 24

3. Termination and transfer

The terminability of pledge claims and the transfer of pledge titles shall, in the case of pledges already established at the time of the entry into force of this Act, be judged in accordance with the previous law, subject to the mandatory provisions of the new law.

Art. 25

VI. Rank

1) Real estate liens arising after the entry into force of this Act shall receive a fixed lien.

2) However, liens on real property that arose prior to the entry into force of this Act shall retain the right of subordination.

Art. 26

*VII. Limitation according to the appraisal value*

Repealed Art.

27

*VIII. Statutory liens under public law*

1) The liens existing under public law and claims for the creation of such liens shall remain reserved.

2) In particular, the provisions of this Act shall not affect Articles 120, 121 and 168 of the Act on the General Administration of the Land of April 21, 1922.



## Art. 27a

## IX. Continuation of the previous right for previous pledge types

- 1) Upholdable liens, pledges and mortgage bonds shall remain unchanged.
- 2) They shall continue to be subject to the provisions of the previous law (Art. 392 to 441).

## Art. 27b SchIT

*X. Continuation of the previous right for existing paper promissory notes*

- 1) Paper promissory notes existing at the time of the entry into force of the amendment of August 31, 2016 shall remain valid.
- 2) They remain subject to the provisions of the previous law.
- 3) If a change is made to an existing paper borrower's note, namely a change of creditor or a change of ownership, the paper borrower's note must be converted into a registered borrower's note. The paper borrower's note must be presented for this purpose.

## Art. 27c SchIT

## XI. Conversion of the type of promissory note

The landowner and the beneficiaries of the paper borrower's note may jointly notify the conversion of a paper borrower's note registered prior to the entry into force of the amendment to the law of 31 August 2016 into a registered borrower's note. The paper certificate of indebtedness must be presented at the time of registration.

## E. Liens Art. 28

*I. In general*

The effects of the lien, the rights and obligations of the pledgee, the pledgor and the pledgor's debtor shall be governed by the new law from the time of the entry into force of this Act, even if the lien arose earlier.

## Art. 29

## II. Retention right

- 1) The right of retention under this Act shall also extend to such property as came into the power of disposal of the creditor prior to its entry into force.

- 2) The creditor is also entitled to it for such claims that arose before that time.
- 3) Previously created retention rights shall be subject to the provisions of this Act with respect to their effectiveness.
- 4) The forwarder, the carrier, the commission agent, the lessor and the lessee may, after the entry into force of this Act, claim only the right of retention.

Art. 30

F. Possession

- 1) Possession shall be under the new right as of the effective date of this Act.

2) Retrieved

3) Retrieved

G. The land register

*1. Continuation of the previous land register facilities*

Art. 31

1. In general

- 1) Until the introduction of the land register, the old land register will continue to be kept, either on individual or collective sheets. The general ledger can also be kept in loose-leaf form.
- 2) The management of the previous land register facilities is based on the new law and, if it concerns the general ledger in book form, in accordance with Art. 33ff. SchIT SR.
- 3) Where the new law provides for entry in a column, the relevant entry shall be made in the text if the old land register does not know such a column.
- 4) Previous land register facilities are understood to be the old land register kept until January 31, 1923, as well as the continuation of the old land register.

Art. 32

*2. Effects*

- 1) The rights in rem of the previous right, which were not registered in the old land register, shall retain their validity even without registration, but, insofar as they require registration under the new law, they may not be opposed by third parties who have relied in good faith on the previous land register facilities.

be maintained. This does not apply to easements granted under Art. 17 SchIT SR.

2) In all other cases, after the entry into force of the property law, the previous land register institutions shall, unless an exception is provided for, express the effects of the new law.

3) The right to clean up the previous land register facilities is reserved.

### 3. New inclusion of land Art. 33

#### *a) Independent and permanent rights*

1) If independent and permanent rights are registered for inclusion in the land register, a special land register sheet shall be used for each of them.

2) The type (e.g. water right) and duration of the right and other information required for its identification must be entered on the inventory page.

SR

### Art. 34

#### b) Collective properties

1) If the inclusion of several plots of land belonging to the same owner on one land register sheet is requested, a special land register sheet shall be opened for the same.

2) The same principles apply to registrations as previously for foundations.

3) The sheet is to be headed as a collective sheet.

### 4. Entries

#### *a) Property*

### Art. 35

#### aa) In general

The transfer of ownership of individual plots of land shall be registered in the same manner as before.

### Art. 36

#### bb) Total ownership

In the case of acquisition of joint ownership of a plot of land, the names of the joint owners shall be indicated and the following shall be added to them: "as joint owners".

### Art. 37

*cc) Joint ownership*

- 1) In the case of acquisition of co-ownership of a plot of land, the co-owners must be indicated individually and the fraction of their entitlement (e.g. "co-owner to one third") must be indicated for each of them.
- 2) The transfer of individual shares to ownership is to be entered on the owner's side.

Art. 38

*dd) Independant co-ownership and annotation properties*

- 1) In the case of dependent co-ownership, instead of the owners, the entitled properties shall be indicated with the fraction of their entitlement.
- 2) The procedure for annotation properties shall be analogous.

Art. 39

b) Easements and encumbrances

- 1) Easements and land charges shall be entered in the same way as before on the sheet of the encumbered and, if applicable, also of the entitled property.
- 2) It is necessary to indicate whether it is an authorization or a burden (e.g. "as a burden").
- 3) In the case of land charges, a total value must also be stated.

*c) Real estate liens*

Art. 40

*aa) In general*

- 1) If a real estate lien is cancelled without another lien taking its place, an empty lien position is to be entered, stating the amount and rank.
- 2) The entry is given the same number as the deleted lien (e.g. "ad B: empty lien, 10,000 francs, 2nd rank").
- 3) From the entry into force of this Act, the change of creditor shall be registered only in the register of creditors and only upon request.

Art. 41

bb) Land pledge

- 1) Real estate liens are registered in the same way as mortgages were previously registered.
- 2) The entry must contain the designation "mortgage bond", the interest rate, the rank and the transactions (e.g. "Transaction: Gült 10 000 Franken u. G. V. 5 000 Franken").
- 3) Land improvement liens shall be designated as such.

Art. 42

cc) Promissory note and validity

- 1) Debt certificate and validity shall be designated as such in the registration.
- 2) In the case of bearer titles, the owner must be indicated in the land register; in the case of registered titles, the creditor must be indicated.
- 3) The new law applies to the issuance of titles and their delivery.
- 4) The indication of the pledge holder is made on the load sheet.
- 5) In all other respects, the same principles apply to the registration of promissory notes and gültts as to the mortgage bond.

Art. 43

dd) Series title

In the case of serial titles, the number of titles must be indicated in addition to the other information.

5. Reservations

a) *In general*

Art. 44

aa) *Form*

- 1) Prior notices shall be designated as such in the land register.
- 2) If they refer to a special right, this designation must be indicated (e.g. "Vormerkung ad c").
- 3) The content of the priority notice must be described in more detail, specifying the person of the beneficiary and the type of priority notice (e.g. "Provisional entry: Land charge in favor of X. 10,000 francs, 5%, 2nd rank, operation, validity, 12,000 francs").

Art. 45

bb) *Location*

- 1) Prior notations shall be made on the encumbrance sheet if their main effect relates to liens (e.g. prior notation of the right of subordination).
- 2) In all other cases, they must be entered on the inventory sheet (e.g.

B. Pre-emption and repurchase rights).

- 3) If a priority notice has significance both for ownership or for an easement or for a land charge and for a real estate lien, it is entered under the right to which it mainly relates, while a reference to this entry is made on the other sheet (e.g. "Restriction on disposal see inventory sheet").

Art. 46

b) Restrictions on disposal

- 1) Restrictions on disposal shall be placed on the inventory sheet.
- 2) A reference to this reservation shall be made on the encumbrance sheet.

Art. 47

c) Preliminary Entries

- 1) Provisional entries shall be entered on the encumbrance sheet if they relate to a lien, and on the inventory sheet in all other cases.
- 2) If a provisional entry relates to ownership, a reference to the encumbrance sheet shall be entered next to the entry on the inventory sheet.

Art. 48

d) Pre-emptive rights, etc.

Pre-purchase, repurchase, purchase rights and rent and lease shall be recorded on the inventory sheet. A reference to this is to be made on the encumbrance sheet.

6. Notes

Art. 49

*a) In general*

Notes must be designated as such in the land register and must refer to the right to which they belong (e.g. "2. Note ad c").

Art. 50

b) Belonging

If the annotation of appurtenances is required, the same shall be indicated on the inventory sheet.

and to make a reference thereto on the encumbrance sheet (e.g., "3. Note ad c: Belonging: the hotel furniture belonging to the business according to document no. ").

Art. 51

*c) Rights of way and public law restrictions*

- 1) Legal rights of way shall be registered on request on the inventory sheet of the encumbered party and, if applicable, of the entitled property.
- 2) The same applies to public law restrictions on ownership.

Art. 52

*d) Construction Worker's Deposit*

The start of a work for construction craftsmen is noted on the load sheet.

Art. 53

*e) Subjective rights*

Subjective rights shall be noted on the record sheet of the entitled property (e.g. "4. Note: Milk purchase right as land charge on No. 53").

Art. 54

7. Comments

- 1) A special column shall be used for remarks in the land register.
- 2) Remarks on the real estate liens are entered on the encumbrance sheet stating the number of the right to which they relate (e.g. "2. remark ad c: payment of 2,000 francs on May 15, 1923").
- 3) In all other cases, they are entered on the inventory sheet in the appropriate manner.

Art. 55

*8. Deletions and changes*

Deletions and changes are made according to the provisions of the new law.

Art. 56

9. ID cards

- 1) For entries, deletions and changes, the documents required by the new right must be provided.

2) For the registration of rights based on inheritance, a decision of the district court must be presented as an identification document.

Art. 57

*10. Receipts*

1) The previous document books remain unchanged.

2) From the effective date of this Act, the original documents shall be retained at the Office of Justice.

3) They are, as previously the transcripts, in Urkundenbücher zusammengebunden.

*11. Auxiliary register*

Art. 58

*a) Diary*

1) From the entry into force of this Act, the diary shall be kept by the Office of Justice.

2) The old forms can be used for this purpose, as long as they are still available, with the greatest possible adaptation to the requirements of the new law.

Art. 59

*b) Owners register*

The existing register of owners will be completed and continued.

Art. 60

*c) Register of creditors*

1) As soon as this law enters into force, a register of creditors shall be established in accordance with the provisions of the new law.

2) However, only those creditors who have acquired the lien under the rule of the new law must be included in the same.

*II. Introduction of the land register*

*1. In general*

Art. 61

*a) Requirements*

The prerequisites for the creation of the land register are the legally valid survey of the land and the adjustment of the rights in rem, reservations and annotations.



## Art. 62

*b) Order decision and implementation*

- 1) The Government shall, on the proposal of the Office of Justice, order the rectification and introduction of the land register for a municipality or part thereof. The prerequisite for this is the existence of a legally declared official cadastral survey.
- 2) This decision shall be officially announced by the Office of Justice in an appropriate manner.
- 3) The cleaning up and introduction of the land register is carried out by the Office of Justice under the supervision of the Government.

## Art. 63

*c) Costs and fees*

- 1) The costs of the cleanup as well as the creation of the land register are borne by the state.
- 2) The registration of new rights and the appeal procedure are subject to a fee.

## Art. 64

*2. Measurement*

- 1) The establishment and updating of the official cadastral survey is governed by the Cadastral Survey Act.
- 2) In areas without a legally binding official cadastral survey, the boundaries are indicated by the demarcations on the property itself. Their correctness is assumed.

*3. Cleanup*

## Art. 65

*a) Principle*

- 1) The purpose of the clean-up is to determine the rights to real property completely and clearly, to clarify unclear entries and to delete superfluous and meaningless entries.
- 2) The cleanup covers:
  1. the determination and registration of the rights not registered in the previous land register institutions, but arising before the entry into force of the property law

rights in rem, insofar as the previous public call procedure was not carried out with regard to the easements under the old law;

2. the review of all rights in rem, priority notices and annotations registered in the previous land register institutions, the correction of defects and the transfer of the previous entries to the land register;

3. the cancellation of rights in rem that cannot be registered or have lapsed, as well as of superfluous and meaningless reservations and annotations.

Art. 66

*b) Cleanup and transfer of existing entries*

1) The existing entries are to be checked ex officio to see whether they are entered in the correct department, correspond to the actual circumstances and the new law, and whether they are formulated clearly and without contradiction.

2) If existing entries cannot be transferred to the land register, or cannot be transferred unchanged, and if they require contractual renewal, amendment or supplementation, the Office of Justice shall issue an order concerning the correction or deletion of the entry, whereby the provision of Art. 78 SchIT SR shall apply mutatis mutandis.

3) Only formal corrections may be made by the Office of Justice at any time by notifying the parties involved ex officio.

4) Obviously superfluous and meaningless entries are deleted by the Office of Justice ex officio, with notification to the parties involved.

5) The purged entries are to be transferred to the designated sections of the main ledger sheet.

Art. 67

*c) Treatment of rights that can no longer be justified*

Rights in rem under the previous law, such as, in particular, repurchase and inventory rights, which are no longer considered as such under the new law.

The rights that can be established are to be recorded in the land register with a keyword.

Art. 68

*d) Land*

1) The land plots are recorded ex officio in the land register.

2) The description of the properties is based on the data of the official cadastral survey, the other properties are described by the Office of Justice.

3) If a property is recorded in the previous land register facilities that does not exist according to the official cadastral survey, the procedure is to be followed according to Art. 78 ff. SchIT SR.

#### Art. 69

##### e) Existing building rights and water rights concessions

1) Buildings of all kinds, which are on the basis of the old law on third-party land and which are not buildings, such as alpine huts, stables, stove houses, granaries and the like, are, subject to Art. 66 para. 4 SchIT SR, to be entered in the land register as independent and permanent building rights, insofar as real estate liens are liable on them.

2) The same applies to water rights concessions.

#### Art. 70

##### f) Property

1) If real property is not registered in the name of the current owner, the Office of Justice shall cause the parties involved to obtain the necessary identification documents and to submit the required registrations.

2) If no entry is found for a plot of land, the applicant can only be entered in the land register as the owner on the basis of a certificate of legal acquisition.

3) In the case of co-ownership, the share relationship must be clarified, and in the case of joint ownership, the community relationship must be clarified. In the case of the transfer of condominium ownership, the note "Establishment of the condominium prior to the first transfer" must be added.

The "deletion of the building" is to be deleted if the corresponding requirements are met.

#### Art. 71

##### g) Easements and encumbrances

1) If an easement or land charge existing under the old law and not previously requiring registration is applied for registration, the Office of Justice shall submit to the parties involved a written proposal on the wording of the content and scope of the right.

2) When transferring land charges, their total value must be entered in an amount in national currency.

#### Art. 72

h) Liens and pledges

- 1) The mortgages established under the previous law shall be registered as mortgage liens.
- 2) Pledged titles whose creditors are unknown or have not come forward and whose pledge claims probably no longer exist shall be declared invalid at the expense of the encumbered party.
- 3) The statutory right of subordination of prior-law mortgages shall be recorded in the land register.
- 4) An order shall be made on the cancellation of voided mortgages (LGBl. 1940 No. 5) in terms of Art. 78 SchIT SR.

Art. 73

*i) Reservations and comments*

The provisions of this section shall apply mutatis mutandis to prior notices and annotations.

4. Procedure

Art. 74

*a) Leaflet*

- 1) The Office of Justice informs the landowner and the other parties involved about the legal effects of the introduction of the land register by delivering an information sheet.
- 2) At the same time, the Office of Justice may submit a written settlement proposal.

Art. 75

*b) Interrogation of the parties involved*

- 1) If the submitted settlement proposal does not meet with the approval of all parties involved or if the legal relationships are unclear, the Office of Justice may summon the landowners and the other parties involved for a hearing. A record of the hearing shall be drawn up.
- 2) Where necessary to clarify the legal relationship, the hearing may be combined with an inspection.

Art. 76

*c) Plans; third party investigations*

- 1) If the scope of application of an easement or land charge cannot be clearly

and clearly circumscribe, supplementary plans and sketches signed by the parties involved must be submitted.

2) To the extent necessary, the parties involved shall also approach third parties, such as former owners, neighbors, architects, engineering surveyors or building craftsmen, for information and the provision of plan copies on the course of lines, roads and the like.

3) If necessary, the Office of Justice may require third parties to cooperate.

Art. 77

*d) Coercive means*

1) Any person who fails to comply with the request to be questioned or to cooperate in the settlement without excuse and who is not duly represented may, after a warning by the Office of Justice, be punished by an administrative fine of up to 5,000 francs.

2) If the party does not comply with the request to cooperate, the Office of Justice must issue an order pursuant to Art. 78 SchIT SR and otherwise carry out the settlement to the extent that this is possible without the party's cooperation.

Art. 78

*e) Order of the Office of Justice*

1) If the parties do not agree to the Office of Justice's proposal for correction, the Office of Justice shall order the correction or deletion of the entry.

2) An appeal against the decision of the Office of Justice may be lodged with the Office of Justice or with the Complaints Commission for Administrative Matters within 14 days of service. In all other respects, Articles 534 and 535 shall apply.

3) The initiation of the appeal procedure shall be noted on all the properties involved.

4) The right to bring an action for rectification of the land register is reserved.

Art. 79

*f) Undeliverable orders*

1) Undeliverable dispositions shall be posted at the same time as the purged registers.

2) If no appeal is lodged during the period of circulation, the order becomes legally binding.

Art. 80

*g) Change of ownership*

1) If the property is sold after an order has been issued, the purchaser shall by law enter into the pending proceedings in place of the seller.

2) The Office of Justice shall notify the acquirer of the real property of the legal consequence referred to in para. 1 above. It shall notify the competent court of the change of ownership.

Art. 81

*h) Implementation of the changes*

The individual entries, changes or deletions shall be immediately recorded in the diary and executed in the land register if:

1. all parties have agreed to the settlement proposal of the Office of Justice or a final decision has been made in this regard; or
2. there is a legally binding order within the meaning of Art. 66 para. 2 SchIT SR.

5. Circulation, creation and entry into

force Art. 82

*a) Circulation of the cleaned registers (final call)*

1) After completion of the purge, the purged registers and the inadequate orders are made available to the public. The period of publication shall be four weeks. The public display shall be officially announced in a suitable manner.

2) The announcement shall state that during the circulation period at the Office of Justice:

1. Objections due to deficiencies, incorrectness or incompleteness of the adjusted registers must be submitted in writing, unless the party concerned has already agreed to an adjustment proposal or a legally binding order has been issued;
2. rights in rem to private or public real estate that arose prior to the entry into force of the property law and have not yet been used for the

This does not apply to easements under previous law for which the previous public request procedure has already been carried out;

3. in case of undeliverability of an order, the deletion or purge is carried out if no complaint is filed.

3) The Office of Justice shall not intervene in requests already dealt with under para. 2 and shall issue the necessary order.

Art. 83

*b) Completion of applications and objections*

Applications or objections shall be handled in accordance with this section.

Art. 84

c) Creation of the land register

1) After the Office of Justice has dealt with the applications and objections, it shall report to the Government.

2) The rights in rem still in dispute at that time shall be recorded ex officio as provisional entries.

Art. 85

*d) Entry into force of the land register*

1) The government shall set the date of entry into force of the land register.

2) The Office of Justice shall arrange for the official publication of this decision in an appropriate manner, with reference to the full legal effects of property law.

3) Retrieved

Art. 86

e) Consequences of non-registration

1) The rights in rem of the previous right, which are not registered in the settlement procedure, shall remain valid,

However, they cannot be held against third parties who rely in good faith on the land register.

2) If rights in rem are not entered in the land register within two years of the entry into force of the land register, they shall lapse.

3) Unregistered public-law encumbrances and statutory liens arising prior to the entry into force of the amendment to the law of August 31, 2016 may still be enforced against third parties who rely in good faith on the land register for ten years after the entry into force.

Art. 87 to 98 Discontinued

Art. 99

*H. Introduction of property law before the land register*

1) The provisions of this Act shall enter into force even before the new land register has been opened.

1) e provisions of the formal land register law shall apply from the entry into force of this Act until the introduction of the new land register only insofar as this is specifically provided for.

Art. 100

J. Limitation

1) Where a statute of limitations of five or more years is newly established, the expired period of a statute of limitations commenced prior to the effective date of this Act shall be credited, provided, however, that at least two years must have elapsed since that date in order to complete the statute of limitations.

2) Shorter periods of limitation or forfeiture determined by this Act shall not begin to run until the effective date of this Act.

3) In all other respects, the provisions of the new law shall apply to the statute of limitations from this point in time.

K. Amendment of existing law

Art. 101

*I. Iting laws*

Upon the entry into force of this Act, the following laws shall be amended as follows:

1. The provisions of Articles 1 to 7 of the Introduction shall apply to all areas of private law, and in particular § 887 of the General Civil Code shall be repealed thereby.

2. Retrieved

3. Retrieved

*II. new law leadership*

Art. 102

1. Reservation of title

Revoked

2. *payment transactions*



Art. 103 to 105 Discontinued

3. rfstich

Art. 106 to 112

Repealed

Art. 113

4. ennzeichen

Suspended

Art. 114

5. offered access

Suspended

Art. 115

6. *tention right of the state for imprisonment costs*

Repealed Art.

116

7. pledge lifted

8. *andbriefs* Art. 117 -120 Revoked

9. *SEAT PROTECTION*

Art. 121 to Art. 125 Deleted

10. *mend cooperatives*

Art. 126 to Art. 131 Repealed

11. *ftloserklärung von Wertpapieren*

Art. 132 to Art. 137 Revoked

Art. 138

Repealed

Art. 139

13. *Jurisdiction of the Administrative Court*

Repealed

SR

Art. 140

14. Field

police

Suspended

Art. 141

*L. Repeal of older provisions*

1) Upon the entry into force of this Act, all laws and ordinances contradicting it shall be repealed.

2) In particular, are canceled:

1. all relevant provisions of the Austrian General Civil Code of 1810, introduced in this country by ordinance of

18 February 1812, in particular §§ 285 to 530, 825 to 858, 1321 and 1322, 1368 to 1372, the provisions on hereditary leaseholds and hereditary leaseholds, ground rents (§§ 1122 to and including 1150) and entailments, all contradictory provisions on contracts and on limitation and prescription (§§ 1451 et seq.), insofar as they are in conflict with the present law, as well as all relevant supplementary decrees;

2. Art. 306 par. 1, 2 and 4, up to and including 316, as well as all other relevant provisions of the German General Commercial Code (Allgemeines Handelsgesetzbuch)

of 1862, introduced in this country by law of September 16, 1865, LGBl. 1865 No.10, and § 21 of the latter law;

3. the land register patent of January 1, 1809 and the explanatory patent of 27. September 1839, published under the announcement of January 5, 1915, LGBl. 1915 No. 1, all addenda relating to the land register law and the inheritance law provisions relating to the foundations in item i of the introductory patent concerning the inheritance law of April 6, 1846;

4. the law of April 28, 1914, LGBl. 1914 No. 2, concerning the amendment and supplementation of the Princely Land Register Patent of January 1, 1809 and the Princely Patent of September 27, 1839;

5. The Act on the Amortization of Old Mortgage Claims of November 15, 1903, LGBl. 1903 No. 7, within the meaning of Art. 20 para. 3 of the Final Title;

6. the law of January 21, 1918, LGBl. 1918 No. 5, concerning the abolition of the consort forests in Triesenberg;

7. the Act of December 20, 1915, LGBl. 1915 No. 17, concerning the separation of land from the land register for the purpose of public transport and public services.

## Waterways;

8. the contradictory provisions of the Field Police Regulations of 23 November 1864, LGBl. 1864 No. 8, in particular §§ 24, 25, 28;
9. the contradictory provisions of the Building Code of July 14, 1870, LGBl. 1870 No. 6, especially §§ 1, 7, 8, 9;
10. the conflicting provisions of the Forest Code of October 8, 1865, LGBl. 1866 No. 2, especially §§ 16 and 40;
11. the Law of March 7, 1864, LGBl. 1864 No. 2/3, concerning the use of waters in the Principality of Liechtenstein;
12. Art. 3 No. 3 let. d, of the Law on Legal Assistance Proceedings of April 22, 1922, LGBl. 1922 No. 19, insofar as it concerns the renewal of boundaries and disputes arising from the community of property;
13. the contradictory provisions of the Code of Civil Procedure of 10 December 1912, LGBl. 1912 No. 9, in particular sections 486, 493, 541 up to and including 547;
14. the Ordinance concerning Antiquarian Finds of September 21, 1888, LGBl. 1888 No. 1;
15. The decree of July 9, 1894, LGBl. 1894 No. 4, prohibiting the planting of trees in and around vineyards;
16. the ordinance on the replacement of the right to eat and drink of June 20, 1843;
17. the Law on the Redemption of Tithes of March 7, 1864, LGBl. 1864 No. 2/2. Art.

142

## M. Final provisions

- 1) This Act is declared urgent and shall enter into force on the day of its promulgation.
- 2) The government is entrusted with enforcement.
- 3) It shall issue the necessary implementing regulations.
- 4) The Government shall publish a subject index to this law. Vaduz, December 31, 1922

## VIII. Copyright Act

from 19 May 1999

### I. Subject

#### Art. 1

1) This law regulates:

- a) the protection of authors of literary and artistic works;
- b) the protection of performers, directors, producers of sound and audiovisual recordings, and broadcasting organizations;
- c) the protection of female producers of databases.
- d) Retrieved

2) International treaties remain reserved.

3) Unless the law expressly provides otherwise, the feminine terms used in this law to refer to persons (such as author, producer, owner) shall be understood as referring to members of the female and male sexes.

### II. Copyright

#### A. The work

#### Art. 2

##### Definition of

##### work

1) Works, regardless of their value or purpose, are intellectual creations of literature and art that have individual character.

2) These include in particular:

- a) literary, scientific and other language works;
- b) Works of music and other acoustic works;
- c) Works of fine art, especially painting, sculpture and graphics;
- d) Works with scientific or technical content such as drawings, plans, maps or plastic representations;
- e) Works of architecture;
- f) Works of applied art;

- g) photographic, cinematographic and other visual or audiovisual works;
  - h) choreographic works and pantomimes.
- 3) Computer programs are also considered works of literature and art.
- 4) Designs, titles and parts of works are also protected, provided they are intellectual creations with an individual character.

Art. 3

*Second hand works*

- 1) Intellectual creations with an individual character that are created using existing works in such a way that the works used remain recognizable in their individual character are second-hand works.
- 2) Such works are in particular translations as well as audiovisual and other adaptations.
- 3) Second hand works are independently protected.
- 4) The protection of the works used is reserved.

Art. 4

Compilations

- 1) Collections are protected independently, provided that they are intellectual creations with an individual character in terms of selection or arrangement.
- 2) The protection of works included in the collective work is reserved.
- 3) Databases shall also be deemed to be collective works if they constitute a separate intellectual creation due to the selection or arrangement of the material. Existing rights to their content are not affected.

Art. 5

Non protected works

- 1) Are not protected by copyright:
- a) Laws, regulations, international treaties and other official decrees;
  - b) Means of payment;
  - c) Decisions, minutes and reports of authorities and public administrations;
  - d) Patent specifications and published patent applications.

2) Also not protected are official or legally required collections and translations of the works under paragraph 1.

B. The author Art. 6

*Term*

- 1) The author is the natural person who created the work.
- 2) Under the conditions specified in this Act, copyright shall pass to the producer (manufacturer). The freedom of contract shall be preserved.

Art. 7 Co-  
authorship

- 1) If several persons have participated as authors in the creation of a work, they are entitled to the copyright jointly.
- 2) If they have not agreed otherwise, they may use the work only with the consent of all; consent may not be refused contrary to good faith.
- 3) Each co-author may pursue infringements independently; however, she may only demand performance to all of them.
- 4) If the individual contributions can be separated and nothing to the contrary has been agreed, each co-author may use his or her own contribution independently if this does not impair the exploitation of the joint work.

Art. 8

Presumption of authorship

- 1) As long as nothing else is proven, the author is considered to be the person who is named as the author on the copies of the work or in the publication of the work with her name, her pseudonym or a mark.
- 2) As long as the author remains unnamed or unknown in the case of a pseudonym or an identifier, the publisher may exercise the copyright. If the publisher is also not named, the person who published the work may exercise the copyright.
- 3) The government may introduce a copyright register by decree. Entry in the register shall be voluntary and shall give rise to the legal presumption that the first person to register shall be deemed to be the author until proven otherwise.

C. Copyright content

1. Relationship of the author to the work

Art. 9

Acknowledgement of authorship

- 1) The author has the exclusive right to his own work and the right to recognition of authorship.
- 2) The author has the exclusive right to determine whether, when, how and under which copyright designation his work is to be published for the first time.
- 3) A work is published if the author has made it accessible to a larger number of persons for the first time outside of a private circle within the meaning of Art. 22(1)(a) or has consented to such publication.

Art. 10 Use of

the work

- 1) The author has the exclusive right to determine whether, when and how his work is used.
- 2) In particular, the author has the right:
  - a) to reproduce the work directly or indirectly, temporarily or permanently, in any manner and in any form, in whole or in part;
  - b) to offer, sell or otherwise distribute copies of the work;
  - c) perform, present, otherwise make perceptible or accessible, directly or by any means, the Work in such a way that persons may have access to it from places and at times of their choosing;
  - d) to broadcast the Work by radio, television or similar means, including through leigures;
  - e) to retransmit broadcasted works by means of technical equipment whose carrier is not the original broadcasting organization, in particular also via lines;
  - f) to make accessible, broadcast and retransmitted works perceptible.
- g) Retrieved

Art. 11

*Public reproduction via satellite*

- 1) Public communication by satellite from Liechtenstein is subject to the provisions of this Act.
- 2) "Public communication by satellite" means the act of inputting, under the control and responsibility of the broadcasting organization, program-carrying signals intended for public reception into an unbroken chain of communications leading to the satellite and back to earth.
- 3) If works protected by copyright are reproduced in public via satellite, the permission to do so can only be acquired by contract.
- 4) If a collecting society has concluded a collective agreement with a broadcasting organization for a certain group of works, this may be extended by the supervisory authority (Art. 54) to rightholders of the same group who are not represented by the collecting society, provided that
  - a) is broadcast by the same broadcasting company via terrestrial systems at the same time as it is broadcast to the public via satellite, and
  - b) the unrepresented rightholder may at any time exclude the extension of the collective agreement to its works and exercise its rights either individually or collectively.
- 5) Paragraph 4 does not apply to cinematographic works including works created by a process similar to cinematographic works.

Art. 12

Work integrity

- 1) The author has the exclusive right to determine:
  - a) whether, when and how the work may be changed;
  - b) whether, when and how the work may be used to create a second hand work or included in a collective work.
- 2) Even if a third party is authorized by contract or by law to modify the work or to use it to create a second-hand work  
the author may oppose any distortion of the work that would harm her honor or reputation.
- 3) Permitted is the use of existing works to create parodies or variations of the work comparable to them.



4) Executed works of architecture may be changed by the owner, subject to para. 2.

2. Relationship of the author to the owner of the copy of the work

Art. 13

*Exhaustion principle*

If the rightholder has sold or consented to the sale of the original or copies of a work, it may be resold or otherwise distributed. This does not apply to computer programs and databases with regard to the rental right.

Art. 14

Renting copies of works

1) The author has the exclusive right to rent out copies of works of literature and art or otherwise make them available for a fee.

2) If an author has transferred or assigned her rental right to a phonogram or to the original or a reproduction of a film to a phonogram or film producer, she shall retain the right to an appropriate remuneration for the rental. The author may not waive this claim.

3) There is no obligation to pay compensation in the case of:

a) Works of architecture;

b) Work copies of the applied arts;

c) Copies of works that are leased for a contractually agreed use of copyrights.

4) Claims for remuneration may only be asserted by a collecting society licensed in the Principality of Liechtenstein (Art. 50 et seq.).

5) This Article shall not apply to computer programs. The exclusive right according to Art. 16 let. c is reserved.

Art. 14a

*Access and exhibition rights of the author*

1) Anyone who owns or possesses a copy of a work must make it available to the author to the extent necessary to exercise the copyright and to the extent that no legitimate interest of his or her own is opposed.

2) The author may request that a copy of the work be made available for exhibition in Germany, provided that an overriding interest is demonstrated.

Art. 15 PLR

1) Institutions open to the public which lend copies of literary and artistic works owe the author remuneration for this.

2) There is no obligation to pay compensation in the case of:

a) Works of architecture;

b) Work copies of the applied arts;

c) Copies of works that are lent for a contractually agreed use of copyrights.

3) The Government may, by decree, exempt certain categories of institutions, such as educational institutions or public libraries, from payment of the remuneration.

4) Claims for remuneration may only be asserted by a collecting society licensed in Liechtenstein (Art. 50 et seq.).

Resale

right Art.

15a

a) Principle

1) The resale right grants the author a claim to a share in the sale price in the event of a resale within the meaning of Art. 15b after the first sale by the author.

2) The resale right is an inalienable right which the author cannot waive in advance.

Art. 15b

*b) Scope of the resale right*

1) The resale right applies to all resales in which representatives of the art market such as auction houses, art galleries and art dealers in general are involved as sellers, buyers, auctioneers or agents.

2) The resale right is not applicable to resales if:

a) the transferor acquired the work directly from the author less than three years before the resale in question; and

b) the price obtained upon resale does not exceed 15,600 francs.

Art. 15c

c) Works of art covered by the resale right

1) Original works of art such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glass objects and photographs shall be deemed to be covered by the resale right, provided that they were created by the author himself and meet the requirements of Art. 2.

2) Copies of works produced by the author himself or under his direction in a limited edition are also considered to be originals of works of art covered by the resale right. As a rule, such copies of works must be numbered, signed or otherwise duly authorized by the author.

Art. 15d

*d) Amount of the resale right remuneration*

1) The minimum sales price for claiming the resale right is 4,700 Swiss francs.

2) The resale right remuneration for a sales price of: a) 4 700 to 78 000

Francs: 4 %;

b) 78 001 to 312 000 francs: 3 %;

c) 312 001 to 546 000 francs: 1 %;

d) 546 001 to 780 000 francs: 0.5 %;

e) 780 001 francs and more: 0.25 %.

3) The total amount of the resale right compensation may not exceed 19,500 Swiss francs.

4) For the purposes of paragraphs 1 and 2, the sales price shall be the sales price excluding taxes and duties.

Art. 15e

*e) Eligible*

1) are entitled to the resale right compensation from the seller:

a) the author of the work; and

b) after the death of the author, his or her legal successors for the duration of the copyright protection pursuant to Art. 32, para. 2.

2) Foreign authors and their legal successors may only claim the resale right if the legal provisions of the state to which they belong recognize the protection of the resale right for Liechtenstein rightholders as well as for nationals of all other EEA states in that country.

3) Foreign authors who have their habitual residence in Liechtenstein are entitled to the same resale rights as Liechtenstein authors.

Art. 15f

f) Exercise of the resale right by collecting societies

The administration of the resale right may be transferred to a collecting society (Art. 50 to 53).

Art. 15g

g) *Duty to provide information*

1) Claimants under Art. 15e and collecting societies under Art. 15f may, within three years of the date of resale, obtain from any representative of the art market within the meaning of Art. 15b all information necessary for calculating and securing the resale right remuneration arising from a resale. Art. 53 remains reserved.

2) The representative of the art market within the meaning of Art. 15b may refuse to provide information on the name and address of the seller if it pays the resale right remuneration to the claimants under Art. 15e.

Art. 16

Actions requiring consent in computer programs

The rightholder has the exclusive right to perform or permit the following acts:

a) the permanent or temporary reproduction of a computer program, in whole or in part, by any means and in any form. Insofar as loading, displaying, running, transferring or storing the computer program requires reproduction, these actions require the consent of the rightholder;

b) the translation, editing, arrangement and other reworking of a computer program, as well as the reproduction of the results obtained. The

Rights of those who edit the program remain unaffected;

c) any form of distribution of the original of a computer program or of reproductions, including rental.

Art. 17

*Actions requiring consent for databases*

The rightholder shall have the exclusive right to do or permit to be done the following acts with respect to the copyrightable expression:

- a) temporary or permanent reproduction, in whole or in part, by any means and in any form;
- b) translation, editing, arrangement and any other transformation;
- c) any form of public distribution of the database or any of its reproductions;
- d) any public reproduction, performance or display;
- e) any reproduction as well as public dissemination, reproduction, demonstration or performance of the results of the acts referred to in subparagraph (b).

D. Transfer of rights; compulsory  
enforcement Art. 18

Transfer of rights

- 1) The copyright is transferable and hereditary.
- 2) The transfer of a right contained in the copyright shall only include the transfer of other partial rights if this has been agreed.
- 3) The transfer of ownership of the work copy does not include copyright use rights even if the original work is involved.

Art. 19

Dependent works

- 1) If the employee creates a work protected by copyright in the course of her official duties and in fulfillment of her contractual obligations, the rights to this work shall pass to the employer unless otherwise agreed.
- 2) In the case of other contractual relationships, the scope of the transferred

copyrights in the absence of an agreement to the contrary in accordance with the purpose pursued by the contract.

Art. 20 Author

of cinematographic works

- 1) The author of a film or other audiovisual work shall be deemed to be its principal director.
- 2) Furthermore, those participants in the creation or production who are contractually designated as co-authors shall be deemed to be co-authors.
- 3) If authors conclude a contract with a film producer for a film production, it shall be presumed that the author covered by this contract has assigned her rental right, unless otherwise provided in the terms of the contract. She shall be entitled to an appropriate remuneration for this.

Art. 21

Enforcement

The rights referred to in Art. 10, para. 2, and Art. 12, as well as Art. 16 and 17, shall be subject to execution insofar as the author or rightholder has already exercised them and the work has already been published with the author's or rightholder's consent.

E. Limitations of copyright Art. 22

Privileged uses of works

- 1) Published works may be used for special purposes. A special purpose is considered to be:
  - a) any use of the work in the personal sphere and in the circle of persons closely related to each other, such as relatives or friends;
  - b) the use of the work for the purpose of illustration in teaching or for scientific research, provided that this is justified for non-commercial purposes and, if possible, the source and the name of the author are indicated;
  - c) the reproduction of the work on paper or a similar medium by means of photomechanical processes or other processes with a similar effect for teaching purposes, for scientific research or for internal information and documentation in companies, public administrations, institutes, commissions and similar institutions;
  - d) digital duplication for teaching purposes and for the scientific

Research without direct or indirect economic or commercial purpose.

2) Whoever is entitled to use the work according to para. 1 may, subject to para. 3, have the necessary reproductions made by third parties; libraries, other public institutions and business establishments which make copying machines available to their users shall also be deemed to be third parties within the meaning of this paragraph.

3) Outside the private circle are not allowed:

a) the complete or largely complete reproduction of commercially available copies of works;

b) the reproduction of works of visual art;

c) the reproduction of graphic recordings of works of music;

d) the recording of lectures, performances or presentations of a work on audio, audiovisual or data carriers.

3a) Reproductions made during the retrieval of works made available by permission shall be exempt from the restrictions on the privileged use of works contained in this Article and from the remuneration claims under Article 23.

4) This Article shall not apply to computer programs.

#### Art. 23

##### *Remuneration for the privileged uses of the work*

1) Subject to paragraph 3, no remuneration shall be due for the reproduction of works within the scope of the privileged use of works pursuant to Art. 22 (1) (a).

2) Anyone who reproduces works in any way within the framework of the privileged use of the work in accordance with Art. 22 Para. 1 Letters b, c or d or who reproduces works as a third party in accordance with Art. 22 Para. 2 shall owe the author remuneration for this.

3) Anyone who produces or imports blank cassettes and other sound and audiovisual carriers suitable for recording works owes the author remuneration for this.

4) Claims for remuneration may only be asserted by a collecting society licensed in Liechtenstein (Art. 50 et seq.).

#### Art. 24

##### Computer program decryption

1) The code of a computer program may be reproduced and its code form translated provided that the following conditions are met:

a) the actions are essential to obtain the necessary information to establish the interoperability of an independently created computer program with other programs;

b) the acts are performed by a person authorized to use the copy of a computer program or on his behalf by a person authorized to do so;

c) the information necessary to achieve interoperability has not yet been made readily available; and

d) the actions are limited to the parts of the program that are necessary to establish interoperability.

2) The information obtained under paragraph 1 shall not:

a) used for purposes other than to establish the interoperability of the independently created program;

b) disclosed to third parties, unless this is necessary for the interoperability of the independently created program;

c) used for the development, reproduction or distribution of a program of substantially similar expression or for other acts infringing copyright.

3) The right of decryption under paragraph 1 may not be waived. Art. 25

#### Dissemination of broadcast works

1) The rights to make broadcast works perceptible simultaneously and unchanged or to retransmit them as part of the retransmission of a broadcast program can only be asserted via a collecting society licensed in Liechtenstein (Art. 50 et seq.).

2) The retransmission of works via technical equipment that is limited to a small number of recipients from the outset, such as equipment in a multi-family house or a closed building complex, is permitted.

3) This article is not applicable to the retransmission of subscription television programs and programs which are not receivable anywhere in Liechtenstein.

#### Art. 26



Archiving and backup copies

1) To ensure the preservation of the work, a copy may be made of it. A copy must be kept in a place not accessible to the general public.

be stored in an accessible archive and marked as an archive copy.

1a) Publicly accessible libraries, educational institutions, museums and archives may produce the work copies necessary to safeguard and preserve their holdings, provided that no direct or indirect economic or commercial purpose is pursued.

2) Whoever has the right to use a computer program may make a backup copy of it, insofar as this is necessary for the use of the computer program; this right may not be waived by contract.

Art. 26a

*Temporary duplications*

Temporary reproductions that are ephemeral or incidental and constitute an integral and essential part of a technical process and whose sole purpose is,

- a) a transmission in a network between third parties through an intermediary or
- b) a lawful use

of a work or other object of protection, and which do not have an independent economic significance, are permissible.

Art. 26b

*Reproductions for broadcasting purposes*

1) The right of reproduction of non-theatrical works of music may be claimed for the use of commercially available or accessible audio or audio-visual carriers for the purpose of broadcasting only through a collecting society licensed in Liechtenstein (Art. 50 et seq.).

2) Reproductions made in accordance with Par. 1 may not be sold or otherwise distributed; they must be made by the broadcasting organization using its own resources. They must be deleted again when they have fulfilled their purpose. Art. 12 remains reserved.

Art. 26c

*Use of works by people with disabilities*

- 1) A work may be reproduced in a form accessible to persons with disabilities insofar as the sensory perception of the work in its already published form is not possible for these persons or is possible only under aggravating conditions.
- 2) Such copies of works may be produced and marketed only for use by persons with disabilities and without the purpose of profit.
- 3) The author is entitled to remuneration for the reproduction and distribution of her work in a form accessible to persons with disabilities, provided that this does not merely involve the production of individual copies of the work.
- 4) The claim for remuneration can only be asserted by an auditing company licensed in Liechtenstein (Art. 50 et seq.).
- 5) For the use of spoken works and graphic recordings of musical works for the benefit of persons with visual or reading disabilities, Articles 26d to 26f apply exclusively.

Art. 26d

*Use of certain works by people with visual or reading disabilities*

- 1) People with visual or reading disabilities may reproduce or have reproduced for their own use published spoken works that are in text or audio format, as well as graphic recordings of musical works, for the purpose of converting them to accessible format. This authority also includes illustrations of any kind included in spoken or musical works. Reproduction pieces may only be created from works to which the person with a visual or reading disability has lawful access.
- 2) Persons with a visual or reading impairment within the meaning of this Act are persons who, due to a physical, mental or intellectual impairment or due to a sensory impairment, are not able to read language works as easily as persons without such an impairment, even with the use of an optical visual aid.
- 3) The authority pursuant to subsection 1 may not be contractually waived.

Art. 26e

*Authorized bodies for people with a visual or reading disability*

- 1) Authorized entities may reproduce published spoken works that are in text or audio format, as well as graphic recordings of musical works, for the sole purpose of making them available to people with visual or reading disabilities in

to an accessible format. Art. 26d (1) sentences 2 and 3 apply *mutatis mutandis*.

2) Authorized bodies may lend and distribute copies made in accordance with Paragraph 1 to people with visual or reading disabilities or to other authorized bodies, and may use them for making them available to the public or for other public reproduction.

3) An authorized body that intends to carry out the uses referred to in paras. 1 and 2 on a transboundary basis shall establish procedures to ensure that it:

a) distributes, transmits, or makes available reproductions in an accessible format only to persons with visual or reading disabilities or other authorized entities;

b) takes appropriate steps to prevent the unauthorized reproduction, distribution, communication to the public or making available to the public of reproductions in an accessible format;

c) handles works and their reproductions in an accessible format with care and keeps records of them;

d) publishes information on how it fulfills its obligations under subparagraphs (a) to (c) on its website or otherwise, as appropriate, and keeps it up to date.

4) Authorized bodies shall provide information in accessible form to persons with visual or reading disabilities and other authorized bodies and rights holders upon request:

a) of which works they have copies in an accessible format and which formats these are;

b) with which other authorized entities they exchange duplicates in a barrier-free format.

5) For purposes of this article, an authorized entity is an entity that provides educational services or accessible reading and information for persons with visual or reading disabilities in a nonprofit manner.

6) The author shall be entitled to payment of an appropriate remuneration for uses pursuant to paras. 1 and 2. This claim may only be asserted by a collecting society admitted in Liechtenstein pursuant to Art. 50.

7) The authority pursuant to paras. 1 and 2 may not be contractually waived.

Art. 26f

*Supervision of authorized bodies*

- 1) The Office of National Economy shall supervise authorized bodies. It shall ensure that authorized bodies comply with the obligations incumbent upon them under Art. 26e paras. 3 and 4.
- 2) The Office of Economic Affairs may take all necessary measures to ensure that the authorized bodies comply with the obligations under Art. 26e paras. 3 and 4. In particular, it may demand information and the submission of documents from the authorized bodies at any time.

Art. 27

Citati

ons

- 1) Published works may be cited if the citation is for explanatory, reference, or illustrative purposes and the extent of the citation is justified by that purpose.
- 2) The quotation as such and the source must be designated. If the source refers to authorship, this must also be stated.

Art. 28

Museum, fair and auction catalogs

A work in a collection open to the public may be reproduced in a catalog published by the administration of the collection; the same rule applies to the publication of trade fair and auction catalogs.

Art. 29

Works on generally accessible ground

- 1) A work that is permanently located on or in the public domain may be imaged; the image may be offered, sold, broadcast or otherwise distributed.
- 2) The image must not be three-dimensional or usable for the same purpose as the original.

Art. 30

Recordings for broadcasting

purposes

- 1) For a permitted broadcast or retransmission, a work may be recorded on audio, audio-visual or data carriers.

2) A recording made for this purpose may not be sold or otherwise distributed.

Art. 31

*Reporting on current events*

1) To the extent necessary for the reporting of current events, the works perceived in the process may be recorded, reproduced, presented, broadcast, distributed, retransmitted or otherwise made perceptible.

2) For the purpose of providing information on current issues, short excerpts from press articles and radio and television reports may be reproduced, distributed and broadcast or retransmitted; the excerpt and the source must be labeled. If the source refers to the authorship, this must also be indicated.

Orphan works

Art. 31a

a) Principle

1) Orphan works may be reproduced and made available to the public by publicly accessible libraries, educational institutions, museums, archives and film and audio heritage institutions in accordance with paragraphs 2 to 6.

2) Orphan works within the meaning of this Act are works and other objects of protection in books, periodicals, newspapers, magazines or other writings, as well as cinematographic or audiovisual works on which cinematographic works are recorded and phonograms, if:

a) they are contained in collections of publicly accessible libraries, educational institutions or museums, as well as in the collections of archives or of institutions in the field of film and audio heritage (inventory contents);

b) the rightholders of such Inventory Content could not be identified or located through a diligent search; and

c) the stock content was either first published or, if not published, broadcast in an EEA Member State.

3) Inventory content that has neither been published nor broadcast may be used by the respective institution referred to in paragraph 1 if:

a) the content of the inventory has already been made available to the public with the consent of the rightholder; and

b) it can be assumed in good faith that the rightholder would not oppose the use pursuant to para. 1.

4) If there are several rightholders of an item of content, it may be reproduced and made publicly accessible even if not all rightholders could be identified or located even after a diligent search, but consent to use has been obtained from the known rightholders.

5) Reproduction and making available to the public by the institutions mentioned in paragraph 1 are only permitted if the institutions are acting in the public interest, in particular if they are preserving and restoring holdings and opening up access to their collections, provided that this serves cultural and educational purposes. The institutions may charge a fee for access to the orphan works used that covers the costs of digitization and public access.

6) The institutions referred to in paragraph 1 shall provide the names of identified authors and other right holders each time an orphan work is used.

#### Art. 31b

##### *b) Careful search and documentation requirements*

1) The diligent search for the rightholder pursuant to Art. 31a(2) shall be carried out for each item of stock content and for other subject matter contained therein; at least the sources specified in the Annex shall be consulted. The diligent search shall be carried out in the EEA member state where the work was first published or, if not published, first broadcast. If there is evidence that relevant information on rights holders may be found in other states, available sources of information in those other states shall also be consulted. The using institution may also commission third parties to carry out the diligent search.

2) In the case of cinematographic or audiovisual works, the diligent search must be conducted in the EEA member state where the producer has her principal place of business or habitual residence.

3) For the stock content referred to in Art. 31a(3), a diligent search shall be conducted in the EEA Member State in which the institution that issued or lent the stock content with the permission of the right holder has its registered office.

4) The using institution documents its diligent search and forwards the following information to the Office of National Economy:

- a) The exact designation of the inventory content, which according to the results of the careful search is orphaned;
  - b) the way in which the orphaned work will be used by the institution;
  - c) any change in the status of a used orphan work under Art. 31c;
  - d) the contact details of the institution such as name, address and, if applicable, the Telephone number, fax number and e-mail address.
- 5) The Office of National Economy shall immediately forward the information referred to in paragraph 4 to the Office for Harmonization in the Internal Market.
- 6) A diligent search is not required for inventory content that is already recorded as orphan in the Office for Harmonization in the Internal Market database.

Art. 31c

*c) Termination of use and remuneration obligation of the using institution*

- 1) If the owner of the rights to the content is subsequently determined and identified, the using institution must immediately cease the acts of use as soon as it becomes aware of this.
- 2) The rightholder shall be entitled to payment of an appropriate remuneration for the use made against the institution making the use.

Art. 31d

*d) Use of orphan works by public broadcasters*

Public service broadcasters may reproduce and make available to the public film or audiovisual works and sound recordings produced by public service broadcasters before 1 January 2003 and held in their collections in accordance with Art. 31a paras. 2 to 6. Articles 31b and 31c shall apply *mutatis mutandis*.

F. Term of protection Art. 32

*In general*

- 1) A work is protected by copyright as soon as it is created, regardless of whether it is recorded on a medium or not.
- 2) The protection expires 70 years after the death of the author.
- 3) If it must be assumed that the author has been dead for more than 70 years, there is no longer any protection.

Art. 33

*Co-authorship*

- 1) If several persons have participated in the creation of a work (Art. 7), the protection expires 70 years after the death of the last deceased person.
- 2) If the individual contributions can be separated, the protection of the independently usable contributions expires 70 years after the death of the respective author.
- 3) The term of protection for a cinematographic or other audiovisual work expires 70 years after the death of the longest living of the following persons, whether or not they have been designated as co-authors: Principal director, author of the screenplay, author of the dialogues and composer of the music composed specifically for the cinematographic or audiovisual work in question.
- 4) The term of protection for a musical composition with lyrics expires 70 years after the death of the longest living of the following persons, regardless of whether they have been designated as co-authors: The author of the lyrics and the composer of the musical composition, provided that both contributions were created specifically for the musical composition with lyrics in question.

Art. 34

*Unknown authorship*

- 1) If the author is unknown, protection of her works expires 70 years after publication or, if the work was published in deliveries, 70 years after the last delivery.
- 2) If it becomes generally known who the author is before the expiration of this term of protection, the protection shall expire 70 years after her death.

Art. 35

*Calculation*

The term of protection is calculated from December 31 of the year in which the event relevant for the calculation occurred.

Art. 36

*In the international relationship*

- 1) For works published abroad for the first time, protection shall be granted for the period specified in Articles 32 to 35, 44 and 49. Treaties under international law remain reserved.
- 2) This provision is not applicable in relation to EEA Member States.



III. Related rights Art. 37

*Rights of female performers*

- 1) Performing artists are natural persons who perform a folk art work or expression or participate in such a performance in an artistic manner.
- 2) The performing artists have the exclusive right to their performance or its determination:
  - a) directly or by any means elsewhere perceptible or accessible in such a way that persons can access it from places and at times of their choice;
  - b) by radio, television or similar means, including by wire, and to retransmit the broadcast performance by means of technical equipment other than the original broadcasting organization;
  - c) on audio, audio-visual or data carriers and to reproduce such recordings directly or indirectly, temporarily or permanently, in any manner and in any form, in whole or in part;
  - d) to offer, sell or otherwise distribute them as duplicate copies;
  - e) perceptible when broadcast, retransmitted or made available.
- 3) Performers have the exclusive right to permit or prohibit the rental of recordings of their performance.
- 4) If performing artists conclude a contract with a film producer for a film production, it shall be presumed that the artist covered by this contract has assigned her rental right, unless otherwise provided for in the terms of the contract. She shall be entitled to an appropriate remuneration for this.
- 5) If the producers of phonograms fail to offer copies of the phonograms for sale in sufficient quantity or to make the phonogram available by any means so that persons may have access to it from places and at times of their choice, the performers may terminate the contract by which they have transferred or assigned their rights to the recording of the performance to the producers of phonograms (transfer and assignment contract). The termination is admissible:

- a) after the expiration of 50 years after the lawful publication of the phonogram or, in the absence of such publication, 50 years after its lawful communication to the public; and
- b) if the producers of phonograms do not perform both of the acts of exploitation referred to in sentence 1 within one year of notification by the performers of their intention to terminate the transfer and assignment agreement.
- 6) If the transfer or assignment agreement is terminated pursuant to paragraph 5, the rights of the producers of phonograms in the phonogram shall expire. Performers may not waive their right of termination.

Art. 37a

Personal rights of female performers

- 1) Performing artists have the right to recognition of the performer's property in their performances.
- 2) The protection of performing artists against interference with their performances is governed by Art. 38 et seq. PGR.

Art. 38

Several performing artists

- 1) If several persons have participated artistically in a performance, they shall be entitled to the related rights jointly in accordance with the rules of Art. 7.
- 2) If performing artists appear as a group under a common name, the representation designated by the group of artists shall be authorized to assert the rights of the members. As long as the group has not designated a representation, the following shall be required for the assertion of the rights, whoever has organized the performance, recorded it on audio, video or data carriers or broadcast it.
  - a) of the soloists;
  - b) the conductor;
  - c) the director;
  - d) the representation of the group of artists according to paragraph 2.
- 3) In the case of a choral, orchestral or stage performance, the consent of the following persons is required for the use of the performance under Article 37:

4) A person who has the right to exploit a performance on audiovisual carriers shall be deemed to have the right to permit third parties to make the recorded performance available in such a way that persons have access to it from places and at times of their choice.

5) In the absence of corresponding statutory or contractual provisions, the rules on management without a mandate shall apply to the relationship between the persons authorized in accordance with paras. 2 and 4 and the artists they represent.

Art. 39

Rights of the producers of phonograms

1) The producers of phonograms have the exclusive right:

- a) to reproduce the recordings directly or indirectly, temporarily or permanently, in any manner and in any form, in whole or in part;
- b) to offer, sell or otherwise distribute the duplicate copies;
- c) make the recordings available by any means so that persons may access them from places and at times of their choosing.

2) The producers of phonograms have the exclusive right to authorize or prohibit the rental of recordings of their performances.

Art. 40

Rights of women film producers

1) The film producers have the exclusive right:

- a) to reproduce the recordings directly or indirectly, temporarily or permanently, in any manner and in any form, in whole or in part;
- b) to offer, sell or otherwise distribute the duplicate copies;
- c) make the recordings available by any means so that people can access them from places and at times of their choice.

2) The film producers have the exclusive right to allow or prohibit the rental of recordings of their performance.

Art. 41

Entitlement to remuneration for the use of sound recordings or films

1) Are commercially available phonograms or films for the purpose of broadcasting,

If the material is used for retransmission, public reception or performance, the performers shall be entitled to appropriate remuneration.

2) The producers of the used carrier are to participate appropriately in the remuneration for the performing artists.

3) Retrieved

4) Claims for remuneration may only be asserted by a collecting society licensed in Liechtenstein (Art. 50 et seq.).

5) Foreign performers and producers of phonograms or films who do not have their habitual residence or registered office in Liechtenstein shall only be entitled to remuneration if the State to which they belong or in which they have their registered office grants Liechtenstein nationals a corresponding right. This provision does not apply in relation to the EEA member states and Switzerland.

#### Art. 41a

##### *Performers' entitlement to remuneration in the case of transfer and assignment agreements*

1) If a transfer or assignment agreement entitles the performers to a non-recurring remuneration, the performers shall be entitled to an additional remuneration payable annually by the producers of phonograms for each complete year immediately following the 50th year after the lawful publication of the phonogram or, in the absence of such publication, for the 50th year after its lawful communication to the public. Performers may not waive this right to remuneration.

2) The producers of phonograms shall, after the 50th year following the lawful publication of the phonogram or, in the absence of such publication, in the 50th year following its lawful communication to the public, set aside for the payment of the additional annual remuneration provided for in paragraph 1, a total of 20% of the revenues which they derive from the reproduction, distribution and making available of the phonogram in question during the year immediately preceding the year for which the remuneration is payable.

3) Producers of phonograms shall be obliged to provide performers entitled to the additional remuneration referred to in paragraph 1, upon request, with information which may be necessary to ensure the payment of such remuneration.

4) The claim to remuneration may only be asserted by a collecting society licensed in the Principality of Liechtenstein (Art. 50 et seq.).

5) Where performers are entitled to recurring payments, neither advances nor contractual deductions shall be deducted from payments to performers in the 50th year following the lawful publication of the phonogram or, in the absence of such publication, in the 50th year following its lawful communication to the public.

Art. 42

Rights of the broadcasting

organization The broadcasting organization has the exclusive right:

- a) to forward his shipment;
- b) to make its mission perceptible;
- c) to record its broadcasts on audio, audio-visual or data carriers and to reproduce such recordings directly or indirectly, temporarily or permanently, in any manner and in any form, in whole or in part;
- d) to offer, sell or otherwise distribute the duplicate copies of its broadcast;
- e) to make its broadcasts accessible by any means so that persons can access them from places and at times of their choice.

Art. 43

*Subrogation, enforcement and limits of protection*

The provisions of Articles 13, 14, 18, 19, 21 to 31 and 36 shall apply mutatis mutandis to the rights to which performers and producers of phonograms or audiovisual recordings and broadcasting organizations are entitled.

Art. 44

Term of  
protection

1) Protection shall expire 50 years after the performance of the work or folk art expression by the performer, upon publication of the phonogram or upon its production if there is no publication, and upon broadcasting of the program.

2) The performer's right to phonograms shall expire:

a) 50 years after the first publication or first communication to the public of the performance, whichever occurred first, if the

recording of the performance not made on a phonogram has been lawfully published or publicly reproduced within 50 years;

b) 70 years after the first publication or first communication to the public, whichever occurred first, if the recording of the performance in a phonogram was lawfully published or communicated to the public within 50 years.

3) The right of the producer of phonograms expires 50 years after the recording. However, if the phonogram was lawfully published within 50 years, the right expires 70 years after the first lawful publication. If the phonogram has not been lawfully published within 50 years and if the phonogram has been lawfully reproduced in public within 50 years, the right shall expire 70 years after the first lawful public reproduction.

4) The right to recognition of the performer's status under Art. 37a(1) shall expire upon the death of the performer, but not before the expiry of the term of protection under subsection 1.

5) The term of protection is calculated from December 31 of the year in which the event relevant for the calculation occurred.

IIIa. Protection of technical measures and information for the exercise of rights

Art. 44a

*Protection of technical measures*

1) Effective technical measures for the protection of works and other objects of protection may not be circumvented.

2) Effective technical measures within the meaning of paragraph 1 are technologies and devices such as access and copy controls, encryption, distortion and other conversion mechanisms, which are intended and suitable to prevent or restrict unauthorized uses of works and other objects of protection.

3) It is prohibited to manufacture, import, offer for sale, sell or otherwise distribute, lease, transfer for use, advertise and possess for profit devices, products or components and to provide services which, apart from circumventing effective technical measures, have only a limited economic purpose or benefit and which:

- a) Are the subject of sales promotion, advertising or marketing with the aim of circumventing effective technical measures; or
- b) mainly designed, manufactured, adapted or provided to enable or facilitate the circumvention of effective technical measures.
- 4) Insofar as the rightholder uses technical measures in accordance with this law, he shall be obliged to provide the beneficiaries of Art. 22 Para. 1, Art. 26c, 26d, 26e and 27 with the necessary means to enable the use of the work to the extent required. Agreements to the contrary are invalid. The beneficiaries have an enforceable claim to the realization of the permitted use of the work.
- 5) Paragraph 4 shall not apply, with the exception of Art. 26d and 26e, if works and other objects of protection are made available to the public on the basis of a contractual agreement in such a way that they are accessible to members of the public from places and at times of their choice.

Art. 44b

*Observatory for technical measures*

- 1) The Government may, by ordinance, establish a specialized body that:
  - a) shall monitor the effects of the technical measures pursuant to Art. 44a Para. 2 on the limitations of copyright regulated in this Act and shall report thereon;
  - b) serves as a liaison between the users and the users of technological measures and promotes solutions in partnership.
- 2) The government shall regulate the tasks and the organization of the specialized agency by ordinance.

Art. 44c

Protection of information for the exercise of rights

- 1) Information for the exercise of copyright and related rights may not be removed or changed.
- 2) Protected is electronic information of the right holder for identification of works and other objects of protection or about modalities and conditions for their use as well as numbers or codes,  
representing such information, if such information element:
  - a) is attached to a sound, sound image or data carrier; or

b) appears in connection with an incorporeal representation of a work or other protected object.

3) Works or other subject matter from which copyright or related rights information has been removed or altered may not be reproduced, introduced, offered, sold, or otherwise distributed, broadcast, displayed, or made available in such form.

#### IV. Protection of databases

##### Art. 45

##### Protection sui generis

1) The producer of a database which requires a substantial investment in terms of quality or quantity for the acquisition, verification or presentation of its contents shall have the right to prohibit the extraction and/or re-utilization of all or a substantial part, in terms of quality or quantity, of the contents of such database.

2) Furthermore, the repeated and systematic extraction and/or re-use of insignificant parts of the contents of the database is not permitted if this amounts to actions that conflict with normal use of the database or unreasonably prejudice the legitimate interests of the producer of the database.

3) For purposes of this chapter, the following definitions apply:

a) "Extraction" means the permanent or temporary transfer of the whole or a substantial part of the contents of a database to another medium, regardless of the means used and the form of extraction;

b) "Re-utilization" means any form of making publicly available the whole or a substantial part of the contents of the database by means of distribution of copies, by rental, by online transmission or by other forms of

Transmission. The first sale of a copy of a database in an EEA Member State by the rightholder or with its consent shall exhaust the right to control the resale of such copy in the European Economic Area. Public lending does not constitute extraction or re-utilization.



4) The right referred to in paragraph 1 may be transferred or assigned or be the subject of contractual licenses.

5) The right provided for in paragraph 1 shall apply irrespective of whether the database is eligible for protection by copyright or by other rights. It shall also apply irrespective of whether the contents of the database are eligible for protection by copyright or by other rights. The protection of databases by the right granted under paragraph 1 shall not affect any existing rights in their contents.

Art. 46

*Beneficiary*

1) The right provided for in Art. 45 shall apply to databases if their producers or rightholders are nationals of an EEA Member State or have their habitual residence in the territory of the European Economic Area.

2) Para. 1 shall also apply to undertakings and companies formed in accordance with the laws of a Member State and having their registered office, central administration or principal place of business in the European Economic Area; if, however, such undertakings or companies have their registered office in the territory of the European Economic Area, their activities must have a real and continuous link with the economy of one of the Member States.

Art. 47

*Rights and obligations of the lawful users*

1) The producer of a database made available to the public in any manner whatsoever may not prohibit the lawful user of this database from extracting and/or re-using insubstantial parts of the contents of the database in terms of quality and/or quantity for any purpose whatsoever. If

the lawful user is only entitled to extract and/or re-use a part of the database, this paragraph shall only apply to that part.

2) The lawful user of a database made available to the public in any manner whatsoever may not take any action which interferes with the normal use of that database or unreasonably prejudices the legitimate interests of the producer of the database.

- 3) The lawful user of a database made available to the public in any manner whatsoever shall not cause damage to the owner of a copyright or related right in works or performances contained in that database.
- 4) Any agreements to the contrary shall be null and void.

Art. 48

Exceptions

1) The lawful user of a database made available to the public in any manner whatsoever may extract and/or re-use a substantial part of the contents of the database without the permission of the producer of the database in the following cases:

- a) for an extraction of the contents of a non-electronic database for private purposes;
- b) for a taking for the purpose of illustration of teaching or for the purpose of scientific research, provided that it indicates the source and to the extent justified by the non-commercial purpose;
- c) for extraction and/or further use for the purposes of public security or administrative or judicial proceedings.

2) Art. 26d and 26e shall apply *mutatis mutandis*.

Art. 49

*Protection period*

- 1) The right to the database arises at the time of completion of the production of the database. It expires 15 years after the completion of the production.
- 2) In the case of a database that has been made available to the public in any manner whatsoever before the expiration of the period referred to in paragraph 1, the protection granted by this right shall expire 15 years after the date on which the database was first made available to the public.
- 3) Any substantial change, qualitatively or quantitatively, in the contents of a database, including substantial changes resulting from the accumulation of successive additions, deletions or modifications, on the basis of which it may be assumed that a substantial new investment, qualitatively or quantitatively, has been made, shall give rise to a separate term of protection for the database which is the result of that investment.

V. Exploitation of copyrights and related rights

A. Collecting societies

Art. 50

*Principle*

Collective exploitation of copyrights and related rights is governed by the Collecting Societies Act.

Art. 51

Repealed

Art. 52

Repealed

Art. 53

Repealed

B. Supervision Art. 54

Repealed Art.

54a Repealed

Art. 54b Discontinued

Art. 55

Repealed

VI. Legal

protection

A. Civil law protection

Art. 56

*Declaratory action*

A person who demonstrates a legal interest may have the court determine whether a right or legal relationship exists or is absent under this Act.

Art. 57

Actions for

performance

1) Any person whose copyright or related right is infringed or endangered may demand from the court:

a) prohibit a threatened violation;

b) to eliminate an existing violation;

c) Order the defendant to disclose the origin and quantity of the items in its possession that have been unlawfully manufactured or placed on the market, and to disclose the addressees and the extent of any transfer to commercial customers.

1a) A threat to copyrights or related rights shall be deemed to exist in particular in the case of acts pursuant to Art. 44a paras. 1 and 3 and Art. 44c paras. 1 and 3.

2) This is without prejudice to claims for damages, compensation, damages for pain and suffering, and the surrender of profits in accordance with the provisions of the Austrian Civil Code (ABGB) and the Austrian Code of Obligations (PGR).

3) Anyone who holds an exclusive license is entitled to sue independently, unless this has been expressly excluded in the license agreement. All licensees may join an infringement action to claim their own damages.

#### Art. 58

##### *Recovery in civil proceedings*

1) The court may order the confiscation and recovery or destruction of the unlawfully produced objects or the facilities, equipment and other means primarily used for their production.

2) Excluded are executed works of architecture.

#### Art. 59 Interim

##### rulings

1) If a person can credibly demonstrate that his or her copyright or related rights are being infringed or that he or she must fear such infringement and that the infringement threatens to cause him or her irreparable harm, he or she may apply for an injunction.

2) In particular, it may demand that the court order measures to preserve evidence, to determine the origin of unlawfully manufactured or marketed items, to maintain the existing condition or to enforce injunctions and removal orders in advance.

#### Art. 60

##### Publication of the judgment

At the request of the prevailing party, the court may order that the judgment be published at the expense of the other party. It shall determine the nature and extent of the publication.

B. Penal provisions

Art. 61 Copyright  
infringement

1) At the request of the injured, a person who intentionally and unlawfully:

a) uses a work under a false designation or a designation other than that specified by the author;

b) published a work;

c) changes a work;

d) uses a work to create a second hand work;

e) reproduces a work directly or indirectly, temporarily or permanently, in any manner and in any form, in whole or in part;

f) offers, sells or otherwise distributes copies of the work;

g) performs, performs, presents or otherwise makes perceptible a work directly or by any means;

g) makes a work available by any means so that persons may have access to it from places and at times of their choosing;

h) broadcasts a work by radio, television or similar means, including by wire, or retransmits a broadcast work by means of technical equipment whose carrier is not the original broadcasting organization;

i) makes perceptible a work that has been made accessible, broadcast or retransmitted;

k) refuses to inform the competent authority of the origin and quantity of the articles in their possession that have been unlawfully manufactured or placed on the market, and of the addressees and extent of any transfer to commercial customers;

l) leased out a plant;

m) digitized a work.

2) Anyone who commits copyright infringement on a commercial basis (Section 70 StGB) is liable to a custodial sentence of up to three years. Prosecution takes place through the public prosecutor's office.

Art. 62

*Failure to cite the source*

Any person who wilfully fails to indicate the source used in the cases provided for by law (Articles 27 and 31) and, if it is mentioned therein, the author, shall be liable, at the request of the infringed person, to a fine of up to 5,000 francs, and in the case of non-recovery to imprisonment for up to one month.

Art. 63

Infringement of related rights

- 1) At the request of the injured, a person who intentionally and unlawfully:
- a) broadcasts a performance of a work by radio, television or similar means, including by wire;
  - b) records a performance of a work on audio, audiovisual or data carriers;
  - c) offers, sells or otherwise distributes copies of a performance of a work;
  - d) retransmits a broadcast work performance by means of technical equipment whose carrier is not the original broadcasting organization;
  - e) makes perceptible a work performance that has been made accessible, broadcast or retransmitted;
  - e) uses a work performance under a false artist name or an artist name other than the one designated by the performer;
  - e) makes a performance of a work, a sound or audiovisual recording or a broadcast available by any means so that persons may have access to it from places and at times of their choice;
  - f) reproduces a picture, sound or audiovisual medium, offers, sells, otherwise distributes or rents out the reproduced copies;
  - g) retransmits a program;
  - h) records a program on audio, video or data media;
  - i) reproduces a broadcast fixed on audio, audio-visual or data carriers or distributes such reproduction copies;
  - k) distorts or abridges an image or sound carrier;
  - l) refuses to inform the competent authority of the origin and quantity of the carrier in its possession of a performance protected under Articles 37, 39, 40 or 42, which has been unlawfully manufactured or placed on the market, and of the addressees and the extent of any transfer to commercial buyers.

2) Any person who commits an infringement of related rights on a commercial basis (Section 70 of the Criminal Code) shall be liable to a custodial sentence not exceeding three years. Prosecution takes place through the public prosecutor's office.

Art. 63a

*Violation of the protection of technical measures and information for the exercise of rights*

1) At the request of the person violated in relation to the protection of their technical measures or their information for the exercise of rights, whoever intentionally and unlawfully:

a) circumvents effective technical measures in accordance with Art. 44a Para. 2 with the intention of using protected works or other protected objects;

b) manufactures, imports, offers for sale, distributes or otherwise disseminates, rents, leases for use or possesses for profit any device, product or component, or offers or renders any service, which has a limited purpose or use other than circumventing effective technical measures and which:

1. Are the subject of sales promotion, advertising or marketing with the aim of circumventing effective technical measures; or

2. mainly designed, manufactured, adapted or provided to enable or facilitate the circumvention of effective technical measures;

c) advertises means or services that are punishable under subparagraph (b);

d) removes or modifies electronic information for the purpose of exercising copyright and related rights under Art. 44c(2);

e) Works or other objects of protection from which information on the exercise of rights under Art. 44c Para. 2 has been removed or modified.

reproduces, imports, offers, sells or otherwise distributes, transmits, makes perceptible or accessible.

2) Any person who commits the offences referred to in paragraph 1 on a commercial basis (Section 70 of the Criminal Code) shall be liable to a custodial sentence not exceeding three years. Prosecution shall take place through the public prosecutor's office.

3) Acts in accordance with par. 1 letters d and e are only punishable if they are committed by a person

The infringement of a copyright or related right shall not be committed by any person who is aware, or should be aware under the circumstances, that he or she is causing, enabling, facilitating or concealing the infringement of a copyright or related right.

Art. 64

Infringement of the rights to databases

- 1) At the request of the injured, a person who intentionally and unlawfully:
  - a) extracts or re-uses all or a substantial part, qualitatively or quantitatively, of the contents of a database;
  - b) repeatedly and systematically extracts and/or re-uses insubstantial parts of the contents of a database within the meaning of Article 45, paragraph 2;
  - c) causes damage to the owner of a copyright or related right in works or services contained in a database.
- 2) Anyone who commits an infringement of database rights on a commercial basis (Section 70 of the Criminal Code) is liable to a custodial sentence of up to three years. Prosecution takes place through the public prosecutor's office.

Art. 65

Repealed

Art. 66

*Responsibility*

If the offences are committed in the business operations of a legal entity, a general partnership, a limited partnership or a sole proprietorship, the penal provisions shall apply to the persons who

acted or should have acted on their behalf, but with joint and several liability of the legal entity, the company or the sole proprietorship for the fines and costs.

Art. 67

Confiscation in criminal  
proceedings

- 1) If an infringement has been committed, the
  - a) Goods to which the infringement relates, and
  - b) objects that have been used or are intended for their commission shall be confiscated. § Section 26 of the Criminal Code shall apply.



- 2) Executed works of architecture cannot be confiscated.
- 3) The proceedings shall be governed by the provisions of Sections 353 to 357 of the Code of Criminal Procedure.

Art. 68

*Decay*

- 1) Unlawfully obtained pecuniary advantages from offences under Articles 61 to 65 may be declared forfeited in accordance with the General Part of the Criminal Code.
- 2) The proceedings shall be governed by the provisions of Sections 353 to 357 of the Code of Criminal Procedure.

Art. 69

Criminal  
prosecution

The district court shall have jurisdiction to prosecute under this Act.

C. Measures on import, export or transit Art. 70

Display of suspicious shipments

- 1) The competent body shall be authorized to notify the owners of the copyrights or related rights or licensed exploitation rights.

The customs authorities must be notified if they suspect that goods are about to be brought into or out of the customs territory whose distribution in Liechtenstein violates the legislation in force in Liechtenstein on copyright or related rights.

- 2) In this case, the competent body is authorized to detain the goods for three working days so that the persons entitled to apply can file an application in accordance with Art. 71, para. 1.

Art. 71

Request for assistance

- 1) If owners or licensees of copyrights or related rights who are entitled to bring an action or licensed collecting societies have concrete indications that goods are about to be brought into or out of the customs territory whose distribution violates the copyright or related rights legislation in force in Liechtenstein, they may apply in writing to the competent authority to refuse the release of the goods.

- 2) Applicants must provide all relevant information available to them which is required for the decision of the competent body; this includes a precise description of the goods.
- 3) The competent body shall decide on the application. It may charge a fee to cover the administrative costs.

Art. 72

Retention of goods by the competent body

- 1) If, on the basis of an application in accordance with Art. 71(1), the competent authority has a well-founded suspicion that the introduction of goods into or out of the customs territory is in breach of the legislation in force in Liechtenstein on copyright or related rights, it shall notify the applicant on the one hand and the declarant, owner or holder of the goods on the other.
- 2) The competent body shall retain the goods in question for up to ten working days from the date of notification under paragraph 1, in order to enable the applicant to obtain interim measures.
- 3) In justified cases, the competent body may detain the goods in question for a maximum of ten additional working days.
- 4) The competent authority may make the detention of goods conditional upon the provision of an appropriate security by the applicant, if the detention of goods is likely to cause damage.
- 5) The applicant shall compensate the damage caused by the detention of goods if injunctions are not ordered or prove to be unfounded.

Art. 72a

*Samples or patterns*

- 1) During the period of retention of the goods, the competent body shall be authorized to provide or send samples or specimens to the applicant for examination upon request or to permit the applicant to inspect the retained goods.
- 2) The samples or specimens will be collected and shipped at the applicant's expense.
- 3) They must be returned after testing, if reasonable. If samples or specimens remain with the applicant, they are subject to the provisions of customs law.

Art. 72b

Protection of business and trade secrets

- 1) At the same time as the notification under Article 72(1), the competent authority shall inform the declarant, holder or owner of the goods of the possibility of handing over samples or specimens or of the possibility of inspection under Article 72a(1).
- 2) The applicant, owner or proprietor may request to be present at the inspection in order to protect their business and trade secrets.
- 3) The competent body may refuse to hand over samples or specimens if the applicant, owner or holder submits a justified request.

Art. 72c

*Request for destruction of the goods*

- 1) Together with the application under Art. 71 par. 1, the applicant may apply in writing to the competent body to destroy the goods.
- 2) If a request for destruction is made, the competent body shall notify the declarant, holder or owner of the goods as part of the notification under Art. 72, para. 1.
- 3) The application for destruction shall not have the effect of extending the time limits under Art. 72(2) and (3) for obtaining temporary restraining orders.

Art. 72d

Consent

- 1) The consent of the declarant, owner or holder is required for the destruction of the goods.
- 2) Consent shall be deemed to have been granted if the declarant, owner or proprietor does not expressly object to the destruction within the time limits specified in Art. 72 paras. 2 and 3.

Art. 72e

*Evidence*

Before destroying the goods, the competent body shall take samples or specimens and keep them as evidence for any action for damages.

Art. 72f

*Damages*

- 1) If the destruction of the goods proves to be unfounded, the following shall be liable exclusively

the applicant for the damage incurred.

2) If the applicant, owner or holder has consented in writing to the destruction, no claims for damages shall arise against the applicant even if the destruction later proves to be unfounded.

Art. 72g

*Costs*

1) The destruction of the goods shall be at the expense of the applicant.

2) The court shall decide on the costs of taking and storing samples or specimens in accordance with Art. 72e in connection with the assessment of claims for damages in accordance with Art. 72f Para. 1.

Art. 72h Declaration of

liability and compensation

1) If damage is to be feared as a result of the retention of the goods, the competent body may make the retention conditional upon the applicant providing a declaration of liability. In justified cases, the competent body may require the applicant to provide a reasonable security in lieu of such declaration.

2) The applicant must compensate the damage caused by the detention of the goods and the taking of samples or specimens if interim injunctions are not ordered or prove to be unfounded.

Art. 73

Jurisdiction; international treaties

1) The competent body within the meaning of Articles 70 to 72h shall be determined by the Government by ordinance.

2) The government may entrust the implementation of import, export and transit measures:

a) individual offices of the state administration;

b) Third.

3) International treaties remain reserved.

VII. Final provisions

A. Execution and repeal of previous law

Art. 74

### Implementing regulations

The Government shall issue the regulations necessary for the implementation of this Act.

#### Art. 75 Repeal

##### of laws

Upon the entry into force of this Act, the Act of 26 October 1928 on Copyright in Literary and Artistic Works, LGBl. 1928 No. 12, and the Ordinance of 30 January 1996 on Certain Intellectual Property Rights, LGBl. 1996 No. 31, shall be repealed.

#### B. Transitional provisions Art. 76

##### Existing protected objects

- 1) This Act shall also apply to works, performances, sound and audiovisual carriers and broadcasts created before its entry into force.
- 2) If the use of a work, performance, sound or audiovisual carrier or broadcast that would be unlawful under this Act was previously permitted, it may be completed if it was commenced before the effective date of this Act.

#### Art. 77

##### Existing contracts

- 1) Contracts on copyrights or related rights concluded before the entry into force of this Act and dispositions made on the basis of such contracts shall remain effective under the previous law, provided that their content does not contradict the new law or is newly regulated by it.
- 2) Unless otherwise agreed, these contracts shall not apply to rights first created by this Act.

#### Art. 78 Expired

##### protection periods

- 1) Periods of protection which expired before the entry into force of this Act shall not be revived, even if they would be longer under this Act.
- 2) In relation to EEA member states, property rights which expired under the old law before July 1, 1995, shall be revived retroactively if they would not expire until after that date under the provisions on the term of protection under Articles 32 to 35. This does not apply to films and audiovisual works protected before July 1.

1994 have been created.

3) However, anyone who, on the basis of the previous provisions on the term of protection, has in good faith exploited or begun to exploit works which have become free of copyright and which have been revived in accordance with paragraph 2, may continue to do so free of charge until the entry into force of this Act.

C. Entry into  
force Art.

79

This Act shall enter into force on the day of its promulgation.

#### Appendix

(Art. 31b par. 1)

##### Sources of a careful search

The sources referred to in Art. 31b para. 1 are in particular the following:

a) for published books:

1. Depositories of officially deposited deposit copies, library catalogs maintained by libraries and other institutions, and keyword lists;
2. publishers' and authors' associations in the respective country;
3. existing databases and directories, WATCH (Writers, Artists and their Copyright Holders), the ISBN (International Standard Book Number) and databases of available books;
4. the databases of the relevant collecting societies, in particular the organizations entrusted with the administration of reproduction rights;
5. Sources that combine multiple databases and directories include VIAF (Virtual International Authority Files) and ARROW (Accessible Registries of Rights Information and Orphan Works);

b) for newspapers, magazines, trade journals and periodicals:

1. the ISSN (International Standard Serial Number) for regular publications;
2. Indexes and catalogs of library holdings and collections;
3. Deposits of officially deposited depository copies;
4. publishers' associations and authors' and journalists' associations in the respective country;

5. the databases of the relevant collecting societies, including the organizations entrusted with the administration of reproduction rights;

c) for visual works, including works of fine arts, photographs, illustrations, design and architectural works and their development.

and other such works contained in books, journals, newspapers and magazines or other works:

1. the sources referred to in paragraphs 1 and 2;

2. the databases of the relevant collecting societies, in particular the collecting societies for fine arts, including the organizations entrusted with the administration of reproduction rights;

3. the databases of image agencies;

d) for audiovisual works and sound recordings:

1. the depositories of officially deposited depository copies;

2. producers' associations in the respective country;

3. the databases of institutions active in the field of film or sound heritage and national libraries;

4. Databases of relevant standards and identifiers such as ISAN (International Standard Audiovisual Number) for audiovisual material, ISWC (International Standard Music Work Code) for musical works, and ISRC (International Standard Recording Code) for sound recordings;

5. the databases of the relevant collecting societies, in particular for female authors, performers and producers of phonograms and audiovisual works;

6. the performance of the contributors and other information on the packaging of the work;

7. the databases of other authoritative associations representing a certain category of right holders.

## IX.marriage law

from 13 December 1973

### Table of contents

#### 1. Part General provisions

Art. 1-3

#### 2. Part

The right of marriage

1. Section: The Engagement Art. 4-8

2. Section: Eligibility for Marriage and Impediments to Marriage Art. 9-14

3. Section: Proclamation and Marriage Art. 15-27

4. Section: The Invalidity of Marriage Art. 28-42

5. Section: The effects of marriage Art. 43-49h

#### 3. Part

Divorce and separation of marriage

1. Section: Divorce of Marriage Art. 50-62

2. Section: Separation of Marriage Art. 63-65

3. Section: Ancillary Consequences of Divorce and Separation Art. 66-89h

#### 4. Par

t Transitional and final provisions

Art. 90-100

#### 1. Part General

provisions

#### Art. 1

*Essence of marriage*

Marriage is the full and undivided cohabitation of two people of different sexes established by contract.

#### Art. 2



*Marriage Freedom*

Anyone can marry if there is no legal obstacle to the intended union.

Art. 3

*Religiously contracted marriage*

- 1) Everyone is free to enter into marriage before the marriage authority of a religious community after the state marriage ceremony has been completed. A religious marriage ceremony may not be performed without a marriage certificate.
- 2) This religious marriage is governed by the rules of the religious community.
- 3) Otherwise, a marriage contracted on religious grounds shall not be affected by the provisions of this Act.

2. Part

The right of marriage

1. Section The Engagement

Art. 4

*Engagement*

The engagement consists of the promise of two persons of different sexes to marry each other.

Art. 5

*Exclusion of the action for entering into marriage*

- 1) The betrothal does not give rise to an actionable right to enter into marriage.
- 2) A contractual penalty set for the case of breach of betrothal cannot be claimed.

Art. 6

*Consequences of the breach of engagement*

- 1) If a fiancé breaks the engagement without good cause, or if it is annulled by him or her or by the other fiancé for a reason for which he or she is responsible, he or she shall pay to him or her, to his or her parents or to third persons who have acted in place of the parents, reasonable compensation for the events that have taken place in good faith with respect to the marriage.
- 2) If, as a result of the breach of betrothal, a fiancé suffers, through no fault of his own, a

## Marriage

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serious injury in his personal circumstances, the court may award him a sum of money as satisfaction (§ 1293 ff. ABGB) if the other fiancé is at fault.

3) This entitlement is not transferable and passes to the heirs only if it is recognized or claimed at the time of the beneficiary's death.

### Art. 7

#### *Gift reimbursement*

1) Gifts between fiancés can be reclaimed if the engagement is annulled. If they are no longer available, the amount of the enrichment must be returned.

2) If the betrothal is dissolved by the death of a betrothed, any recovery is excluded.

### Art. 8

#### *Limitation*

Claims arising from the betrothal shall become statute-barred one year after the dissolution.

## 2. Section Eligibility and impediments to marriage

### I. Marriageability

### Art. 9

#### *Matrimonial*

1) In order to enter into a marriage, the bride and groom must have reached the age of 18.

2) However, in exceptional cases, if serious considerations justify it, the court may declare a bride or groom to be of marriageable age with the consent of the legal representative.

### Art. 10

#### *Judgement*

1) In order to enter into a marriage, the bride and groom must be capable of judgement.

2) Mentally ill persons are in no case capable of marriage.

### Art. 11

#### *Consent of the legal representative*

1) Minors or persons whose legal capacity has been impaired for other reasons

are restricted, may enter into marriage only with the consent of their legal representative.

2) If the legal representative refuses to give consent without good cause, the court may substitute it at the request of one of the bride and groom requiring consent.

II. Impediments to  
marriage

Art. 12

Marriage

*Marriage barriers*

impediments are:

- a) Consanguinity and adoption;
- b) existing marriage bond.

Art. 13

*Consanguinity and adoption*

1) Marriage may not be contracted between blood relatives in the direct line, between full or half-born siblings, and between uncle and niece, aunt and nephew, whether they are related in or out of wedlock.

2) Marriage may not be contracted between the adopted child and the adopter.

Art. 14

*Existing marriage bond; disappearance*

- 1) A marriage may not be contracted while a previous marriage exists.
  - 2) If one spouse is declared missing, the other spouse may enter into a new marriage only if the previous marriage has been dissolved by a court.
3. Section Proclamation and Marriage

I. Proclamation

Art. 15

*Proclamation request*

To obtain the proclamation, the bride and groom must register their proposed marriage with the civil registrar, who will arrange for the proclamation by posting it on the agency's website.

Art. 16

*Form of the request for promulgation*

The registration is made by the bride and groom in person or with a written statement in which the signatures are officially certified.

Art. 17

*Rejection of the request for promulgation*

- 1) The pronouncement shall be denied if:
  - a) the registration is not done correctly;
  - b) the bride or groom is not fit to marry;
  - c) a legal impediment to marriage is manifest; or
  - d) the bride or groom obviously does not want to establish a cohabitation, but wants to circumvent the provisions on admission and residence of foreigners.
- 2) The civil registrar shall hear the bride and groom in the cases referred to in paragraph 1(d) and may obtain information from other authorities or third parties.

Art. 18

*Right of objection*

- 1) During the promulgation period, anyone who has an interest may object to the marriage by invoking the  
Lack of marital capacity of one of the spouses or a legal impediment to marriage.
- 2) The objection must be made in writing to the civil registrar.
- 3) An objection that does not relate to the lack of capacity to marry or to a legal impediment to marriage shall be rejected by the civil registrar.

Art. 19

*Notification of the objection*

- 1) If an objection has been raised, the civil registrar shall immediately notify the bride and groom thereof after the expiration of the promulgation period.
- 2) If the objection is not accepted by one of the bride and groom, the objector must be informed of this immediately.

Art. 20

*Decision on the objection*

If the objector wishes to maintain the objection, he shall apply to the court for

To sue for prohibition of the marriage contract.

Art. 21

*Deadline*

- 1) The time limit for filing an objection, for refusing recognition and for bringing an action to prohibit the conclusion of the marriage is 14 days in each case.
- 2) It shall commence on the day on which the pronouncement is made, the objection is communicated to the bride and groom, or the refusal of recognition is opened to the objector.

II. Marriage Art. 22

*Prerequisite*

The civil registrar may perform the marriage ceremony only if there is no objection or if the objection filed with the court does not have been made pending or has been dismissed. If he does not do so himself, he shall issue a promulgation certificate which shall be valid for six months.

Art. 23

*Refusal of the wedding ceremony*

- 1) The civil registrar shall refuse to perform the marriage ceremony as soon as there is a reason for which the pronouncement must be refused.
- 2) After the expiration of six months, the proclamation loses its effect.

Art. 24

*Wedding ceremony without proclamation*

If, due to the serious illness of one of the bride and groom, there is a danger that the marriage may not be performed if the time limits for pronouncement are observed, the government may authorize the registrar to perform the marriage ceremony with a shortening of the time limits or without pronouncement.

Art. 25

*Publicity of the wedding ceremony*

- 1) The marriage ceremony is performed publicly in the wedding venue in front of two witnesses of age.
- 2) The wedding ceremony may only take place outside the wedding venue if it is established by a medical certificate that one of the bride and groom is prevented from attending the ceremony due to illness.

Art. 26

*Form of the wedding ceremony*

- 1) The registrar asks the groom and the bride if they want to marry each other.
- 2) After answering this question in the affirmative, the civil registrar declares that by this mutual consent the marriage is concluded by operation of law.

Art. 27

*Regulation*

The Government shall, by ordinance, issue more detailed regulations on the announcement of marriage, the marriage ceremony and the keeping of marriage registers.

4. Section

The invalidity of

I. Invalidity reasons

marriage

Art. 28

*Principle*

A marriage is invalid only in those cases in which this is stipulated in Articles 29 to 38.

Art. 29

*Consanguinity and adoption*

A marriage is invalid if it was entered into despite the existence of the marriage impediment of consanguinity or adoption (Art. 13).

Art. 30

*Existing marriage bond*

A marriage is invalid if it has been entered into despite the existence of a marriage bond (Art. 14).

Art. 31

*Gender incapacity*

A marriage is invalid if one of the spouses is unable to consummate the marriage with the other spouse due to permanent physical or mental incapacity that existed at the time the marriage was entered into.

Art. 32

*Form defect*

1) A marriage is invalid if the marriage ceremony before the civil registrar did not take place in the form prescribed by Art. 26.

2) However, the marriage shall be considered valid from the beginning if the spouses have lived together as spouses for five years after the marriage or, if one of them has predeceased, until his or her death, but for at least three years, unless an action for invalidity has been filed at the expiration of the five years or at the time of the death of one of the spouses.

Art. 33

*Lack of judgment*

A marriage is invalid if one of the spouses is mentally ill or incapacitated for a permanent or temporary reason at the time of the marriage.

Art. 34

*Lack of consent of the legal representative*

1) A marriage is invalid if a spouse who is underage or has limited legal capacity for other reasons has entered into the marriage without the consent of the legal representative.

2) However, the marriage shall be deemed valid from the beginning if the spouse has become minors or the legal incapacity has ceased or the legal representative has subsequently given his or her consent or if the wife has become pregnant.

Art. 35

*Error in the person of the other spouse*

A marriage is invalid if one of the spouses was mistaken about the person of the other spouse at the time of marriage. All other errors of the spouses, as well as their mistaken expectations of the presupposed or agreed conditions, do not invalidate the marriage.

Art. 36

*Malicious deception*

1) A marriage shall be invalid if one of the spouses was induced to enter into the marriage by fraudulent deception as to such circumstances as would have prevented him or her from entering into the marriage if he or she had been aware of the facts and had properly appreciated the nature of the marriage.

## Marriage

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would have prevented marriage.

2) However, the marriage shall be considered valid from the beginning if the spouse, after discovering the deception, has indicated that he or she wishes to continue the marriage.

### Art. 37

#### *Reasoned fear*

1) A marriage is invalid if one of the spouses has been determined to enter into the marriage under the influence of a well-founded fear, the existence of which is to be judged from the magnitude and probability of the danger and from the physical and mental condition of the threatened spouse.

2) However, the marriage shall be considered valid from the beginning if the spouse has indicated that he or she wishes to continue the marriage after the established predicament has ceased.

### Art. 38

#### *Citizenship marriage*

1) A marriage is invalid if one of the spouses did not want to establish a cohabitation but wanted to circumvent the regulations on the acquisition of national citizenship.

2) However, the marriage shall be deemed valid from the beginning if the spouses have lived together as spouses for five years after the marriage or, if one of them has predeceased, until his or her death, but for at least three years, unless an action for invalidity has been brought at the expiration of the five years or at the time of the death of one of the spouses.

### Art. 38a

#### *Circumvention of the provisions on admission and residence of foreigners*

The marriage is invalid if one of the spouses does not want to establish a cohabitation but wants to circumvent the provisions on admission and residence of foreigners.

## II. Invalidation Art. 39

#### *Meaning of invalidation*

1) The invalidity of the marriage becomes effective only after the court has pronounced the invalidity by judgment.

2) Until this judgment, the marriage has the effects of a valid marriage.

### Art. 40



*Procedure*

- 1) The procedure for invalidation shall be carried out ex officio, subject to paragraph 2.
- 2) In the cases provided for in Articles 31, 35, 36 and 37, the action may be brought only by the spouse whose rights have been infringed and, in the case provided for in Article 34, only by the legal representative.

III. Consequences of invalidity

Art. 41

*For the children*

- 1) If a marriage is declared invalid, the children shall nevertheless be considered legitimate, without regard to the good or bad faith of their parents.
- 2) The same rules apply to the care and upbringing of the children as in the case of separation.

Art. 42

*For the spouses*

- 1) If a marriage is declared invalid, the spouses shall resume the name they bore before the marriage was concluded. In all other respects, the provisions of Art. 66 apply mutatis mutandis.
- 2) The provisions of Art. 67 et seq. shall apply mutatis mutandis to the settlement of maintenance claims following the annulment of a marriage. In assessing any maintenance in equity, account must also be taken of whether the reason that led to the marriage being declared invalid was known or should have been known to one of the spouses when the marriage was entered into.
- 3) The provisions of Art. 73 et seq. of the Civil Code shall apply to the division of property between the spouses following a declaration of invalidity of the marriage, unless the marriage pacts contain provisions to this effect.
- 4) The provisions of Art. 89b to 89f apply to the division of termination benefits from the occupational pension plan acquired during the marriage.

5. Section

The effects of marriage

Art. 43

*Marital community; rights and obligations of the spouses*

## Marriage

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- 1) Through the marriage ceremony, the spouses are united in the marital community.
- 2) They mutually undertake to safeguard the welfare of the community in harmonious cooperation and to care for the children jointly.
- 3) They owe each other loyalty and assistance.

### Art. 44

#### *Family name*

- 1) The spouses shall determine the marriage on the occasion of the marriage ceremony vis-à-vis the civil registrar in a public or publicly certified document, which of their names they will use as their common surname. The spouse whose surname does not become the common surname may declare that he or she precedes or follows the common surname with a hyphen. If this spouse already bears a double name, he/she may use only one of these names of his/her choice.
- 2) If the spouses do not determine a common surname, each spouse retains his or her previous surname.

### Art. 45

#### *Marital apartment*

The spouses jointly determine the marital home.

### Art. 46

#### *Maintenance of the family; in general*

- 1) The spouses shall jointly provide, each to the best of his or her ability, for the due maintenance of the family.
- 2) They agree on the contribution each of them will make, namely by paying money, taking care of the household, looking after the children, or helping in the other's profession or business.
- 3) They take into account the needs of the marital community and their personal circumstances.

### Art. 46a

#### *Compensation for participation in the acquisition of the other spouse*

If one spouse assists in the acquisition of the other, he or she is entitled to appropriate compensation for his or her assistance. The amount of the claim is based on the

The nature and duration of the benefits; the overall living conditions of the spouses, in particular also the maintenance payments granted, shall be taken into account appropriately.

Art. 46b

*Claims for compensation*

Claims for compensation for the contribution of one spouse to the acquisition of the other (Art. 46a) are inheritable, inter vivos or on death.

transferable and attachable, insofar as they have been recognized by contract or settlement or asserted in court.

Art. 46c

*Exclusion of claims for compensation*

Art. 46a does not affect contractual claims of one spouse against the other arising from cooperation or collaboration in the acquisition. Such claims exclude a claim under Art. 46a; however, in the case of an employment relationship, the spouse shall retain the claim under Art. 46a to the extent that it exceeds his or her claims under the employment relationship.

Art. 47

*Amount at free disposal*

1) The spouse who takes care of the household, looks after the children or helps the other in his or her profession or trade is entitled to a regular payment from the other of a reasonable amount at his or her free disposal.

2) When determining the amount, the entitled spouse's own income and a provision for family, profession or business appropriate to the circumstances must be taken into account.

Art. 48

*Representation of the conjugal community*

1) Each spouse represents the marital community for the ongoing needs of the family while living together.

2) For the other needs of the family, a spouse can only represent the marital community:

1. if authorized to do so by the other or by the court; or

2. if the interest of the conjugal community does not tolerate a postponement of the transaction and the other spouse, due to illness, absence or similar

## Marriage

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reasons cannot agree.

3) By his or her actions, each spouse binds himself or herself personally and, insofar as they do not exceed his or her power of representation recognizable to third parties, solidarily also on behalf of the other spouse.

### Art. 49

#### *Profession and trade of the spouses*

In the choice and practice of his profession or trade, the spouse shall have regard for the other and for the welfare of the marital community.

### Art. 49a

#### *Legal transactions of the spouses; in general*

Each spouse may enter into legal transactions with the other or with third parties, unless otherwise provided by law.

### Art. 49b

#### *Family apartment*

1) A spouse may terminate a lease, alienate the family home or apartment, or limit the rights to the family home by other legal transactions only with the express written consent of the other.

2) If the spouse is unable to obtain such consent or if it is refused without good cause, he or she may apply to the court.

### Art. 49c

#### *Duty to provide information*

1) Each spouse may request information from the other about his or her income, assets or debts.

2) At his or her request, the judge may require the other spouse or third parties to provide the necessary information and to produce the necessary documents.

3) The obligation of third parties to provide and submit information is limited by the provisions of the civil court proceedings on the inadmissibility and justified refusal of the testimony, unless it is merely information on the circumstances.

### Art. 49d

#### *Judicial measures; in general*

- 1) If a spouse fails to fulfill his or her obligations to the family, or if the spouses disagree on a matter of importance to the marital union, they may jointly or individually apply to the court for mediation.
- 2) The court reminds the spouses of their obligations and tries to reconcile them; with their consent, it may call in experts or refer them to a marriage or family counseling center.
- 3) If necessary, at the request of one of the spouses, the court shall take the measures provided for by law.
- 4) At the request of one spouse, maintenance contributions under Articles 46 and 47 shall be fixed for the future in numerical form as a monthly pension if the other spouse neglects his or her obligation to contribute.

Art. 49e

*Withdrawal of the power of representation*

- 1) If a spouse exceeds his or her authority to represent the marital community or proves incapable of exercising it, the court may, at the request of the other, revoke his or her authority to represent in whole or in part.
- 2) The spouse making the request may notify third parties of the withdrawal only by personal communication.
- 3) With respect to third parties acting in good faith, the withdrawal shall be effective only if it has been published by order of the court.

Art. 49f

*Restrictions on the power of disposal*

- 1) If it is necessary to secure the economic basis of the family or to fulfill a pecuniary obligation arising from the marital community, the court may, at the request of one of the spouses, make the disposition subject to the consent of the other spouse.
- 2) If the court prohibits a spouse from disposing of a plot of land, it shall have this noted in the land register ex officio.

Art. 49g

*Change of conditions*

If the circumstances change significantly, the court shall, at the request of one of the spouses, adjust the measures or revoke them if their reason has ceased to exist.

Art. 49h

*Procedure*

1) The court shall make the orders necessary for the protection of marriage and the family in accordance with the above provisions, including the claim for compensation in accordance with Art. 46a et seq. in non-litigious proceedings. This does not apply to maintenance amounts and other monetary claims. These are to be asserted in the ordinary legal proceedings.

2) From the time an action for legal separation is brought, only civil proceedings shall be available for the duration of the proceedings and after the legal separation or divorce for any claims arising from the above provisions.

3. Part

Divorce and separation of marriage

1. Section divorce of marriage

I. Divorce on joint request Art. 50

*Comprehensive agreement*

1) If the spouses jointly request a divorce and file a complete agreement in accordance with para. 2 on the ancillary consequences of the divorce with the necessary supporting documents, the court shall, as a rule, hear them once separately and once together; it shall satisfy itself that the request for divorce and the agreement are based on free will and careful consideration and that the agreement can be approved.

2) If the conditions referred to in paragraph 1 are met, the court shall pronounce a divorce by order and approve the agreement concerning maintenance, the allocation of the matrimonial home, the distribution of the household effects, the division of the increase in assets achieved during the marriage and the division of the termination benefit from the occupational pension scheme. Likewise, the court examines and approves the agreement regarding the collateral consequences concerning maintenance, custody and, in the case of joint custody, the care of the children as well as the personal contacts between one parent and the children in accordance with the provisions of the ABGB. The spouses may, however, declare that they wish to adhere to the existing arrangement with regard to custody without filing any motions; also with regard to the care of the children in the case of joint custody or with regard to personal contacts between one parent and the children, they may declare that they have reached an agreement and do not file any motions in this regard pursuant to Art. 51.

3) If an agreement under subsection (2) is incomplete or not approvable, the judge shall attempt to reach an agreement between the spouses concerning the

missing or defective points. If no agreement can be reached, the further procedure shall be in accordance with Art. 51 or 54.

Art. 51

*Partial agreement*

- 1) If the spouses jointly seek a divorce but do not submit a full agreement on the ancillary consequences of the divorce, and if the spouses declare that the court shall judge the consequences of the divorce on which they do not agree, the court shall settle the outstanding issues.
- 2) The court shall hear the spouses on the petition for divorce and on the collateral consequences of the divorce on which they have agreed, as well as on the joint declaration that the other collateral consequences are to be judged by the court, as in the case of the comprehensive agreement.
- 3) As to the collateral consequences of the divorce on which they disagree, each spouse files motions.

Art. 52

*Effect of divorce decree; main consequence of divorce.*

When the divorce decree becomes final, the marriage bond is severed.

Art. 53

*Date of the petition for divorce*

The petition for divorce on joint request can be filed only after one year has passed since the marriage.

Art. 54

*Change to divorce on complaint*

- 1) If the court decides that the requirements for a divorce on joint request are not or no longer met, it shall set a time limit for each spouse to replace the request for divorce with a petition.
- 2) If both spouses allow the time limit to expire without filing suit, the court shall dismiss the original joint petition for divorce.
- 3) The right of the spouses to file a new joint petition for divorce or an action for divorce shall not be affected by the dismissal within the meaning of subsection 2.

II. Divorce on complaint

A. After separation

Art. 55

*3 years living apart*

A spouse may demand a divorce if the spouses have lived apart for at least three years at the time of the pendency of the action or at the time of the change to divorce on complaint.

B. Unreasonableness

Art. 56

*Principle*

Before the expiration of the three-year period, a spouse may request a divorce if he or she cannot reasonably be expected to continue the marriage for substantial reasons that are predominantly attributable to the other spouse.

Art. 57

*Attempt at reconciliation*

After a petition for divorce based on Article 56 has been filed, the court shall conduct an attempt at reconciliation, which shall be repeated once if there is a prospect of reconciliation. The spouses shall appear at the reconciliation proceedings in person and without representatives.

Art. 58

*Interruption of the procedure*

If, after completion of the reconciliation proceedings in the course of the divorce proceedings under Art. 56, the court considers that there is a possibility of reconciliation between the spouses, the court may interrupt the proceedings for a reasonable period of time. This does not affect the grounds for interruption under the ZPO.

C. Common provisions

Art. 59

*Consent to divorce action; counterclaim.*

If one spouse sues for divorce after separation or on the grounds of unreasonableness and the other spouse expressly agrees or files a counterclaim in which he or she himself or herself seeks a divorce, the further proceedings shall be conducted in accordance with the provisions on divorce on the basis of a joint petition under the conditions stipulated therein.



requirements. If the change of procedure has taken place, a change back in accordance with Art. 54 is excluded.

Art. 60

*Precautionary measures*

- 1) Either spouse may terminate the joint household for the duration of the proceedings after the *lis pendens* has arisen.
- 2) For the duration of the proceedings, the court may, on application, grant a spouse and the children a reasonable maintenance payment or take other precautionary measures by means of a temporary injunction if the best interests of one of the spouses or the children so require. The provisions on measures for the protection of the marital union shall apply *mutatis mutandis*.
- 3) This provision applies *mutatis mutandis* to proceedings in the case of divorce on joint request.

Art. 61

*Official investigation*

The court must examine *ex officio* whether the grounds for divorce of three years of separation or unreasonableness exist and whether the petition for divorce can be granted.

Art. 62

*Divorce decree; main consequence of divorce*

- 1) Divorce on complaint takes place by judgment.
  - 2) The court shall pronounce a divorce if, based on the conduct of the respective proceedings, it has objectively and freely determined that:
    - a) after invoking Art. 55, the requirement of three years of living apart is met;
    - b) after invoking Art. 56, the continuation of the marriage is unreasonable;
    - c) there is a mutual will to divorce within the meaning of Art. 59 and the other requirements under the provisions on divorce on joint request are met.
  - 3) When the divorce decree becomes final, the marriage bond is severed.
2. Section Separation of marriage

Art. 63

*Requirements and procedure*

- 1) The spouses may request separation jointly or individually.
- 2) The separation is pronounced under the same conditions and according to the same procedure as the divorce.
- 3) The right to demand divorce shall not be affected by the separation. Art. 64

*Separation judgment or decree; main consequence of separation*

The judgment or decree on separation shall annul the obligation to marital cohabitation and fidelity as soon as the legal force of the judgment or decree takes effect. The marriage bond remains in force.

Art. 65

*Resumption of marital union*

- 1) The judgment or decree on separation shall cease to have effect if the separated spouses resume marital union and notify the court thereof by a joint written statement.
- 2) The provisions concerning the division of the increase in assets achieved during the marriage shall remain unaffected by the lapse of the separation judgment or the separation decree. On the other hand, the provisions of all other ancillary consequences of the separation shall cease to apply with the notification pursuant to para. 1.

3. Section

Collateral consequences of divorce and separation

I. Right to a name

Art. 66

*Resumption of a previous name*

- 1) Divorced or separated spouses shall continue to retain their previous conjugal surname, unless otherwise provided below (Art. 44).
- 2) However, the spouse whose surname was changed at the time of marriage has the right to declare to the registry office, after the judgment or decree of divorce has become final, that he or she will resume the original name or the name he or she had before the marriage.
- 3) The surnames of the children are changed by the name changes in the sense of

of the above paragraph 2 shall not be affected.

## II. Regulation of collateral consequences

### Art. 67

#### *Principle*

- 1) Regardless of the type of divorce or separation, the spouses may reach agreements on maintenance, allocation of the matrimonial home, distribution of household goods and division of the increase in assets obtained during the marriage, division of termination benefits from occupational pensions, as well as on maintenance, care and upbringing of the children and intercourse between them and the children. The agreements require the approval of the court.
- 2) If the spouses have not reached an agreement on the collateral consequences or if the submitted agreement has not been approved by the court, the court shall make a settlement in the order in accordance with the principles set forth in the following titles.
- 3) The special provisions of this Act, in particular the provisions on divorce on joint request and Art. 89a, are reserved.

## III. Maintenance

### Art. 68

#### *Maintenance assessment*

- 1) If one of the spouses cannot reasonably be expected to provide for his or her own maintenance, including adequate old-age provision, the balance of his or her assets and continuing marital pacts, the other must make an appropriate contribution.
- 2) When deciding whether a contribution should be made and, if so, in what amount and for how long, particular consideration should be given to:
  - a) the division of tasks during the marriage;
  - b) the duration of the marriage;
  - c) the living status of both spouses during the marriage;
  - d) the age and health of the spouses;
  - e) the income and assets of the spouses;
  - f) the extent and duration of the care still to be provided by the spouses for the children;

## Marriage

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g) the professional training and employment prospects of the spouses as well as the estimated expenses for the professional integration of the person entitled to benefits;

h) the entitlements from old-age and survivors' insurance and from occupational or other private or state pension plans.

3) If the granting of maintenance determined in accordance with subsection 2 would jeopardize the maintenance of the obligated spouse, taking into account his or her other obligations, the obligated spouse need only pay as much as is equitable in view of the needs and the income and financial circumstances of both divorced or separated spouses.

4) A contribution may exceptionally be refused or reduced if it would be manifestly inequitable because the entitled person:

a) grossly violated their duty to contribute to the maintenance of the family;

b) has willfully brought about their indigence;

c) has committed a serious criminal offense against the obligated person or a person closely associated with the obligated person.

### Art. 69

#### *Method of granting maintenance*

1) Maintenance shall be provided by payment of a monetary annuity payable monthly in advance.

2) Instead of the pension, the beneficiary may demand a settlement if there is an important reason and the obligor is not unreasonably burdened by this.

### Art. 70

#### *Change in circumstances*

1) If there is a significant and permanent change in the income and financial circumstances, the court may, on complaint, increase, reduce, cancel or suspend the pension for a certain period of time.

2) However, the entitled person may request the increase of the pension only if he/she has to take care of the minor children or if no pension covering the due maintenance could be determined at the time of divorce or separation, but the economic circumstances of the obligated person have improved accordingly.

3) In addition, the court may, in justified exceptional cases, independently of para. 2, determine an increase in maintenance, if this is due to:

- a) special neediness of the creditor through no fault of his own, as in the case of serious illness, serious infirmity or old age, or
- b) special advance payments during the marriage and
- c) The court shall decide whether the increase in maintenance is justified in relation to the duration of the marriage and whether the income and financial circumstances of the person liable for maintenance permit it without the latter having to accept unjust restrictions as a result of the increase in maintenance.
- 4) The spouses may exclude in the agreement the change of the pension determined therein in whole or in part.
- 5) The pension may be subject to the national consumer price index or an equivalent successor index by agreement or by court decision.

Art. 71

*Forfeiture*

The beneficiary shall forfeit the right to maintenance if, after divorce or separation, he is guilty of serious misconduct against the obligor.

Art. 72

*Expiry and rest*

- 1) The maintenance claim shall expire upon the death of the beneficiary. It shall continue to exist after the death of the beneficiary only insofar as it is directed towards performance or compensation for non-performance for the past or relates to contributions due at the time of the death of the beneficiary.
- 2) Upon the death of the obligor, the maintenance obligation shall pass to the heirs as a liability of the estate, subject to subsection 3. However, the beneficiary must accept a reduction of the maintenance annuity to an amount that is fair and equitable, taking into account the circumstances of the heirs and the earning capacity of the estate.
- 3) A maintenance contribution reduced in accordance with Art. 68(4) shall cease upon the death of the obligor.
- 4) If the creditor enters into a de facto cohabitation, the obligation to pay maintenance shall be suspended for the duration of the cohabitation. If the creditor remarries, the maintenance obligation shall cease. Apart from these cases of suspension and extinction of the maintenance obligation, it shall take precedence over the maintenance obligations of other persons.

IV. Division of the increase in assets achieved during the marriage

Art. 73

*Subject of the division*

- 1) If a marriage is annulled, divorced or separated, the increase in assets obtained during the marriage shall be divided between the spouses.
- 2) The increase in assets achieved after the dissolution of the domestic community shall not be taken into account in the allocation of the increase.

Art. 74

*Allocation mass*

- 1) The assets to be divided shall include any increase in assets acquired by the spouses during the marriage until the dissolution of the domestic partnership that is not covered by the exceptions set forth in this Act.
- 2) Retrieved

Art. 75

*Excluded assets; own property*

- 1) Assets are not subject to apportionment if they are
  - a) brought into the marriage by a spouse, acquired by death, or given to him or her by a third party, or
  - b) are for the personal use of a spouse solely or directly for the exercise of his or her profession, or
  - c) claims for damages for pain and suffering or other highly personal claims.
- 2) The marital home as well as the household effects on the use of which a spouse is dependent for the provision of his or her necessities of life shall also be included in the division if one spouse has brought them into the marriage, has inherited them by reason of death or if a third party has given them to him or her as a gift.
- 3) The assets referred to in para. 1 shall constitute the personal property of the respective spouse.

Art. 76

*Income from own property*

Income from personal property is included in the increase in assets during the marriage if and to the extent that it was intended for this purpose by the beneficiary or used for acquisitions for the use of the spouses.

Art. 77

*Replacement purchases from own assets*

Replacement purchases from personal property are only to be included in the division if and insofar as they were determined for this purpose by the beneficiary or serve the permanent use of both spouses.

*Allocation principles*

Art. 78

*a) Equity*

1) The division shall be made on an equitable basis. Particular attention shall be paid to the weight and extent of the contribution of each spouse to the creation of the property. The contribution shall also include maintenance, participation in the acquisition of property, insofar as this has not already been compensated otherwise, the running of the joint household, the care and upbringing of joint children and any other marital assistance.

2) In the course of the division, debts which have been incurred for the creation of the assets subject to the division or for the coverage of the marital living expenses and which are still outstanding at the time of the division shall also be taken into account according to equitable discretion.

3) The discretionary decision to be made on the division shall in particular also take into account the welfare and interests of the children.

Art. 79

*b) Consideration for the areas of life*

The division is to be carried out in such a way that the spheres of life of the divorced or separated spouses touch each other as little as possible in the future. Companies, businesses and the like should remain under the control of the spouse who previously owned or managed them.

Art. 80

*Court orders*

1) When dividing the increase in marital property, the court may order the transfer of ownership of movable tangible property or an interest therein and the transfer of ownership or other rights to immovable property from one spouse to the other, as well as the establishment of rights in rem or legal relationships under the law of obligations in favor of one spouse in respect of immovable property of the other.

2) If the assets to be divided are owned by a third party, the court may order the transfer of rights and obligations relating to such assets only with the consent of the owner.

Art. 81

*Marital home*

1) If the marital home is used by virtue of ownership or a right in rem of one or both spouses, the court may order the transfer of ownership or the right in rem from one spouse to the other or the establishment of a legal relationship under the law of obligations in favor of one spouse.

2) If the matrimonial home, which is owned by one spouse and is exempt from division (Art. 75(1)), is left to the other spouse for continued use (Art. 75(2)), only a right of usufruct or a right of residence may be stipulated in addition to a legal relationship under the law of obligations in order to establish this continued use.

3) Otherwise, the court may order one spouse to take the place of the other in the legal relationship underlying the use of the matrimonial home or to continue the previously common legal relationship on his or her own, irrespective of any regulation by contract or statute.

Art. 82

*Marital home due to employment relationship*

1) If the matrimonial home is used on the basis of an employment relationship or if the legal relationship to it is established in connection with an employment relationship, the court may make an order regarding the use of such a home only with the consent of the employer or the legal entity responsible for the allocation of the service apartment if

a) the assignment of the apartment, because it is mainly used for the performance of official duties, could violate essential interests of the employer, or

b) the dwelling is used free of charge or for a fee that is merely insignificant and substantially below the customary local rate, or

c) the apartment is provided by the employer as part of the remuneration for the services rendered.

2) If the marital home is awarded to the spouse who is not an employee in accordance with para. 1, the court shall set an appropriate fee for use. The right of use of this spouse shall exist only as long as he or she does not



remarried, and may not pass or be transferred from him to any other person.

Art. 83

*Immovable things*

- 1) The transfer of ownership of immovable property or the creation of rights in rem therein may be ordered only if a fair settlement cannot be achieved in any other way.
- 2) The same applies to companies, businesses, corporations and the like, unless the participation rights could be easily broken down.

Art. 84

*Compensation for disadvantages*

- 1) If, without the express or tacit consent of the other spouse, one spouse has reduced marital property or marital savings in a manner that is inconsistent with the spouses' living conditions during cohabitation no earlier than two years prior to the filing of an action for annulment of marriage, a petition or an action for divorce or separation, or, if the cohabitation has been terminated prior to the filing of the action, no earlier than two years prior to such termination, the value of what is missing shall be included in the division.
- 2) If a movable object which has served the use of both spouses during the marriage is part of an enterprise and if this enterprise remains the property of only one spouse even after the division, the court shall take this into account appropriately when dividing the increase in marital property in favor of the other spouse.

Art. 85

*Debt*

With regard to the debts to be included in the division, the court shall determine which spouse is obliged to pay them internally.

Art. 86

*Payment of loan liabilities*

- 1) If the court decides (Art. 85) or the spouses agree (Art. 89a) which of the two is liable internally to pay credit obligations for which both are liable, the court shall, with effect for the creditor, exclude-

## Marriage

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that the spouse who is liable for payment in the internal relationship becomes the principal debtor, the other one the deficiency guarantor.

2) The deficiency guarantor under subsection 1 may, subject to section 1356 ABGB only for the amount that cannot be recovered from the principal debtor within a reasonable period of time, even though the creditor has obtained an execution title against the principal debtor.

a) Execution of property or salary and

b) Execution is carried out on a property of the principal debtor known to the creditor, which obviously provides cover for the claim, as well as

c) has liquidated collateral available to the creditor.

3) If the execution title would have to be obtained abroad or if the execution measures listed would have to be carried out abroad, the measures listed in para. 2 against the principal debtor are not required insofar as they are not possible or not reasonable for the creditor.

4) Moreover, the deficiency guarantor to whom the legal action against the principal debtor has been announced in due time (section 21 of the Code of Civil Procedure) may only raise objections against the creditor which are not based on his person insofar as they can also be raised by the principal debtor.

### Art. 87

#### *Implementation of the division*

In its decision, the court shall also make the orders necessary for its execution and determine the detailed circumstances, especially with regard to time, for its fulfillment. If the execution of the decision involves expenses, the court shall decide in its reasonable discretion which spouse shall bear them.

### Art. 88

#### *Compensation payment*

1) Insofar as an equitable division of the assets under consideration cannot be physically achieved in accordance with the above provisions, the court shall impose a compensation payment on one spouse to the other. The leeway granted to the court by virtue of equitable discretion shall also apply to this.

2) The court may grant a deferral of the compensation payment or its payment

in partial amounts, if possible against security, if this is economically necessary for the person obliged to compensate and reasonable for the person entitled to compensation.

Art. 89

*Transfer of the right to apportionment*

The entitlement arising from the division of marital property is inheritable, transferable inter vivos or upon death and attachable, provided that it is recognized by contract or settlement or is the subject of pending annulment, divorce or separation proceedings.

Art. 89a

*Contracts*

- 1) The division of the marital property gain cannot be waived in advance.
- 2) This does not apply to agreements of the spouses:
  - a) on the segregation of assets belonging to a company or representing shares in a company, except if the latter are merely investments in value; or
  - b) on the exclusion of income or replacement purchases from assets that are not to be taken into account in the calculation of the increase pursuant to Art. 75, para. 1 or Art. 89a, para. 2, subpara. a, even if these agreements go beyond the provisions of Art. 76.
- 3) In connection with an impending marriage annulment, divorce or separation proceeding, agreements may be made regarding the division of the entire increase in assets.
- 4) Such agreements must be in writing and the signatures must be notarized; however, in the case of an action for marriage annulment, an action for divorce or separation, and in the case of divorce or separation on joint request, they must be approved by the court.

V. Allocation of occupational pension entitlements Art.

89b

*Division of termination benefits*

- 1) If one spouse or both spouses are members of an occupational benefits institution and no insured event has occurred in the case of either spouse, then

## Marriage

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in the event of divorce, each spouse is entitled to the

Half of the termination benefits of the other spouse to be determined in accordance with the relevant laws concerning occupational benefits and acquired during the duration of the marriage until the dissolution of the domestic partnership.

2) If the spouses are entitled to claims from each other, only the difference is to be divided.

### Art. 89c

#### *Waiver and exclusion*

1) A spouse may waive his or her entitlement in whole or in part in a divorce agreement if a corresponding old-age and disability provision is guaranteed in another way.

2) The court may refuse division in whole or in part if it would be manifestly inequitable due to the property or economic circumstances after the divorce.

### Art. 89d

#### *Compensation*

1) If an insured event has already occurred for one or both spouses or if, for other reasons, entitlements to occupational benefits acquired during the marriage cannot be divided, appropriate compensation is due.

2) The court may require the debtor to secure compensation if circumstances so warrant.

### Art. 89e

#### *Procedure in case of agreement*

1) If the spouses have agreed on the division of the termination benefits and the manner in which the division is to be carried out, and if they submit confirmation from the participating occupational benefits institutions regarding the feasibility of the arrangement made and the amount of the credit balances that are decisive for the calculation of the termination benefits to be divided, the agreement shall also become binding for the occupational benefits institutions upon approval by the court.

2) The court shall notify the occupational pension institutions of the legally valid decision regarding the issues concerning them, including the necessary information for the transfer of the agreed amount.

Art. 89f

*Procedure in case of disagreement*

1) If no agreement is reached, the court shall decide on the ratio in which the termination benefits are to be divided and shall determine the date of dissolution of the domestic partnership. Upon request, the occupational benefits institutions must provide the court with information on the claims of the insured spouses.

2) As soon as the decision pursuant to para. 1 is final, the court shall refer it ex officio to the competent institutions for occupational pensions. On the basis of the divorce decree or divorce order, the determined division ratio and the time of the dissolution of the domestic community, these institutions shall determine the amount of the termination benefits acquired during the marriage with regard to the division to be made.

VI. Child law

Art. 89g

*Consequences concerning the child*

The provisions of the General Civil Code are reserved with regard to the regulation of child support, the care and upbringing of children, and intercourse between parents and children.

Art. 89h

*Child Welfare*

In deciding on the collateral consequences of divorce and separation, the judge shall, in principle, take into account the best interests of the child.

Art. 89i to 89sDeleted

Part 4

Transitional and final provisions Art. 90

*Amendment of legal terms*

Separation of marriage according to the previous provisions of the law shall be considered as divorce of marriage according to the provisions of this Act. The separation of marriage from table and bed according to the previous provisions of the law is considered as separation according to the provisions of this law.

Art. 91

*Divorce consequences*

If, prior to the entry into force of this Act, the consequences of divorce have been recorded by the court in the court records pursuant to § 105 of the General Civil Code or pursuant to

§ 108 and § 117 ABGB, they shall continue to apply even after a divorce of the marriage under the new law (Art. 73 et seq.).

Art. 92

*Marriages divorced from table and bed; divorce under new law*

1) Any spouse whose marriage has been divorced by a court judgment in accordance with Sections 107 and 109 of the General Civil Code may, as from the entry into force of this Act, sue for divorce in accordance with the new law, provided that the statutory requirements are otherwise met. If the dissolution of the marital union has not yet lasted five years, the right of opposition may be asserted within the framework of Art. 76.

2) Any spouse whose marriage has been divorced by court order pursuant to Sections 103 and 105 of the General Civil Code may, as of the effective date of this Act, sue for divorce under the new law if the dissolution of the marital union has lasted five years without its resumption within the meaning of Article 56.

Art. 93

*Validity of marriages contracted under the old law*

The validity of a marriage contracted before the entry into force of this Act shall be determined in accordance with the previous provisions of the Act.

Art. 94

*Pending proceedings*

This Act shall apply to divorce and separation proceedings pending when this Act enters into force.

Art. 95

*Terminology*

Wherever laws and regulations refer to divorce, they shall mean separation as defined in this Act, and wherever they refer to separation, they shall mean divorce as defined in this Act.

Art. 96

*Repeal of previous regulations*

Regulations concerning matters governed by this Act shall cease to have effect upon the entry into force of this Act.

Art. 97

*Repealed regulations*

The following provisions in particular shall be repealed upon the entry into force of this Act:

- a) Sections 44 to 136 (2nd main section), Sections 153, 160 and 1266 sentence 1 of the General Civil Code;
- b) Princely decree of October 14, 1804, concerning the introduction of the political marriage consensus;
  - Court Decree of September 23, 1817, JGS No. 1372, on Sections 86 and 87 of the General Civil Code;
  - Court Decree of August 10, 1821, JGS No. 1789, on § 136 ABGB;
  - Court Decree of June 17, 1825, JGS No. 2112, on § 96 ABGB;
  - Court Decree of December 22, 1826, JGS No. 2242, on § 78 ABGB;
  - Court Decree of July 17, 1835, JGS No. 61, on § 119 ABGB;
  - Court Decree of June 27, 1837, JGS No. 208, on § 94 ABGB;
  - Court Decree of May 4, 1841, JGS No. 531, on § 1264 ABGB.
- c) Art. 12 par. 2 PGR and § 3 par. 1, 2, 3, 4, 5 and 6 of the Final Division to the PGR.

Art. 98

*Amendment of previous regulations*

§ Section 142 of the Austrian Civil Code is amended to read as follows:

1) In the event of the separation of the marriage, the court shall regulate the care and upbringing of the children. It shall decide, taking into account the particular circumstances of the case, with due regard for the interests of the children, the occupation, personality and capacity of the spouses, whether all or which children are to be left to the father or the mother. Notwithstanding this, the other spouse shall retain the right to have personal relations with the child. The court may regulate such intercourse in more detail. The costs of bringing up the child shall be borne by the father.

2) In the event of a change in circumstances, the court may make such new orders as are necessary in the best interests of the children without regard to its previous orders.

Art. 99

*Prescriptive law*

The Government shall issue the regulations necessary for the implementation of this Act.

Art. 100

*Entry into force*

This Act is declared nonurgent and shall take effect on June 1, 1974.

Law

from 4 September 2014

On the amendment of the Marriage Act

II.

Transitional provisions

- 1) A spouse whose surname was changed at the time of marriage before the entry into force of this Act may at any time declare to the civil registrar that he or she wishes to resume the surname he or she had before the marriage.
- 2) If, on the occasion of his or her marriage before the entry into force of this Act, a spouse has declared to the civil registrar in accordance with Art. 44 para. 2 of the Marriage Act in the previous version that he or she wishes to retain his or her previous name to form a double name and has used the first name of a double name already used by him or her before the marriage to form this double name, he or she may declare to the civil registrar at any time after the entry into force of this Act that he or she wishes to place the second name of the current double name before or after the joint surname instead of the first name.







