Collection of Liechtenstein Laws
Civil Law

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CIVIL LAW

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Bergt J., Stern T.

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LR 214.0	Property Law (SR)
LR 944.0	Consumer Protection Act (KSchG)
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LR 290	Private International Law Act (IPRG)
LR 212.10	Marriage Act (EheG)
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Table of Contents

I. General Civil Code

of June 1, 1811

Introduction

On Civil Laws in General

Definition of Civil Law

§ 1

The body of laws that defines the private rights and obligations of the inhabitants of the state among themselves constitutes civil law in that state.

§ 2

Once a law has been duly promulgated, no one may claim ignorance of it as a defense.

§ 3

Commencement of the Effectiveness of Laws

The effectiveness of a law and the legal consequences arising therefrom take effect immediately upon promulgation, unless the law itself specifies a later date for its effectiveness.

Scope of the Law

§ 4

Repealed

§ 5

Laws do not have retroactive effect; they therefore have no influence on prior acts or on rights acquired previously.

Interpretation

§ 6

In its application, a law must not be interpreted in any way other than as is evident from the specific meaning of the words in their context and from the clear intent of the legislature.

§ 7

If a legal case cannot be decided either from the wording or from the natural meaning of a law, consideration must be given to similar cases that have been definitively decided in the laws, and to the grounds of other related laws

. If the legal case remains in doubt, it must be decided in accordance with the principles of natural law, taking into account the carefully gathered and thoroughly considered circumstances.

§ 8

Only the legislature has the authority to declare a law to be generally binding. Such a declaration must apply to all legal cases yet to be decided, provided that the legislature further specifies that its declaration shall not apply to the adjudication of legal cases involving acts performed and rights asserted prior to the declaration.

§ 9

Duration of the Law

Laws remain in force until they are amended or expressly repealed by the legislature.

Other Types of Regulations, Such as

§ 10

a) Customs

Customs may be taken into account only in cases where a law refers to them.

§ 11

b) Provincial Statutes

Not applicable

§ 12

c) Judicial Decisions

Orders issued in individual cases and judgments rendered by courts in specific legal disputes shall never have the force of law; they may not be extended to other cases or to other persons.

§ 13

d) Privileges

Privileges and exemptions granted to individuals or entire bodies shall, insofar as political ordinances do not contain any specific provisions regarding them, be treated in the same manner as other rights.

§ 14

Main Classification of Civil Law

The provisions contained in the Civil Code concern the law of persons, the law of property, and the provisions common to both.

Part 1

On Rights in Person

1. Main Section

On Rights Relating to Personal Characteristics and Relationships

§ 15

Personal Rights

Personal rights relate in part to personal characteristics and circumstances, and in part are based on family relationships.

I. From the nature of the person

§ 16

Inherent Rights

Every human being has inherent rights that are self-evident by reason, and is therefore to be regarded as a person. Slavery or serfdom, and the exercise of any power pertaining thereto, is not permitted in these countries.

§ 17

Legal Presumption of the Same

Whatever is consistent with inherent natural rights is presumed to exist until it is proven that such rights are subject to lawful restrictions.

§ 18

Acquired Rights

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

Enforcement of Rights

§ 19

Anyone who considers their rights to have been infringed is free to file a complaint with the authority designated by law. However, anyone who, disregarding said authority, resorts to self-help, or anyone who exceeds the limits of self-defense, is liable for such actions.

§ 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 adjudicated by the judicial authorities in accordance with the law.

II. Personal rights arising from old age or lack of mental capacity

§ 21

Repealed

§ 22

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

§ 23

In cases of doubt as to whether a child was born alive or dead, the former is presumed. Anyone claiming the contrary must prove it.

III. Regarding the circumstances of absence

§ 24

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

1. if a period of 80 years has elapsed since his birth and his whereabouts have remained unknown for ten years;
2. regardless of the period since his birth, if he has remained unknown for 30 full years;
3. if he was seriously wounded in war, or if he was on a ship that was wrecked, or was in some other imminent danger of death, and has been missing for three years since that time. In all these cases, a declaration of death may be requested and issued in accordance with the provisions set forth in § 277.

§ 25

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

IV. From the Status of a Legal Person

§ 26

The rights of the members of a lawful association among themselves are determined by the agreement or purpose of the association and by the specific regulations applicable to it. In their relations with others, lawful associations generally enjoy the same rights as individuals. Unlawful associations have no rights as such, neither against their members nor against others, and they are incapable of acquiring rights. Unlawful associations, however, are those that are specifically prohibited by political laws or that clearly conflict with security, public order, or public morals.

§ 27

The extent to which municipalities are subject to special provisions of public administration with regard to their rights is set forth in the political laws.

V. On the Status of a Citizen

§ 28

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

§§ 29–32 Repealed

Rights of Foreigners

§ 33

Foreigners generally have the same civil rights and obligations as natives, unless the status of citizenship is expressly required for the enjoyment of these rights. Furthermore, in order to enjoy the same rights as natives, foreigners must, in cases of doubt, prove that the state to which they belong treats the citizens of this country in the same manner as its own citizens with regard to the right in question.

§ 34 to 37

Repealed

§ 38

Ambassadors, public agents, and persons in their service shall enjoy the immunities established by international law and public treaties.

§ 39

VI. Rights of Persons Arising from Religious Status

Differences in religion have no effect on private rights, except to the extent that the law specifically provides otherwise in certain matters.

VII. Family Relations, Family, Kinship, and Affinity

§ 40

The term “family” refers to the parents and all their descendants. The relationship between these persons is called kinship, while the relationship that arises between a spouse and the relatives of the other spouse is called affinity.

§ 41

1) The degrees of kinship between two persons are determined by the number of generations through which, in the direct line, one of them descends from the other, and in the collateral line, both descend from their nearest common ancestor. In whatever line and to whatever degree a person is related to one spouse, in that same line and to that same degree is he or she related by marriage to the other spouse.

2) The provisions regarding affinity apply mutatis mutandis to registered partnerships.

§ 42

The term “parents” generally encompasses all relatives in the ascending line, regardless of degree, and the term “children” encompasses all relatives in the descending line.

§ 43

The special rights of family members are listed in the various legal relationships in which they apply.

2. Main Section

On Matrimonial Law

§§ 44 to 134

Repealed

3. Main Section

On the Rights Between Parents and Children

General Rights and Obligations

§ 135

When children are born, a new legal relationship arises; this establishes rights and obligations between the parents and the children.

§ 136

1) The mother and father are considered the parents of a child.

2) Repealed

3) Repealed

§ 137

1) Parents and children shall support one another and treat one another with respect. Unless otherwise provided, the rights and duties of the father and the mother are equal.

2) Parents shall promote the welfare of their minor children, provide them with care, security, and a proper upbringing. The use of any form of violence and the infliction of physical or emotional suffering are prohibited. To the extent practicable and possible, parents shall exercise custody by mutual agreement.

§ 137a

1) In exercising the rights and fulfilling the duties under this section, anything that impairs the minor's relationship with other persons who have rights and duties concerning the child under this section, or that hinders the performance of their duties, must be refrained from in order to safeguard the child's welfare.

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 an official order.

3) An adult who lives in the same household with a parent and the parent's minor child on a more than temporary basis and who has a familial relationship with the parent must do everything that is reasonably expected under the circumstances to protect the child's welfare.

§ 137b

1) In all matters concerning the minor child, particularly custody and personal contact, the child's best interests must be the primary consideration.

2) In assessing the child's welfare, particular consideration must be given to the extent to which, taking into account the living conditions of the child, his or her parents, and his or her other environment:

1. the child is provided with adequate food, medical and sanitary care, and housing;
2. the child's physical and emotional well-being is ensured, and the risk is avoided that the child will suffer violence or witness violence against significant caregivers, or that the child will be unlawfully removed or detained;
3. the child's careful upbringing is ensured, and their aptitudes, abilities, inclinations, and developmental potential are fostered;
4. the child feels valued and accepted by the parents, that the child's opinion is taken into account in accordance with the child's level of understanding and ability to form an opinion, and that any harm the child might suffer as a result of a measure being enforced is prevented;
5. reliable contact and secure bonds between the child and both parents and important caregivers are ensured, and conflicts of loyalty are avoided; and
6. the child's financial and other claims and interests are safeguarded.

Parentage of the Child

§ 138

Parentage established under this Code, any changes thereto, and the determination of non-parentage are effective against all persons.

§ 138a

1) Persons of sound mind and judgment may, if they do not have legal capacity in their own right, act with legal effect in matters concerning their own descent and the descent of their descendants, provided their legal representative consents. If the legal representative acts in such a case, he or she requires the consent of the person of sound mind and judgment. In cases of doubt, the existence of legal capacity is presumed in minors who have reached the age of 14.

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

§ 138b

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

§ 138c

A mother is the woman who gave birth to the child.

§ 138d

1) The father of the child is the man

1. who is married to the mother at the time of the child's birth or, as the mother's husband, died no 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, pursuant to paragraph 1, item 1, several men could be considered the father, the father is the one who was last married to the mother. *Acknowledgment of paternity*

§ 138e

1) Paternity is acknowledged by a personal declaration in a domestic public document or a publicly certified copy thereof. The acknowledgment takes effect from the time of the declaration, provided that the document or its publicly certified copy is received by the civil registrar.

2) The acknowledgment shall contain the exact names of the person acknowledging paternity, the mother, and the child, if the child has already been born.

3) Paragraphs 1 and 2 apply mutatis mutandis to consents to an admission.

§ 138f

1) The child or the mother, provided she is of sound mind and judgment and is alive, may file an objection to the acknowledgment with the court within two years of becoming aware of its legal validity.

2) The running of the period is suspended as long as the person entitled to object is not of full legal capacity or is prevented from objecting within the last year of the period by an unforeseen or unavoidable event.

§ 138g

1) If, at the time of the acknowledgment, the paternity of another man has already been established, the acknowledgment shall not become legally effective until it has been generally

binding effect that the other man is not the father of the child in question.

2) However, an acknowledgment of paternity made at a time when it was established that the child was fathered by another man becomes legally effective if the child consents to the acknowledgment in a public document or a document certified by a public official. If the child is not of legal age, the acknowledgment of paternity shall, moreover, only become legally effective if the mother, who is of sound mind and judgment, herself designates the acknowledger as the father in the aforementioned form. The acknowledgment takes effect from the time of its declaration, provided that the documents drawn up regarding this declaration, as well as the consent to the acknowledgment and, if necessary, the designation of the person acknowledging paternity as the father, or their publicly certified copies, are received by the civil registrar.

3) The man who was previously established as the father, or the mother, provided she is of sound mind and judgment, alive, and has not designated the person acknowledging paternity as the father pursuant to paragraph 2, may file an objection to the acknowledgment with the court. Section 138f applies mutatis mutandis.

4) For the consent of the minor child, the Office of Social Services acts as the child's legal representative.

Judicial Determination of Paternity

§ 138h

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

2) At the child's request, a man may be declared the father if he cohabited with the mother for a period of not more than 300 days and not less than 180 days prior to the birth, unless he proves that the child is not his. Such a determination is no longer possible two years after the man's death, unless the child proves that he or she is unable to provide the evidence under paragraph 1 for reasons attributable to 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 failing to establish paternity. *Establishment of paternity in cases of existing parentage*

§ 138k

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

Determination that the child is not the biological child of the mother's husband

§ 138l

1) If a child born during the mother's marriage or within 300 days of the death of the mother's husband is not the child's biological father, the court shall determine this upon application.

2) The application may be filed by the child against the man or by the man against the child.

§ 138m

1) An application for a determination that the child is not descended from the mother's husband may be filed within two years of becoming aware of the circumstances supporting such a determination. This period begins at the earliest upon the child's birth; in the case of a change in paternity, at the earliest upon the change taking effect. An application is not admissible as long as the child's descent from another man has been established.

2) The running of the period is suspended as long as the person entitled to file the application lacks legal capacity or is prevented from filing the application within the last year of the period by an unforeseen or unavoidable event.

3) More than 30 years after the child's birth or after a change in paternity, only the child may request a determination of non-paternity. *Declaration of the invalidity of the acknowledgment of paternity*

§ 138n

1) The court must declare an acknowledgment of paternity legally invalid:

1. ex officio, if:

a) the acknowledgment or—in the case of § 138g(2)—the child's consent or the mother's designation of the acknowledger as the father does not comply with the formal requirements; or

b) if the person acknowledging paternity—or, in the case of § 138g(2), the child or the mother—lacked the capacity to understand and form a judgment, or if the person acknowledging paternity or the child lacked legal representation, unless the lack of legal representation has been subsequently remedied or the person acknowledging paternity has ratified the acknowledgment after attaining legal capacity;

2. on the basis of an objection, unless it is proven that the child is descended from the person acknowledging paternity;

3. upon application by the person acknowledging paternity, if he proves

a) that his acknowledgment was induced by deceit, unjust and well-founded fear, or error regarding the fact that the child is his offspring; or

b) that the child is not his biological child and he only subsequently became aware of circumstances indicating that the child is not his biological child.

2) The application under paragraph 1, item 3 may be filed no later than two years after the discovery of the deception, the error, or the aforementioned circumstances, or after the cessation of the duress. The period begins at the earliest upon the birth of the child.

Legal Relationships Between Parents and Children

Name

§ 139

1) If the parents are married to each other, the child shall receive their common surname.

2) If the parents do not have a common surname, the child shall receive the surname that the parents designated as the surname of the children born of the marriage in a public or publicly certified document submitted to the civil registrar at the time of the marriage or, at the latest, at the time of the registration of the birth of the first child. For this purpose, the parents may designate only the surname of one parent.

§ 139a

1) If the parents are not married to each other, the child takes the mother's surname. If the mother has a double surname, she must declare to the registrar, in a public document or a document certified by a public official, which part of the double surname the child will take at the time of the child's birth.

2) The father may give his surname to a minor child. The naming requires the consent of the mother, the child's legal representative, and the child himself or herself if the child has reached the age of 14. The right of consent of any of these persons shall lapse if they are unable to express an informed opinion not merely temporarily, their whereabouts have been unknown for at least six months, or contact with them cannot be established or can be established only with disproportionate difficulty. In any case, the court must decide on the lapse of the right to consent upon the request of a party involved. If a required consent is refused without just cause, the court must substitute it upon the request of a party involved if this is in the best interests of the child; the child's consent cannot be substituted.
3) The naming and the consents thereto must be declared to the registrar in a public or publicly certified document. The naming takes effect as soon as the required declarations and, if applicable, the court decision have been received by the registrar.
§ 139b
1) If the parents of a minor child marry each other, if a minor child is adopted, or if there is a change in the child's parentage, §§ 139 and 139a shall apply mutatis mutandis.
2) A change in the family name of a minor child who has already
age of 14, requires the child's consent, which must be declared to the registrar.
Support
§ 140
1) Parents shall contribute proportionately, to the best of their ability, to meeting the child's needs in a manner appropriate to their financial circumstances, taking into account the child's aptitudes, abilities, inclinations, and potential for development.
2) The parent who runs the household in which the child is cared for thereby fulfills this obligation. In addition, that parent must 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 is appropriate given their own circumstances.

3) The right to child support is reduced to the extent that the child has his or her own income or is capable of supporting himself or herself, taking into account his or her living circumstances.

§ 141

If the parents are unable, despite their best efforts, to provide child support, the grandparents are obligated to do so in accordance with the child's needs, as determined by the parents' financial circumstances. In all other respects, § 140 applies mutatis mutandis; however, a grandchild's claim to maintenance is reduced to the extent that it is reasonable for the grandchild to draw upon his or her own assets. Furthermore, a grandparent is obligated to provide maintenance only to the extent that doing so does not jeopardize his or her own reasonable maintenance, taking into account his or her other duties of care.

§ 142

A parent's obligation to provide maintenance for the child passes to his or her heirs up to the value of the estate. The child's claim shall include everything the child receives from the decedent through a contractual or testamentary gift, as a statutory share of the inheritance, as a compulsory portion, or through a benefit under public or private law. If the value of the estate is insufficient to secure the child's maintenance until the child is expected to become self-supporting, the child's claim is reduced accordingly.

§ 143

1) The child is obligated to provide maintenance to his or her parents and grandparents, taking into account the child's living circumstances, to the extent that the person entitled to maintenance is unable to support himself or herself and provided that he or she has not grossly neglected his or her maintenance obligation toward the child.

2) The maintenance obligation of children ranks lower than that of a spouse, a former spouse, ascendants, and descendants of the person entitled to maintenance. If there are multiple children, they must provide maintenance in proportion to their means.

3) A parent's or grandparent's claim to support is reduced to the extent that it is reasonable for them to draw upon their own assets. Furthermore, a child is only required to provide support to the extent that doing so does not jeopardize their own reasonable support, taking into account their other obligations of care.

§ 143a

1) If the father and mother of a child are not married to each other, the father is obligated to reimburse the mother for the costs of childbirth as well as the costs of her maintenance for the first six weeks following childbirth and, if further expenses become necessary as a result of the childbirth, to reimburse these as well.

2) The claim is barred by the statute of limitations three years after the birth.

Parental Custody

§ 144

Parents are responsible for the care and upbringing of their minor child, for managing the child's property, and for representing the child. Where both parents share custody, they shall act in mutual agreement in exercising these rights and fulfilling these duties.

§ 144a

1) Custody is vested in both parents 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 child's birth.

2) If the parents are not married at the time of the child's birth, custody rests solely with the mother.

§ 145

1) If a parent who has been granted custody of the child jointly with the other parent has died, a guardian has been appointed for him or her pursuant to § 269(3)(2) and (3), his or her whereabouts have been unknown for at least six months, contact with him or her cannot be established or can only be established with disproportionately great difficulty, or custody has been wholly or partially revoked from him or her, custody shall then be vested solely in the other parent to that extent. If the parent who has sole custody is affected in this manner, the court shall decide, taking into account the best interests of the child, whether custody shall be vested wholly or partially in the other parent or whether and in which set of grandparents (grandparent) it shall be vested; the latter shall also apply if both parents are affected. The provisions regarding custody shall then apply to this pair of grandparents (this grandparent).

2) Upon application by the parent to whom the care and upbringing have been transferred in whole or in part, the court must confirm this transfer.

3) If custody is transferred to the other parent or if the court assigns custody, the child's assets and all documents and records pertaining to the child must be handed over, to the extent that the transfer or assignment of custody pertains thereto.
§ 145a
As long as a parent lacks full legal capacity, he or she does not have the right or the duty to administer the child's assets or to represent the child.
§ 145b
Repealed
§ 145c
1) If a third party has bequeathed assets to a minor child and excluded one parent from the administration of those assets, the administration of those assets and representation in this matter shall vest solely in the other parent. If the third party has excluded both parents from administration, or if the other parent is affected in the manner described in § 145(1), first sentence, these powers shall pass to the guardian, if one is to be appointed (§ 187), or otherwise to a curator to be appointed by the court (§ 275).
2) If the third party has appointed an administrator for the transferred assets, the court shall, if the administrator is suitable, appoint him or her as guardian for these assets, to the exclusion of others from administration.
3) If one parent has bequeathed assets to the child and excluded the other parent from administration or designated an administrator for the bequeathed assets, paragraphs 1 and 2 shall apply mutatis mutandis.
§ 146
1) The care of a minor child includes, in particular, safeguarding the child's physical well-being and health, as well as providing direct supervision, upbringing—especially the development of the child's physical, mental, emotional, and moral capacities—the fostering of the child's aptitudes, abilities, inclinations, and potential for development, and the child's education in school and vocational training.
2) The extent of care and upbringing depends on the parents' living circumstances.
3) In matters of care and upbringing, the parents must also take the child's wishes into account, provided that this does not conflict with the child's well-being or the parents' living circumstances. The child's wishes are all the more decisive the

able to understand the reason and significance of a measure and to form their will based on this understanding.

§ 146a

1) A minor child must obey the instructions of the parents. In issuing and enforcing their instructions, the parents must take into account the child's age, development, and personality.

2) Repealed

§ 146b

1) To the extent that the child's care and upbringing require it, the parent with custody also has the right to determine the child's place of residence. If the child is residing elsewhere, the authorities and public supervisory bodies must, at the request of a parent with custody, assist in determining the child's whereabouts and, if necessary, in bringing the child back.

2) The parent entrusted with the care and upbringing of the child 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 of the child is to provide the child's primary care in their household, that parent also has the right to determine the child's place of residence within the country.

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

§ 146c

1) A child who is capable of understanding and exercising sound judgment may only give consent to medical treatment on their own; in cases of doubt, such capacity is presumed in minors who have reached the age of 14. If the necessary capacity for understanding and sound judgment is lacking, the consent of the person entrusted with the child's care and upbringing is required.

2) If a child capable of understanding and exercising sound judgment consents to a treatment that is usually associated with a severe or lasting impairment of physical integrity or personality, the treatment may only be performed if the person entrusted with the child's care and upbringing also consents.

3) The consent of the child capable of understanding and exercising judgment, as well as the consent of the person entrusted with the child’s care and upbringing, are not required if the treatment is so urgently necessary that the delay associated with obtaining consent would endanger the child’s life or entail the risk of serious harm to the child’s health.

§ 146d

Neither a minor child nor the parents may consent to a medical procedure intended to render the minor child permanently infertile.

§ 147

If a minor who has reached the age of 14 has unsuccessfully presented his or her views on education to the parents, he or she may petition the court. After carefully weighing the reasons presented by the parents and the child, the court shall issue orders appropriate for the child’s welfare.

§ 148

Repealed

§ 149

1) The parents shall administer the property of a minor child with the care of prudent parents. They shall preserve its value and, if possible, increase it; money shall be invested in accordance with the provisions governing the investment of a ward’s funds.

2) In any case, the costs of administration—including the expenses necessary for the preservation of the assets and the ordinary management of the estate, as well as any payments due—must be taken into account; furthermore, the costs of maintenance must also be taken into account to the extent that the child is obligated to contribute from his or her assets pursuant to §§ 140 and 141 or the child’s needs are not otherwise met.

§ 150

1) The parents must render an annual account to the court regarding the assets of the minor child if

a) the assets include real property, a right in such property, a share in a legal entity, or a share in a company without legal personality; or

b) the child's assets, regardless of the items listed in subparagraph (a), are of such a value that the child's maintenance can be covered by the income therefrom (§ 140(3)).

2) The court may exempt the parents from rendering accounts in whole or in part, provided there are no grounds for doubting that they will manage the child's assets properly; this is generally presumed to be the case if they themselves have transferred the assets or the majority thereof to the child.

§ 151

1) A minor child may neither dispose of nor assume obligations in legal transactions without the express or implied consent of his or her legal representative.

2) After reaching the age of 14, however, the child may dispose of and enter into obligations regarding property that has been placed at his or her free disposal and regarding income from his or her own earnings, provided that this does not jeopardize the satisfaction of his or her basic needs.

3) If a minor enters into a legal transaction that is customarily entered into by minors of his or her age and concerns a minor matter of daily life, such transaction shall, even if the conditions of paragraph 2 are not met, become legally effective retroactively upon the fulfillment of the obligations incumbent upon the child.

§ 152

Unless otherwise provided, a minor who has reached the age of 14 may independently enter into a contract to provide services, except for services under an apprenticeship or other training contract. The child's legal representative may terminate the legal relationship established by the contract prematurely for good cause.

§ 153

Unless a minor child can already be held liable for fault at an earlier age (§ 1310), the child becomes liable for damages under the provisions of tort law upon reaching the age of 14, subject to Art. 20(2) PGR.

§ 154

1) Each parent is individually entitled and obligated to represent the child; such representation is legally effective even if the other parent does not consent to it.

2) Acts of representation and consents by a parent concerning a change of first name or surname, joining or leaving a church or religious community, placement in foster care, the acquisition of or renunciation of citizenship, the premature termination of an educational, training, or employment contract, and the acknowledgment of paternity, require the consent of the other parent to be legally valid. This does not apply to the receipt of declarations of intent and service of process.

3) For legal validity, acts of representation and consents by one parent regarding financial matters require the consent of the other parent and the approval of the court, unless the financial matter is part of the ordinary course of business. Under this condition, this includes, in particular, the sale and encumbrance of real property; the establishment, acquisition, conversion, sale, or dissolution of a business, as well as changes to the business's purpose; joining such a business or the conversion of a corporation or cooperative; the renunciation of a right of inheritance; the unconditional acceptance or renunciation of an inheritance; theacceptance of a gift subject to encumbrances or the rejection of an offer of a gift, the investment of funds with the exception of the types regulated in § 230, as well as the filing of a lawsuit and all procedural dispositions that concern the subject matter of the proceedings itself. The last sentence of paragraph 2 applies mutatis mutandis.

§ 154a

1) In civil court proceedings, only one parent is entitled to represent the child; unless the parents agree on the other parent or the court designates that parent or a third party as the representative pursuant to § 176, the parent who initiates the first procedural step shall be the representative.

2) The consent of the other parent and the court's approval required under § 154 apply to the entire proceedings.

Sections 155–171

Repealed

§ 172

Termination of Custody

Custody of the child terminates upon the child reaching the age of majority.

§ 173

With court approval, the parents may agree that, notwithstanding an existing arrangement, custody shall be granted to both parents jointly or to one of them alone; in such cases, the custody of one parent may be limited to specific matters. The court must approve such an agreement if the child, who is at least fourteen years old, does not object, the parents are willing and able to exercise their custody responsibilities by mutual agreement, and the child’s best interests do not preclude approval.

§ 174

1) To the extent that the mother has sole custody by law, the father may petition the court to grant him joint custody with the mother. The court must grant the petition unless the child’s best interests preclude it.

2) If one parent has sole custody pursuant to an agreement between the parents or a court order, and the other parent applies for joint custody with the other parent, the court shall grant the application only to the extent that, due to changed circumstances, joint custody by both parents is more in the best interests of the child than the sole custody of the parent who has had it until now.

3) If a parent applies for a court order granting sole custody, the court must issue such an order only to the extent that it is in the best interests of the child for important reasons, regardless of whether custody has previously been granted to both parents or only to the other parent by law, by a court order, or by agreement. An important reason for granting sole custody to one parent exists, in particular, if it is not possible or reasonable for one parent to exercise custody jointly with the other parent in the best interests of the child.

4) In any case, the court may order a change in custody only if the parents cannot reach an agreement and the child, who is at least fourteen years old, does not object. In making its decision, the court must consider whether a parent is willing and able to perform the duties associated with

tasks associated with custody, in particular the care and upbringing of the child, either alone or, if custody is to be shared, in agreement with the other parent.

§ 175

1) If the parents of a minor child who share custody are living apart on a more than temporary basis, both parents must, unless the child's best interests or compelling reasons on the part of one parent preclude it, contribute to the care and upbringing of the child—including, in particular, the child's personal care—in accordance with an agreement reached between them. If they cannot reach an agreement regarding the amount of time the child is to be cared for in the household of each parent, the court shall, upon the request of one parent, decide—in accordance with the child's best interests—in which parent's household the child is to be primarily cared for and the extent to which the other parent is responsible for the child's care.

2) To the extent that one parent cares for the child alone in his or her household, he or she is obligated to act in concert with the other parent in matters of daily life only to the extent that this is practicable.

§ 176

1) If the parents' conduct jeopardizes the welfare of their minor child, the court—regardless of which party files the petition—must issue the orders necessary to safeguard the child's welfare. In particular, the court may withdraw custody of the child in whole or in part, including any statutory rights to consent or approval. In individual cases, the court may also substitute for a consent or approval required by law if there are no justifiable grounds for refusal.

2) Such orders may be requested by a parent—for example, if the parents cannot reach an agreement on an important matter concerning the child—by other relatives in the direct ascending line, by the foster parents (or a foster parent), by the Social Services Office, and by the child who is at least fourteen years old, though the child may only request such orders in matters concerning his or her care and upbringing. Other persons may propose such orders.

3) The complete or partial withdrawal of custody and guardianship or of the administration of the child's property includes the withdrawal of legal representation

in the respective area; legal representation in these areas may be revoked on its own if the parents or the parent in question fulfill their other obligations.

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

§ 176a

If the child's welfare is at risk and, consequently, complete removal from his or her current environment is necessary against the will of the legal guardians, and if placement with relatives or other suitable close persons is not possible, the court shall transfer custody of the child to the Social Services Office in whole or in part. The Social Services Office may delegate the exercise of custody to third parties.

§ 176b

By means of an order pursuant to Sections 176 and 176a, the court may restrict custody only to the extent necessary to ensure the child's welfare.

Section 177

Custody in the Event of Annulment, Separation, or Divorce

If the marriage of the parents of a minor child is annulled, the parents are separated or divorced by a court order, or the parents live apart, the custody of both parents remains in effect. However, they may enter into an agreement before the court in which:

1. the time periods during which the child is to be cared for in the household of each parent are specified, and, if applicable, in which household the child is to be primarily cared for;
2. the custody of one parent is limited to specific matters; or
3. it is determined that custody shall be granted to one parent alone.

Personal Contact, Rights to Information, and Rights of Expression

§ 177a

1) If custody is not granted to one parent, the child has the right, and that parent has the duty and the right, to regular personal contact appropriate to the child's needs. Personal contact shall

The parents and the child, who must be at least fourteen years old, shall agree on the arrangements. If such an agreement cannot be reached, the court shall, upon the request of the child or a parent, determine the arrangements for contact in a manner consistent with the child's best interests and establish the relevant obligations. The arrangement must take into account the child's age-appropriate needs and ensure the establishment and maintenance of a close relationship appropriate to the parent-child bond.

2) To the extent that the child's best interests so require, the court shall restrict or prohibit personal contact, particularly where this appears necessary due to the use of violence against the child or an important caregiver of the child, or where the parent fails to fulfill their obligation under § 137a(1).

3) Paragraphs 1 and 2 apply mutatis mutandis to grandchildren and their grandparents. However, the grandparents' personal contact must be restricted or prohibited to the extent that it would otherwise disrupt the family life of the parents (or a parent) or their relationship with the child.

4) If personal contact between the minor child and a willing third party serves the child's best interests, the court shall, upon application by the child, a parent, or the third party—provided that the third party has or had a special personal or family relationship with the child—issue the orders necessary to regulate such personal contact. It must issue such orders upon application by the Social Services Office or ex officio if the child's welfare would otherwise be endangered.

§ 178

1) To the extent that a parent does not have custody, that parent has, in addition to the right to personal contact, the right to be informed in a timely manner by the person with custody of important matters concerning the child, such as a change of residence abroad, as well as of intended measures regarding the matters mentioned in § 154(2) and (3)from the person who has custody, and to comment on them within a reasonable period of time. This comment must be taken into account if the wish expressed therein better serves the child's best interests. In addition, this parent may also obtain information regarding the child's well-being and development from third parties involved in the child's care, such as teachers or doctors, in the same manner as the parent who has custody.

2) If the exercise of these rights would endanger the child's welfare, or if the parent exercises these rights abusively or in a manner that is unreasonable for the other parent or the child, the court shall, upon request, or ex officio in cases where the child's welfare is endangered, restrict or revoke these rights.

§ 178a Repealed

§ 178b

Consideration of the Child's Opinion

Before issuing orders concerning the care or upbringing of a child, the court shall, as far as possible, hear the child in person; a child under the age of ten may also be interviewed by the Social Services Office or in another appropriate manner. The child need not be heard if the hearing or a delay in the decision would jeopardize the child's welfare, or if, given the child's age or stage of development, an expression of opinion cannot be expected.

Relationships similar to the legal relationship between parents and children

1. Adoption

§ 179

1) Persons with legal capacity who have not solemnly vowed to remain unmarried may adopt a child. Adoption establishes a relationship of elective filiation.

2) As a general rule, spouses and registered partners may adopt only jointly. Exceptions are permitted if the biological child of the other spouse or registered partner is to be adopted, or if a spouse orcannot adopt because they do not meet the legal requirements regarding legal capacity or age, if their whereabouts have been unknown for at least one year, if the spouses or registered partners have ceased to live together as husband and wife or as partners for at least three years, or if similar and particularly compelling reasons justify adoption by only one of the spouses or registered partners.

3) Persons entrusted by official order with the management of the property of the child to be adopted may not adopt that child until they have been released from this duty. They must first have rendered an account and demonstrated that they have safeguarded the entrusted property.

§ 179a

Form; Effective Date

1) Adoption by election takes effect through a written contract between the adopter and the child to be adopted and through court approval upon application by one of the contracting parties. If approved, it takes effect at the time of the contractual agreement. If the adopter dies after this time, this does not prevent the approval.

2) A child adopted by choice who has not attained legal capacity enters into the contract through his or her legal representative, who does not require court approval to do so. If the legal representative refuses to give consent, the court must grant it upon application by the adoptive parent or the adopted child, provided there are no justifiable grounds for the refusal.

§ 180

Age

1) The adoptive parents must have reached the age of 25.

2) The adoptive father and adoptive mother must be at least 16 years older than the adopted child.

Approval

§ 180a

1) Adoption shall be approved if a relationship corresponding to that between biological parents and children exists or is to be established. It must serve the best interests of the adopted child who lacks legal capacity. If the adopted child has legal capacity, there must be a justifiable interest on the part of the adoptive parent or the adopted child.

2) The adoption shall be denied, unless the requirements of paragraph 1 are met, if there is an overriding interest of a biological child of the adoptive parent that precludes it, in particular if the biological child's support or upbringing would be jeopardized; otherwise, economic considerations shall not be taken into account, unless the adoptive parent acts with the sole or predominant intention of harming a biological child.

§ 181

1) Approval may be granted only if the following persons consent to the adoption:

1. the parents of the minor child to be adopted;
2. the spouse or registered partner of the adopter;
3. the spouse or registered partner of the adopted child;
4. the adopted child, provided they have reached the age of 14.

2) The right of consent of a person referred to in paragraph 1 does not apply if that person, as the legal representative of the adopted child, has concluded the adoption agreement; furthermore, if that person is unable to express an informed opinion not merely temporarily, or if their whereabouts have been unknown for at least six months.

3) The court must substitute the refused consent at the request of a party to the contract if there are no justifiable grounds for the refusal.

§ 181a

1) The following persons have the right to be heard:

1. an adopted child who is not of legal age, starting from the age of five, unless the child has already been living with the adoptive parent since that time;
2. the parents of the foster child who has reached the age of majority;
3. the foster parents or the director of the facility where the adopted child resides;
4. the Social Services Office.

2) The right to be heard of an eligible party referred to in paragraph 1 does not apply if that party has concluded the adoption contract as the legal representative of the child; furthermore, if that party cannot be heard or can only be heard with disproportionate difficulty.

Effects

§ 182

1) As of the date the adoption takes effect, the same rights as those established by legitimate descent arise between the adopter and his or her descendants, on the one hand, and the adopted child and the adopted child's descendants who are minors at the time the adoption takes effect, on the other hand.

2) If the adopted child is adopted by a spouse, a registered partner, or a cohabiting partner as adoptive parents, the family law relationships between the biological parents and their

relatives, on the one hand, and the adopted child and the child's descendants who are minors at the time the adoption takes effect, on the other hand, shall cease at that time.

3) If the adopted child is adopted by only one adoptive parent (father or mother), the family law relationships with the biological father (or mother) and with his (or her) relatives are terminated in accordance with paragraph 2. The court must declare the termination of these relationships with respect to the biological parent who has not been displaced if that parent consents. The termination takes effect from the time the declaration of consent is submitted, but no earlier than the time the adoption becomes effective.

4) If a spouse, registered partner, or cohabiting partner adopts the child of their spouse, registered partner, or cohabiting partner, the family law relationships shall terminate in accordance with paragraph 2 only with respect to the other parent and that parent's relatives.

§ 182a

1) The obligations of the biological parents and their relatives under family law to provide maintenance, a dowry, and a trousseau to the adopted child and the child's descendants who were minors at the time the adoption took effect shall remain in force.

2) The same applies to the adopted child's obligation to provide support to the biological parents, provided that the latter have not grossly neglected their obligation to provide support to the child, who was not yet 14 years of age, prior to the adoption.

3) However, the obligations that remain in force pursuant to paragraphs 1 and 2 are subordinate in priority to the corresponding obligations arising from the adoption.

§ 182b

1) The rights established under the law of succession between the biological parents and their relatives, on the one hand, and the adopted child and the child's descendants who are minors at the time the adoption takes effect, on the other hand, remain in force.

2) In the statutory succession to the estate of the adopted child in the second line, the adoptive parents and their descendants shall take precedence over the biological parents and their descendants.

3) If the adopted child has been adopted by only one person and both that person or their descendants and the biological parent who has not been disinherited or their descendants are alive, the estate shall pass—notwithstanding

in the event of the termination of family law relationships pursuant to § 182(3), second sentence—half to the lineage of the adoptive parent and half to the lineage of the biological parent who has not been displaced.

§ 183

Repealed

Section 183a

Repealed

Revocation and Annulment

§ 184

1) The court shall revoke the judicial authorization with retroactive effect:

1. ex officio or upon the request of a party to the contract, if the adoptee was not of full legal capacity at the time the adoption contract was concluded, unless the adoptee has indicated after attaining full legal capacity that he or she wishes to continue the elective filiation;
2. ex officio or at the request of a party to the contract, if a child of choice who was not of full legal capacity concluded the adoption contract themselves, unless the legal representative or, after attaining full legal capacity, the child of choice subsequently consented, or the court substitutes the refused subsequent consent of the legal representative within the meaning of § 179a(2);
3. ex officio or at the request of a party to the contract, if the adopted child has been adopted by more than one person, unless the adopters were married to each other, in a registered partnership, or living in a domestic partnership at the time of approval;
4. ex officio or at the request of a party to the contract, if the adoption contract was concluded exclusively or primarily with the intention of enabling the adopted child to bear the family name of the adoptive father or adoptive mother, or to create the outward appearance of an adoption in order to conceal unlawful sexual relations;
5. at the request of a party to the agreement, if the adoption agreement was not concluded in writing and no more than five years have elapsed since the approval decision became final.

2) If one of the contracting parties was unaware of the grounds for revocation (para. 1, items 1 through 3 and 5) at the time the adoption contract was concluded, the revocation shall, in relation to

the revocation shall be deemed a rescission (§ 184a) to the extent that the other party so claims.

3) A third party who, relying on the validity of the acceptance in lieu of adoption, acquired rights prior to the revocation may not be held liable on the grounds that the authorization has been revoked. A third party may not claim the effects of the revocation to the detriment of a party to the contract who was unaware of the grounds for revocation at the time the acceptance contract was concluded.

§ 184a

1) Adoption by choice shall be annulled by the court:

1. if the declaration of a party to the contract or of a person entitled to consent was induced by deceit or unjust and well-founded fear, and the affected party applies for annulment within one year of discovering the deception or the cessation of the coercive situation;

2. ex officio, if maintaining the adoption would seriously jeopardize the welfare of the adopted child who lacks legal capacity;

3. upon application by the adopted child, if the annulment follows the dissolution or invalidationof the marriage of the adoptive parents or the biological parent to the adoptive parent, or following the dissolution or annulment of the registered partnership of the adoptive parents or the biological parent to the adoptive parent, or following the dissolution of the cohabitation of the adoptive parents or the biological parent to the adoptive parent, or following the death of the adoptive father (adoptive mother) serves the best interests of the adopted child and does not conflict with a justified interest of the adoptive father (adoptive mother) affected by the annulment, even if he or she is already deceased;

4. if the adoptive father (adoptive mother) and the adoptive child with legal capacity apply for the annulment.

2) If the adoptive parent-child relationship exists with respect to an adoptive father (adoptive mother) and an adoptive mother (adoptive father), the annulment within the meaning of paragraph 1 may only be granted with respect to both; termination with respect to only one of them is permissible only in the event of the dissolution or annulment of their marriage, as well as the dissolution or annulment of their registered partnership or the dissolution of their cohabitation.

§ 185

1) Upon the finality of the annulment order, the legal relationships established by the adoption between the adoptive father (adoptive mother) and his (her) descendants, on the one hand, and the adopted child and his (her) descendants, on the other hand, shall cease to exist.

2) At that time, the family law relationships between the biological parents and their relatives, on the one hand, and the adopted child and his or her descendants, on the other hand, are revived to the extent that they had been terminated pursuant to § 182.

3) As of the date specified in paragraph 1, the legal effects of the adoption regarding the adopted child and his or her minor descendants shall be deemed not to have occurred.

§ 185a

A revocation or rescission for reasons other than those specified in Sections 184 and 184a is not permitted; nor is a contractual agreement or a legal dispute regarding the contestation of the contract of sale.

2. The Foster Care Relationship

§ 186

1) Foster parents exercise their rights based on an authorization from the immediate legal guardians (§ 137a) or from the Social Services Office (§ 176a).

2) Foster parents have the right to be heard in guardianship and foster care proceedings concerning the child and to file motions.

§ 186a

1) Upon application by the foster parents, the court shall transfer custody of the child to them in whole or in part if a relationship akin to that between biological parents and children exists, the foster care relationship is not intended to be of short duration, and the transfer is in the best interests of the child. The provisions governing custody shall then apply to the foster parents.

2) If the parents or grandparents have custody or have previously had custody and do not consent to the transfer, such a transfer may be ordered only if the child’s welfare would otherwise be jeopardized.

3) The transfer must be revoked if this is in the best interests of the child. At the same time, the court must determine, with due regard for the best interests of the child, to whom custody is to be transferred.

4) Before rendering its decision, the court must hear the parents, the legal representative, the foster parents, other guardians, the Social Services Office, and in any case the child who is already ten years old. Section 181a(2) applies mutatis mutandis.

4. Main Section

On Guardianship

§ 187

Establishment of Guardianship

A guardian must be appointed for a minor if at least one person is not entitled to limited legal representation within the scope of custody.

§ 188

Repealed

I. On Guardianship

§ 189

Grounds for Appointment

If it becomes necessary to appoint a guardian for a minor, the minor's relatives or other persons closely related to him or her are required, under penalty of law, to notify the court having jurisdiction over the minor.

§ 190

Who Appoints the Guardian Initially

As soon as the court becomes aware of the situation, it must, ex officio, appoint a suitable guardian.

Necessary Exemption from Guardianship in General

§ 191

The following persons are generally ineligible to serve as guardians:

1. minors and persons who, for reasons other than their minority, are unable to properly manage all or some of their own affairs;

2. Persons from whom, particularly due to dispositions or characteristics revealed by a criminal conviction, a proper upbringing of the ward or a diligent administration of the ward's assets cannot be expected.

§ 192

As a general rule, members of religious orders and persons residing abroad shall not be appointed as guardians.
§ 193
Repealed
§ 194
or from a specific guardianship
1) A person may not be appointed as guardian
1. anyone whom a parent has excluded from guardianship, unless the guardianship court finds this exclusion to be manifestly unjustified;
2. anyone who has been at odds with the minor's parents or with the minor himself, or
3. anyone who is involved in a legal dispute with the minor.
2) It is for the court to determine whether a person appears suitable to assume guardianship in light of the existence of unsettled claims between that person and the minor.
§ 195
Voluntary Grounds for Exclusion
The following persons may not be compelled against their will to assume guardianship: secular clergy and foreigners residing in the country, as well as anyone who is 60 years of age, who is responsible for the care of several children or grandchildren, or who already holds a guardianship.
Types of Appointment to Guardianship
1. Testamentary
§ 196
1) If suitable, the person whom a parent has appointed as legal representative in their will shall be appointed as guardian in the first instance. However, if a parent has appointed only an administrator for the minor's estate in their will, it is presumed that they intended to appoint that person as guardian as well; otherwise, the appointed administrator, if suitable, shall be appointed only as a special curator for the estate.
2) If the parents have made different provisions in their wills, the person who is better suited shall be appointed as guardian or special curator.
§ 197
Repealed

§ 198

2. Statutory

If no guardian or no suitable guardian has been appointed for a child in a will, the next suitable relative shall be appointed as guardian.

§ 199

3. Judicial

If a guardianship cannot be appointed in the manner described above, it is up to the court to decide whom it wishes to appoint as guardian, taking into account the person's ability, status, financial means, and place of residence.

Form of the Actual Appointment of the Guardian

§ 200

The guardianship court must immediately instruct every appointed guardian, without distinction, to assume the guardianship. The guardian, even if he is subject to a different jurisdiction in his personal capacity, is obligated to assume the guardianship and is subject to the guardianship authority with respect to all matters pertaining to this office.

Form of Refusal of Appointment

§ 201

If the person appointed by the court to serve as guardian believes that he is not qualified for this office or that the law exempts him from it, he must, within 14 days of the date on which the court order was notified to him, apply to the guardianship court or, if he is not subject to that court in his personal capacity, to his personal court, which shall accompany his reasons with its opinion and submit them to the guardianship court for a decision.

Responsibility of the Guardian in Relation to This Matter

§ 202

Anyone who conceals their unsuitability for guardianship shall be liable for all damage incurred by the minor and for any loss of benefit resulting therefrom.

§ 203

This liability also applies to anyone who refuses to assume guardianship without just cause, and such a person shall furthermore be compelled to do so by appropriate coercive measures.

Assumption of Guardianship

§ 204

One may assume the office of guardian only upon receiving an appointment from the competent court. Anyone who assumes guardianship without authorization is obligated to compensate the minor for any damage thereby incurred.

§ 205

Oath

Every guardian must swear an oath that he will raise the minor to be upright, represent him in and out of court, faithfully administer his property, and conduct himself in all matters in accordance with the law.

§ 206

Certificate

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

Exercise of Guardianship

Preliminary Judicial Supervision

§ 207

Every guardianship court is required to maintain a so-called guardianship or orphan registry. This registry must contain the first names, last names, and ages of the minors, as well as all significant events relating to the assumption, continuation, and termination of guardianship.

§ 208

This register shall also contain references to all relevant documents so that both the court itself and, subsequently, the orphans who have reached the age of majority may review, in certified form, all information that is useful for them to know.

§ 209

Exclusion of the Guardian from the Administration of Assets

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

§ 210

Position of Multiple Guardians

If several guardians have been appointed, they may administer the minor’s assets jointly or in part. However, if they administer them

If they act jointly or divide the administration among themselves without court approval, each individual is liable for the entire damage incurred by the minor. The court must always ensure that responsibility for the minor's person and the primary management of affairs rests with only one person.

Duties of the Social Services Office

§ 211

If a child is born in the country and neither parent is granted the right to manage the child's assets or to act as the child's legal representative, or if a minor child is found in the country and the child's parents are unknown, the Social Services Office shall serve as the child's guardian until the court issues a different decision.

§ 212

1) The Social Services Office shall, to the extent deemed appropriate under the circumstances, inform the legal representative of a child born in the country, within a reasonable period after the birth, of the parental rights and obligations, particularly regarding the child's right to support, and, where applicable, regarding the determination of paternity, and shall offer assistance to the representative in exercising the child's rights.

2) The Office of Social Services acts as the child's special guardian for the purpose of determining or enforcing the child's maintenance claims and, where applicable, for establishing paternity, provided that the legal representative has given written consent.

3) For other matters, the Social Services Office acts as the child's special guardian if it agrees to act as representative and the written consent of the legal representative is available.

4) The Office of Social Services' power of representation does not restrict the power of representation of the other legal representative; however,

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

5) The authority of the Office of Social Services to act as a representative ends if the legal representative revokes his or her consent in writing, the Office of Social Services withdraws its declaration pursuant to paragraph 3, or the court, upon the Office of Social Services' application, relieves it of its role as special guardian because, given the circumstances of the case, it is no longer able to contribute to the protection of the child's rights and the enforcement of the child's claims.

§ 213

If a guardian or special guardian is to be appointed for a minor and no suitable person can be found, the court shall appoint the Social Services Office.

§ 214

1) Sections 203, 205, 206, 216(2), 237 (second sentence), 266, and 267 do not apply to the Social Services Office. Prior to the investment of a minor's assets, the Social Services Office is only required to obtain the court's approval if such investment does not comply with the provisions of Section 230.

2) The Social Services Office does not require court approval for actions to establish paternity and order child support, or for the conclusion of agreements regarding the amount of statutory child support payments. Agreements regarding the payment of child support for a minor that are concluded before the Social Services Office or by it and certified by it have the effect of a court-approved settlement.

3) The Office of Social Services shall provide persons who care for and raise a child or act as the child's legal representative with information regarding its representative activities concerning that child, provided that this does not jeopardize the child's welfare.

§ 215

1) The Office of Social Services shall apply for the court orders necessary to safeguard the welfare of a minor in matters of custody. In cases of imminent danger, it may, as a special guardian, provisionally take the necessary measures for care and upbringing with effect until a court decision is rendered, provided that it applies for the necessary court orders without delay, and in any event within eight days. The Office of Social Services may apply for a provisional order pursuant to Art. 277a of the Enforcement Code and its enforcement pursuant to Art. 277c of the Enforcement Code if the other legal representative has not filed a necessary application without delay; § 212(4) applies mutatis mutandis.

2) The Office of Social Services must be consulted, if necessary, prior to orders concerning the care and upbringing of a minor, unless the welfare of the child would be endangered by the resulting delay in the order. At the court's request, the Office of Social Services must assist in the questioning of a child or conduct such questioning itself.

Special Duties and Rights of the Guardian

a) With regard to the upbringing of the person

§ 216

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

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

§ 217

Corresponding Obligations of the Ward

The minor owes his guardian respect and obedience; however, he is also entitled to complain to his closest relatives or to the judicial authority if the guardian abuses his power in any way or neglects the duties of necessary custody and care. The minor's relatives and anyone who becomes aware of such conduct are also entitled to file a complaint. The guardian must also turn to this authority if he is unable to curb the minor's misconduct through the authority granted to him for the minor's upbringing.

§ 218

Who is initially responsible for the upbringing

Repealed

Determination of the Amount and Sources of Educational Expenses

§ 219

Repealed

§ 220

Repealed

§ 221

In the event that the minors are completely destitute, the guardianship court shall endeavor to persuade the next of kin who are financially capable to provide for them, unless they are already legally obligated to do so. Furthermore, the guardian is entitled to public social assistance until the minor is able to support himself through his own work and earnings.

Special Duties of Guardianship

b) With regard to asset management

§ 222

Investigation and Preservation of Assets

The guardianship court entrusted with the administration of an orphan's assets is required to first investigate those assets and seek to secure them by freezing them, taking inventory, and appraising them.

§ 223

Through Freezing and Inventory

Movable property is taken into custody by means of a court-ordered freeze if necessary to secure it. An inventory of the minor's assets must always be drawn up.

§ 224

Then, through the valuation of the assets, either directly by the guardianship court

The inventory of assets and the valuation of movable property must be carried out without delay, if necessary even before a guardian is appointed. The inventory shall be kept with the estate records, and a certified copy thereof shall be provided to the guardian. The valuation of immovable property must be carried out as soon as practicable; however, it may be omitted entirely if the value can be determined from other reliable sources.

or through the real estate authority

§ 225

If a minor's immovable property is located in another state, the guardianship authority must request the competent court of that state to conduct an inventory and appraisal of the property and to provide a report thereof; however, that court shall be responsible for appointing a legal representative for such property, unless otherwise provided for in international agreements.

§ 226

Repealed

§ 227

To which category movable property belongs

Movable property located on immovable property and intended to remain there permanently shall be regarded as part of that property; all other movable property, including mortgage deeds and even capital secured by immovable property, falls under the jurisdiction of the guardianship authority.

§ 228

General Provision Regarding Asset Management

The provisions governing the administration of the property of a minor legitimate child by his or her parents shall apply to the administration of property by the guardian; in addition, the following provisions shall apply.

§ 229

Special provisions regarding direct administration of assets, particularly with respect to valuables

Jewelry, other valuables, and mortgage deeds, like all important documents, are placed in court custody; the guardian receives an inventory of the former and the copies of the latter necessary for his use.

§ 230

Money (Investment of a Ward's Funds)

1) To the extent that a minor's money is not to be used for specific purposes in accordance with the law, it shall be invested immediately in a secure and, as far as possible, profitable manner through savings deposits, the acquisition of securities (claims), the granting of loans, the acquisition of real estate, or in any other manner in accordance with the principles of ward security. This is particularly the case only if, after taking into account any existing encumbrances, a house is not encumbered for more than half of its true value, and a parcel of land is not encumbered for more than two-thirds of its true value.

2) If it is economically appropriate, the ward's funds shall be invested in several of these ways.

§ 231

of the remaining movable assets

Any remaining movable property that is not intended for the minor's use, nor to be kept as a family heirloom, nor to be preserved in accordance with the parents' instructions, nor can be put to any other beneficial use, must generally be sold at public auction. Household goods may be sold by private contract to the parents and co-heirs at the court-assessed value. Items that have not been sold at public auction may also be sold by the guardian below the appraised value with the approval of the guardianship court.

§ 232

With regard to real property

Real property may be sold only in an emergency or for the manifest benefit of the minor with the approval of the guardianship court, and as a rule only by public auction; however, for important reasons, a private sale may also be authorized by the court.

§ 233

In the event of imminent significant changes

In general, a guardian may not, without court approval, undertake any transactions that do not fall within the scope of ordinary business operations and that are of significant importance. Thus, he may not, on his own authority, renounce or unconditionally accept an inheritance; dispose of property entrusted to his care; enter into a lease agreement; terminate any capital investment secured by lawful collateral; assign any claim; settle any legal dispute; or start, continue, or discontinue any factory, business, or trade without court approval.

§ 234

Upon Collection of Capital

A guardian may not, on his own, receive any capital belonging to the minor when it is repaid. The debtor to whom such capital is repaid must, for his own security, require the guardian to present the court's authorization for the collection of the capital and must not be satisfied with the guardian's receipt alone; he is also free to make the payment directly to the court itself.

§ 235

Regarding the Further Use of Such Funds

Whenever an outstanding sum is due to be received, the guardian must take the necessary steps for its beneficial use and obtain the court's approval for its actual use.

§ 236

Regarding the Securing of Unsecured Claims

With regard to claims for which no documents are available as proof, the guardian must obtain such documents and, as far as possible, seek to secure those that are not secured or collect them upon maturity. However, the minor's capital shall not be claimed from the parents if, although not legally secured, the minor is not likely to be exposed to any risk of loss, provided that repayment would be difficult for them without the sale of their real property or the transfer of their business.

§ 237

Security Deposit

Upon assuming guardianship, the guardian is not required to post a bond. He remains exempt from the bond requirement thereafter as long as he strictly observes the provisions of the law regarding the security of assets and submits proper accounts in a timely manner.

§ 238

Obligation to Render Accounts

The provisions governing the rendering of accounts by the parents of a minor child shall apply to the rendering of accounts by the guardian.

§ 239

Timing of the rendering of accounts

The accounts must be submitted to the guardianship court annually or, at the latest, within two months after the end of the year, together with all necessary supporting documents. These accounts must specify the income and expenditures, as well as any surplus or reduction in capital. If the minor's assets include a transaction, the court must be satisfied with the submitted certified financial statements or the so-called balance sheet and must keep such documents confidential. Legal coercive measures appropriate to the circumstances must be applied against a guardian who fails to render accounts within the specified time.

§ 240

Place where the accounts are to be submitted

Repealed

Form of the financial statement

§ 241

The guardianship court is required to have the guardian’s accounts examined and corrected by accounting experts, provided that specific regulations exist or the circumstances so require. The guardian must be notified of the completion of this examination.

§ 242

Repealed

§ 243

Special Provisions for the Guardian in the Case of Indirect Property Management

Repealed

§ 244

In the case of contracts entered into by the ward

Repealed

§ 245

Representation

1) The guardian of a minor under guardianship is the guardian’s representative, unless the minor is represented by a special guardian. Unless otherwise provided, the guardian requires court approval to act on behalf of the minor in matters covered by § 154(2) and (3). § 154a(2) applies mutatis mutandis.

2) The guardian may consent to medical treatment that is usually associated with a serious or lasting impairment of physical integrity or personality only if a physician independent of the treating physician confirms in a medical certificate that the child lacks the necessary capacity for understanding and judgment and that the treatment is necessary to safeguard the child’s welfare. If no such certificate is available or if the child indicates that he or she refuses the treatment, the consent must be approved by the court. If the guardian does not grant consent to medical treatment and the child’s welfare is thereby endangered, the court may substitute the consent or transfer custody to another guardian.

In which cases a minor may enter into a contract without the guardian’s consent

§ 246

Repealed

§ 247

Repealed

§ 248

Repealed

Termination of Guardianship

§ 249

a) Due to death

Guardianship terminates completely upon the death of the minor. However, if the guardian dies or is dismissed, another guardian must be appointed in accordance with the provisions of the law (§§ 198 and 199).

§ 250

b) Upon the revival of parental authority

Guardianship also terminates if a person who has custody is entitled to manage the minor’s property and represent the minor, even if only in certain areas; in the second case under § 211, guardianship further terminates if such a parent appears.

§ 251

c) upon reaching the age of majority

Guardianship terminates upon the minor reaching the age of majority.

§ 252

d) through the legal recognition of majority by means of a waiver

Repealed

e) by the official or requested dismissal of the guardian

§ 253

The court orders the dismissal of the guardian ex officio in some cases, and upon request in others.

Cases of Dismissal Ex Officio

§ 254

A guardian must be dismissed ex officio if he administers the guardianship in breach of his duties, if he is found to be incompetent, or if concerns arise regarding him that would have excluded him from assuming guardianship under the law.

§ 255

If guardianship of a child who is not the guardian’s own child jeopardizes the guardian’s marriage or family life, the court must remove the guardian from office upon the request of the other spouse, unless this conflicts with the best interests of the ward.

§ 256

If the testator or the court has appointed a guardian for a limited period or has excluded him or her in the event of a specific occurrence, he or she must be dismissed as soon as that period has expired or the specific event has occurred.

Cases of the guardian

§ 257

If, during the guardianship, circumstances arise that would have exempted or disqualified the guardian from assuming the guardianship under the law, the guardian is entitled, in the former case, but obligated, in the latter, to apply for dismissal.

§ 258

A guardian who has been appointed as the minor's presumed next of kin is free to propose a closer and more suitable relative discovered later to take his place; however, the closer relative has no right to demand that a less closely related relative relinquish a guardianship that has already been assumed; unless he or she had previously been prevented from coming forward.

d) or dismissal sought by others through legal proceedings

§ 259

If the court has appointed a non-relative as guardian, any relative is free to apply to assume guardianship. The court shall make its decision in this matter with due regard to the best interests of the child.

§ 260

If a minor spouse is under guardianship, it is up to the court to determine whether the guardianship should be transferred to the adult spouse.

Conditions for the Dismissal of the Guardian

§ 261

a) Usual timing

As a general rule, a guardian may resign only at the end of the guardianship year, after his or her successor has properly assumed the administration of the estate. However, if the court deems it necessary for the safety of the person or the assets, it may relieve him of his duties immediately.

§ 262

b) Final account

A guardian is required to submit his final account to the court no later than two months after the guardianship has ended, and shall receive from the court, upon verification of its accuracy, a certificate attesting to the honest and proper administration of his office. However, this certificate does not exempt him from liability for any fraudulent act discovered at a later date.

§ 263

c) Transfer of Assets

At the end of a guardianship, the guardian is obligated to transfer the assets to the person who has attained the age of majority or to the newly appointed guardian against a receipt and to report this to the court. The inventory of assets and the annually approved accounts shall serve as a guide for such transfers.

§ 264

Liability of the Guardian for the Fault of Others

In general, a guardian is liable only for his own fault and not for the fault of his subordinates. However, if he has knowingly employed incompetent persons, retained such persons, or failed to insist on compensation for the damage caused by them, he is also liable for this negligence.

§ 265

Subsidiary Liability of the Guardianship Court

Repealed

§ 266

Compensation of the Guardian

1) The guardian is entitled to annual compensation, taking into account the nature and scope of his or her activities and the time and effort usually involved, provided that this does not jeopardize the child’s basic needs.

2) Unless the court deems a lower compensation appropriate for special reasons, it shall amount to five percent of all income after deduction of

statutory taxes and duties payable thereon. Payments made pursuant to a special statutory provision to cover specific expenses shall not be considered income. If the value of the child's assets exceeds 20,000 francs, the court may also grant up to two percent of the excess amount per year as compensation, provided the guardian has rendered outstanding service in preserving the assets or using them to meet the child's needs. If the guardianship covers only a specific area of care or if the guardian's service does not last a full year, the entitlement to compensation is reduced accordingly.

3) In the case of particularly extensive and successful efforts by the guardian, the court may also set the compensation at a higher amount than provided for in the first sentence of paragraph 2, but not higher than ten percent of the income.

§ 267

Remuneration and reimbursement of expenses for the guardian

1) If the guardian utilizes his or her special professional knowledge and skills in matters that would otherwise have to be entrusted to a third party, he or she is entitled to reasonable compensation for such services. 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) Cash outlays, actual expenses, and the costs of liability insurance pursuant to § 264 necessary for the proper exercise of guardianship shall in any case be reimbursed to the guardian by the minor child, insofar as they are not directly borne by third parties under statutory provisions.

3) Claims under paragraphs 1 and 2 do not exist to the extent that they would jeopardize the satisfaction of the child's basic needs.

§ 268

Appeals by the Guardian in Cases of Complaints

A guardian who considers himself aggrieved by an order of the guardianship court shall first file a complaint with that same court, and only if this proves unsuccessful, shall he file an appeal with the higher court.

Part 5

On Trusteeship, Guardianship, and Power of Attorney

§ 269

Requirements for the Appointment of an Administrator

1) If an adult who suffers from a mental illness or is mentally disabled (disabled person) is unable to manage all or some of their affairs without risk of harm to themselves, a guardian ad litem shall be appointed for them upon their request or ex officio.

2) The appointment of a guardian is not permitted if the affairs of the person with a disability are being managed to the necessary extent by another legal representative or through other forms of assistance, particularly within the family, in nursing facilities, in disability support facilities, or through social or psychosocial services. A guardian may also not be appointed if a power of attorney, particularly a durable power of attorney, or a binding advance directive provides for the handling of the disabled person's affairs to the necessary extent. A guardian may not be appointed solely to protect a third party from the pursuit of a claim, even if it is merely alleged.

3) Depending on the extent of the disability as well as the nature and scope of the matters to be managed, the guardian shall be entrusted

1. with the handling of individual matters, such as the enforcement or defense of a claim or the conclusion and execution of a legal transaction,

2. handling a specific range of matters, such as the management of part or all of the person's assets, or,

3. to the extent that this is unavoidable, with the management of all the affairs of the disabled person.

4) Provided that this does not jeopardize the welfare of the disabled person, the court may also determine that the disposition or obligation regarding certain property, income, or a specific portion thereof is excluded from the scope of the guardian's authority.

§ 270

Appointment

1) In selecting the guardian or curator, consideration must be given to the nature of the matters to be handled on behalf of the person to be represented (the ward).
2) The following persons may not be appointed as guardians or curators:
1. persons who do not have legal capacity;
2. persons from whom, particularly due to a criminal conviction, the exercise of guardianship or curatorship in a manner conducive to the welfare of the ward cannot be expected.
§ 271
1) The person whom the court intends to appoint as guardian or curator must disclose to the court all circumstances that render him or her unsuitable for the role. If he or she culpably fails to make this disclosure, he or she shall be liable for all resulting disadvantages to the ward.
2) An attorney may refuse to assume guardianship or curatorship only if, taking into account his or her personal, family, professional, and other circumstances, such an appointment cannot reasonably be expected of him or her. This is presumed to be the case if the attorney already holds more than five guardianships or curatorships.
§ 272
Rights and Duties
1) Guardianship or curatorship encompasses all activities necessary to manage the affairs entrusted to the guardian or curator. In doing so, the guardian or curator must act in the best interests of the ward to the greatest extent possible.
2) In important matters concerning the person of the ward, the guardian or curator must obtain the court's approval. Measures taken or acts of representation performed without approval are impermissible and invalid, unless there is imminent danger.
3) In financial matters, § 245 applies mutatis mutandis.
§ 273
Compensation, Remuneration, and Reimbursement of Expenses
1) The guardian or curator is entitled to annual compensation, taking into account the nature and scope of their activities, particularly in the area of personal care, and the time and effort typically involved. This amounts to five percent of all income after deduction of the expenses therefrom.

taxes and duties payable, provided that payments made pursuant to a specific statutory provision to cover certain expenses are not to be considered income; in cases where the guardian or curator has made particularly extensive and successful efforts, the court may also set the compensation at up to ten percent of such income. If the value of the ward's assets exceeds 20,000 Swiss francs, an additional two percent of the excess amount shall be granted annually as compensation, provided that the guardian or curator has rendered outstanding service in the administration of the assets or their use to meet the ward's needs. 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 that would otherwise have to be entrusted to a third party for a fee, he or she is entitled to reasonable compensation for this. However, this claim does not apply to the costs of legal representation if the ward 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 advances necessary for the proper exercise of guardianship or curatorship, the actual expenses, and the costs of liability insurance taken out to cover liability under § 274 shall in any case be reimbursed to the guardian or curator by the person under guardianship, insofar as they are not directly borne by third parties in accordance with statutory provisions.

4) Claims under the preceding paragraphs do not exist to the extent that they would jeopardize the satisfaction of the ward's basic needs.

§ 274

Liability

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

§ 275

Modification and Termination

1) The court shall, upon application or ex officio, transfer the guardianship or curatorship to another person if the guardian or curator dies, lacks the necessary qualifications, cannot reasonably be expected to perform the duties of the office, any of the circumstances of § 270(2) arise or become known, or the welfare of the ward requires it for other reasons.

2) The guardian or curator shall be removed upon request or ex officio if the conditions for his or her appointment under §§ 269, 277, and 278 no longer apply; if these conditions no longer apply only to a portion of the matters entrusted to the guardian or curator, his or her scope of authority shall be restricted. His or her scope of authority shall be expanded if necessary. If the person under guardianship dies, the guardianship or curatorship shall terminate. Section 263 shall apply mutatis mutandis.

3) The court shall review, at appropriate intervals not exceeding five years, whether the welfare of the person under guardianship requires the termination or modification of the guardianship or curatorship.

§ 275a Repealed

§ 276

Repealed

Requirements for the Appointment of a Curator

§ 277

a) Curatorship in cases of incapacity and conflict of interest

1) At the request of a party or on its own initiative, the court shall appoint a guardian in the cases specifically provided for by law, as well as in the following additional cases:

1. when an adult is unable, due to illness, absence, or similar circumstances, to act on their own behalf or to designate a representative in an urgent matter;

2. if the legal representative of a minor or a person otherwise lacking full legal capacity has interests in a matter that conflict with those of the person represented;

3. if the legal representative is prevented from acting as such.

2) If the interests of two or more minors or persons otherwise lacking full legal capacity who have the same legal representative

, the legal representative may not represent any of the persons in question. The court must appoint a separate guardian for each of them.

§ 278

b) Administrative Guardianship

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

1. in the event of the prolonged absence of a person whose whereabouts are unknown;
2. Repealed
3. in cases of uncertainty regarding succession and to protect the interests of the child before birth;
4. Repealed
5. in the case of public fundraising for charitable and other purposes serving the public good, as long as no arrangements have been made for the administration or use of the funds.

Special Provisions for Trusteeship

§ 279

a) Selection of the guardian

1) In selecting the guardian, particular attention must be paid to the needs of the disabled person and to ensuring that the guardian is not in a relationship of dependency or any other close relationship with a hospital, a residential facility, or any other institution where the disabled person resides or is cared for. The wishes of the disabled person, in particular those expressed prior to the loss of legal capacity and the ability to understand and exercise judgment (guardianship directive), as well as suggestions from close relatives, shall be taken into account, provided they are in the best interests of the disabled person.

2) A suitable person close to the disabled individual shall be appointed as guardian. When a person with a disability reaches the age of majority, a parent who has previously been entrusted with custody shall be appointed as guardian, provided this is not contrary to the best interests of the person with a disability. If both parents have previously been entrusted with custody, both parents may also be appointed as guardians, provided this serves the best interests of the person with a disability.

3) If no suitable close relative is available, a suitable association shall be appointed as guardian with its consent. If an association is also not an option, a lawyer or

appoint a trainee attorney or another suitable person with their consent.
4) A lawyer or a trainee lawyer shall be appointed as guardian primarily when the handling of the affairs requires predominantly legal knowledge; a suitable association shall be appointed primarily when special requirements are otherwise associated with the guardianship.
5) A person may only assume as many guardianships as they can properly manage, taking into account the duties of a guardian, in particular those requiring personal contact. It is presumed that a person—with the exception of a suitable association—cannot assume more than five guardianships, and a lawyer cannot assume more than 15; guardianships for the handling of individual matters are not taken into account.
§ 280
b) Legal Capacity of the Disabled Person
1) The legal capacity of the disabled person is not restricted by a guardianship.
2) To the extent necessary to avert a serious and substantial danger to the person with a disability, the court shall order, within the scope of the guardian's authority, that the validity of certain legal acts- by the disabled person or certain procedural acts in administrative proceedings require the guardian's approval and, in the cases provided for in § 272(3), also that of the court. The requirement for approval shall remain in effect notwithstanding the transfer of guardianship within the meaning of § 275(1); it shall be lifted by the court when it is no longer necessary.
3) If an adult who lacks the capacity to understand and exercise sound judgment enters into a legal transaction of daily life that does not exceed their means, such transaction becomes legally effective retroactively upon the fulfillment of the obligations incumbent upon them—provided that no requirement for prior approval has been ordered in this area pursuant to paragraph 2.
§ 281
c) Consideration of the Will and Needs of the Disabled Person
1) The guardian shall endeavor to ensure that the disabled person, within the scope of their abilities and possibilities, can shape their living conditions according to their wishes and ideas.

2) The person with a disability has the right to be informed by the guardian in a timely manner of any intended significant measures affecting their person or assets and to express their views on these, as well as on other measures, within a reasonable period of time; these views must be taken into account if the wishes expressed therein are not contrary to the best interests of the person with a disability.
3) If the guardian is entrusted with the administration of the disabled person's assets or income, he or she must use these primarily to cover the disabled person's needs corresponding to his or her personal living conditions.
4) If the welfare of a person with a disability is at risk, the court must, at any time and regardless of who files the petition, issue the orders necessary to safeguard that person's 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 receives the necessary medical and social care. Unless the guardian is appointed solely to handle specific matters, such contact shall take place at least once a month.

§ 283

1) A person with a disability may consent to medical treatment only if they are capable of understanding and exercising judgment. Otherwise, the consent of the guardian whose scope of authority includes the handling of such matters is required.
2) In the case of medical treatment that is usually associated with a severe orsignificant impairment of physical integrity or personality, the guardian may consent only if a physician independent of the treating physician confirms in a medical certificate that the person with a disability lacks the necessary capacity for discernment and judgment and that the treatment is necessary to safeguard their well-being. If no such certificate is available or if the person with a disability indicates that they refuse the treatment, the consent requires court approval. If the guardian does not grant consent to medical treatment and this endangers the well-being of the person with a disability, the court may

override the guardian’s consent or transfer guardianship to another person.

3) The consent of the person with a disability who has the capacity to understand and make decisions, the approval of the guardian, and a court order are not required if the treatment is so urgently necessary that the delay involved in obtaining consent, approval, or a court order would endanger the life of the person with a disability or pose a risk of serious harm to their health.

§ 283a

1) If the physician considers a person with a disability to be incapable of understanding and exercising judgment, the physician must make verifiable efforts to involve family members, other close associates, trusted individuals, and professionals particularly skilled in dealing with people in such difficult life situations, who can assist the person in regaining their capacity for understanding and judgment. However, if the person indicates that they do not consent to the intended involvement of others or the disclosure of medical information, the physician must refrain from doing so.

2) If the disabled person’s capacity for insight and judgment can be restored through support as described in paragraph 1, their consent to medical treatment is sufficient.

3) The provision of information to the person affected by the treatment or support within the meaning of paragraph 1 shall be withheld if the resulting delay would entail a risk to life, a danger of serious harm to health, or severe pain.

§ 284

The guardian may not consent to a medical procedure intended to render the disabled person permanently incapable of procreation, unless there is otherwise a serious risk to the disabled person’s life or a risk of serious harm to their health due to a chronic physical condition. Similarly, the guardian may not consent to research that involves an impairment of the disabled person’s physical integrity or personality, unless the research is of direct benefit to their health or well-being. Consent requires court approval in all cases.

§ 284a

1) A person with a disability decides on their place of residence themselves, provided they are capable of understanding and exercising judgment.

2) Otherwise, the guardian must perform this task to the extent necessary to safeguard the disabled person's well-being and provided that the guardian's scope of authority includes the handling of this matter. If the disabled person's place of residence is to be permanently changed, this requires court approval. *Power of Attorney for Health Care*

§ 284b

1) A durable power of attorney is a power of attorney that is intended to take effect when the principal loses the legal capacity, mental capacity, or ability to express oneself necessary to manage the matters entrusted to the agent. The matters for which the power of attorney is granted must be specifically listed. The agent must not be in a relationship of dependency or any other close relationship with a hospital, nursing home, or other facility where the principal resides or from which the principal receives care.

2) The power of attorney 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 or her own hand but did not write it, he or she must confirm in the presence of three impartial, legally competent, and linguistically proficient witnesses that the content of the power of attorney document he or she has signed corresponds to his or her will. Compliance with this formal requirement must be confirmed by the witnesses immediately after the principal's declaration by adding a note to the document indicating their status as witnesses. 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 power of attorney is to also cover consent to medical treatment within the meaning of § 283(2), decisions regarding permanent changes of residence, and the management of financial affairs that do not fall within the scope of ordinary business operations, it must be executed before a lawyer or in court with an explicit specification of these matters. In doing so, the principal must be informed of the legal consequences of such a power of attorney as well as the possibility of revoking it at any time.

The attorney or the court must document the provision of this instruction in the power of attorney document by affixing his or her handwritten signature, stating his or her name and address.

§ 284c

A person with a disability who has granted a power of attorney does not require a guardian in this regard, unless the agent fails to act or does not act in accordance with the terms of the power of attorney, otherwise endangers the person's well-being through their actions, or the person with a disability indicates that they no longer wish to be represented by the agent. The appointment of a guardian may also be waived if a power of attorney does not meet the requirements of

§ 284b, but, given the circumstances of the individual case, there is no reason to fear that the agent will perform his or her duties to the detriment of the disabled person.

§ 284d

1) In handling the matters entrusted to him, the agent must act in accordance with the principal's wishes as expressed in the power of attorney agreement. The agent must take into account the principal's wishes, as expressed after the occurrence of the event giving rise to the power of attorney through statements made by the principal or otherwise evident from the circumstances of the individual case, provided that such wishes are no less conducive to the principal's well-being. In the absence of ascertainable wishes, the agent must promote the principal's well-being to the best of their ability.

2) The agent may not delegate the power of attorney to consent to medical treatment or to decide on a change of residence.

Central Registry of Representatives

§ 284e

1) The Regional Court maintains a Central Register of Representation, in which the following are recorded:

1. the guardianship order (§ 279(1));
2. the advance healthcare directive (Section 284b);
3. the effective date of the power of attorney for health care; and
4. the revocation of the guardianship order and the power of attorney for health care.

2) The following must be specified in particular upon registration:

1. the designation of the document as a power of attorney for healthcare or a guardianship order, or the effective date of the power of attorney for healthcare;
2. the first and last names, date of birth, and residential address of the principal, the person making the disposition, and the agent or proposed guardian; and
3. as indicated by the party, the custodian of the power of attorney for healthcare or the guardianship order, and the date the document was executed.
3) The Regional Court must notify the principal or the person making the disposition of the registration in the Central Register of Representatives; in the case referred to in paragraph 1, item 3, the Regional Court must inform the agent of the registration in the Central Register of Representatives and its consequences.
§ 284f
1) The registration of the revocation of a power of attorney for healthcare or a guardianship order shall be carried out in accordance with § 284e(2) and shall include the date of the revocation.
2) The Regional Court shall register the entry into force of the submitted power of attorney upon presentation of a corresponding medical certificate stating that the principal lacks the necessary legal capacity, capacity to understand and judge, or capacity to express oneself. If guardianship proceedings are pending, the Regional Court must check the Central Register of Representation to verify the registration of the effective date of the power of attorney. Upon completion of the registration, the Regional Court must issue the attorney-in-fact a confirmation of the registration of the effective date of the power of attorney. The confirmation must be accompanied by an overview of the rights and obligations associated with the power of attorney, in particular the obligation not to use the confirmation in legal transactions once the authority to act has ended.
3) The Regional Court must record the termination of the power of representation if the principal or his or her guardian revokes the power of attorney for health care. The Regional Court must inform the agent of the termination of the power of representation and its consequences, in particular the obligation to no longer use the power of attorney in legal transactions.
§ 284g
1) Repealed

2) The state is liable for errors in the registration of a power of attorney for health care and in the issuance of the confirmations pursuant to § 284f(2) in accordance with the provisions of the Official Liability Act.
3) Upon request, the Regional Court shall grant access to the register to other courts, social insurance agencies, social assistance agencies, and other decision-makers in social law matters, as well as to the agent and the principal.

Part 2

Property Rights

On Things and Their Legal Classification

§ 285 through 308

Repealed

1. Section on Property Law

On Rights in Rem

1. Main Section

On Possession

Sections 309–352

Repealed

2. Main Section

On Property Rights

§§ 353 to 379

Repealed

3. Main Section

Acquisition of Ownership by Appropriation

Sections 380
through 403

Repealed

4. Main Section

On the Acquisition of Ownership by Accession

Sections 404
through 422

Repealed

5. Main Section

Acquisition of Ownership by Delivery

Sections 423 through 446

Repealed
6. Main Section
On the Right of Lien
Sections 447
through 471
Repealed
7. Main Section
Easements
Sections 472
through 530
Repealed
8. Main Section
On Inheritance Rights
§ 531
Estate
The totality of the rights and obligations of a deceased person, insofar as they are not based solely on personal relationships, is called the estate or inheritance.
§ 532
Right of Inheritance and Inheritance
The exclusive right to take possession of the entire estate or a specified portion thereof (e.g., half, one-third) is called the right of inheritance. It is an absolute right that is effective against anyone who seeks to appropriate the estate. The person to whom the right of inheritance belongs becomes the heir, and the estate, in relation to the heir, is called an inheritance.
Title on the Right of Inheritance
§ 533
The right of inheritance is based on the testator's will as declared in accordance with statutory provisions, on a contract of inheritance (§§ 602 ff.), or on the law.
§ 534
The three aforementioned types of inheritance may also coexist, such that one heir is entitled to a specific portion of the estate as a whole under the last will, another under the inheritance contract, and a third under the law.
§ 535
Difference Between Inheritance and Bequest

If a person is bequeathed not a share of the entire estate, but only a single item, one or more items of a certain kind, a sum of money, or a right, then the bequeathed item, even if its value constitutes the greater part of the estate, is called a bequest (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 Devolution

§ 536

The right of inheritance arises only after the death of the testator. If a putative heir dies before the testator, he has not been able to transfer the right of inheritance, which he has not yet acquired, to his heirs.

§ 537

If the heir has outlived the testator, the right of inheritance passes to his heirs even before the inheritance is accepted, like other freely inheritable rights, provided it has not already been extinguished by renunciation or in some other manner.

Eligibility to inherit

§ 538

A person is eligible to inherit if they have legal capacity and are entitled to inherit.

§ 539

Repealed

Grounds for Ineligibility to Inherit

§ 540

A person who has committed a criminal act against the decedent or the estate—an act that can only be committed intentionally and is punishable by imprisonment for more than one year—is disqualified from inheriting, unless the decedent has indicated that he or she has forgiven the person.

§ 541

Any person who intentionally frustrates or attempts to frustrate the execution of the testator’s true last will, for example by forcing the testator to declare his last will or by fraudulently inducing him to do so, by preventing him from declaring or amending his last will, or by suppressing a last will that has already been executed, is disqualified from inheriting, unless the testator has indicated that he has forgiven him. He is liable for any damage thereby caused to a third party.

§ 542

Anyone

1. has committed a criminal offense against the testator's spouse, registered partner, or cohabiting partner, or against the testator's lineal relatives, which can only be committed intentionally and is punishable by imprisonment for more than one year,
2. has caused the decedent severe emotional distress in a reprehensible manner, or
3. has otherwise grossly neglected his or her duties toward the decedent arising from the legal relationship between parents and children,

is disinherited if the testator, due to his or her inability to make a will, ignorance, or other reasons, was unable to disinherit him or her, and the testator also did not indicate that he or she had forgiven him or her.

§ 543

Right of Substitution in Case of Disqualification from Inheritance

In the case of intestate succession, the descendants of a person who is disqualified from inheriting take the place of that person, even if that person survived the decedent.

§ 544

Determination of Capacity to Inherit

1) Eligibility to inherit must exist at the time of the opening of the succession. Eligibility acquired at a later date is irrelevant and therefore does not entitle anyone to deprive others of what has already rightfully come to them.

2) Anyone who, after the opening of the succession, commits a criminal act against the estate within the meaning of § 540 or frustrates or attempts to frustrate the fulfillment of the testator's true last will (§ 541) retroactively loses their capacity to inherit.

Sections 545 and 546

Repealed

Effect of Acceptance of the Inheritance

§ 547

Once the heir has accepted the inheritance, he or she is deemed to be the decedent for the purposes of that inheritance. Both are regarded as a single person in relation to a third party. Prior to the heir's acceptance, the estate is treated as if it were still held by the decedent.

§ 548

Liabilities that the decedent would have had to pay from his or her estate are assumed by the heir.
§ 549
The liabilities attached to an inheritance also include the costs of a funeral appropriate to the customs of the locality, the deceased's social standing, and his or her estate.
§ 550
Multiple heirs are regarded as a single person with respect to their joint right of inheritance. In this capacity, prior to the judicial transfer (conveyance) of the inheritance, they are all liable as one and one for all. The extent to which they are liable after the transfer has taken place is determined primarily by the taking of possession of the inheritance.
§ 551
Renunciation of Inheritance
1) Anyone who is legally entitled to dispose of their right to inherit may also renounce it in advance by contract with the testator. For the contract to be valid, it must be recorded in a court protocol; the termination of the contract must be in writing.
2) Unless otherwise agreed, such a renunciation also extends to the statutory share and to the descendants.
9. Main Section
On the Declaration of Last Will in General and Wills in Particular
§ 552
Declaration of Last Will
The disposition by which a testator revocably bequeaths his or her estate or a portion thereof to one or more persons upon death is called a declaration of last will.
Requirements
I. Internal Form
§ 553
If an heir is appointed in a final disposition, it is called a will; if, however, it contains only other dispositions, it is called a codicil.
Distribution of the Estate

§ 554

a) If there is only one heir

If the decedent has appointed a sole heir without limiting him to a specific portion of the estate, he shall receive the entire estate. However, if the sole heir has been allotted only a specific share of the estate relative to the whole, the remaining portions shall pass to the statutory heirs.

§ 555

b) When there are multiple heirs without division

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

§ 556

c) If all are appointed to specific shares

If there are several heirs, all of whom have been appointed to specific shares of the estate, but these shares do not exhaust the entire estate, the remaining shares shall pass to the statutory heirs. However, if the testator has appointed the heirs to the entire estate, the statutory heirs shall have no claim, even if the testator has omitted something in the calculation of the amounts or in the listing of the inherited items.

d) If some are appointed with shares and others without

§ 557

If, among several appointed heirs, some are allotted a specific share (e.g., one-third, one-sixth), while others are not allotted a specific share, the latter shall receive the remainder of the estate in equal shares.

§ 558

If nothing remains, a proportionate amount must be deducted from all specified shares for the heir appointed without a specific share, so that he receives an equal share with the heir who has been bequeathed the least. If the heirs’ shares are of equal size, they must transfer a portion to the heir appointed without a specific share so that he receives an equal share with them. In all other cases where a testator has miscalculated, the division must be carried out in such a way that the testator’s will is fulfilled as far as possible in accordance with the proportions declared for the estate as a whole.

§ 559

Which Heirs Are Treated as a Single Person

If, among the appointed heirs, there are persons some of whom must be regarded as a single person in relation to the others under statutory succession (e.g., the testator's nephews and nieces in relation to the testator's brother), they shall also be regarded as a single person for the purposes of distribution under the will. A body, a community, or an assembly (e.g., the poor) shall always be counted as a single person.

Right of Accrual

§ 560

If all heirs are called to inherit without a determination of shares or in the general terms of an equal division, and one of the heirs cannot or does not wish to exercise his or her right of inheritance, the vacated share shall accrue to the remaining appointed heirs.

§ 561

If one or more heirs are appointed with a specified share, while another or others are appointed without a specified share, the vacated portion shall accrue only to the single or multiple remaining heirs who were appointed without a specified share.

§ 562

A specific heir is never entitled to the right of accretion. Therefore, if there are no remaining general heirs, a settled share of the estate does not pass to a remaining specific heir but to the statutory heir.

§ 563

Whoever receives the settled share of the inheritance also assumes the associated encumbrances, insofar as they are not limited to personal acts of the appointed heir.

§ 564

The testator must appoint the heir himself; he may not leave the appointment to the decision of a third party.

§ 565

The declaration must be deliberate, definite, and made of one's own free will

The testator's intent must be determined, not merely by his assent to a proposal made to him; it must be expressed in a state of full mental capacity, with deliberation and seriousness, free from coercion, fraud, and material error. *Causes of incapacity to make a will*

1. Lack of sound judgment

§ 566

If it is proven that the declaration was made in a state that precludes the necessary soundness of mind, such as mental illness or intoxication, it is invalid.

§ 567

If it is claimed that the testator, who had lost the use of reason, was of sound mind at the time of the last disposition, such a claim must be established beyond doubt by experts or by public officials who thoroughly examined the testator's mental state, or by other reliable evidence.

§ 568

Repealed

§ 569

2. Minor age

Persons under the age of 14 are incapable of making a will. Minors under the age of 18 may make a will only orally before a court, except in the case provided for in § 597. The court must conduct an appropriate inquiry to satisfy itself that the declaration of the last will was made freely and with due consideration. The declaration must be recorded in the minutes, and the findings of the inquiry must be appended thereto.

3. Fundamental error

§ 570

A material error on the part of the testator renders the disposition invalid. The error is material if the testator has mistaken the person to whom he intended to bequeath or the object he intended to bequeath.

§ 571

If it turns out that the beneficiary or the bequeathed property was merely incorrectly named or described, the disposition is valid.

§ 572

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

§ 573

Repealed

§ 574

Repealed

Effective Date of the Disposition

§ 575

A last will and testament that has been declared legally valid cannot lose its validity due to obstacles that arise later.

§ 576

A will that was initially invalid does not become valid merely because the impediment was subsequently removed. If no new disposition is made in this case, the statutory rules of inheritance apply.

II. Form of Last Will and Testament

§ 577

1) A will may be made extrajudicially or judicially, in writing or orally, in writing with or without witnesses.

2) Judicial wills are deposited ex officio. Extrajudicial wills may be deposited with the court by the testator personally or through his or her legal representative. The legal representative may not be an heir or have been named in the will. A record must be made of the deposit.

1. Extrajudicial in writing

§ 578

Anyone who wishes to make a will in writing without witnesses must write the will or codicil by hand and sign it personally with their name. While it is not necessary to include the place and date of execution, it is advisable to do so.

§ 579

1) If a will is not written by the testator's own hand, the testator must sign it by hand in the presence of three witnesses who are present at the same time and expressly declare that the document contains his or her last will and testament.

2) The witnesses, whose identities must be stated in the document, must sign the document with a note indicating their capacity as witnesses. They need not be aware of 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 signature with a handmark, in the presence of all three witnesses. To facilitate a lasting proof of the testator's identity, it is also prudent for one of the witnesses to affix the testator's name as a signatory.

§ 581

If the testator cannot read, he must have the document read aloud to him by one witness in the presence of the other two witnesses, who have reviewed the contents, and confirm that it is in accordance with his will. The scribe of the last will may in all cases also serve as a witness, but is excluded from reading the document aloud if the testator cannot read.

§ 582

A disposition made by the testator by reference to a note or an attachment is effective only if such an attachment meets all the requirements necessary for the validity of a final declaration of intent. Furthermore, such written remarks indicated by the testator may be used only to clarify his or her intent.

§ 583

As a general rule, a single document applies only to one testator. An exception applies to spouses, engaged couples, and registered partners (§ 583a).

§ 583a

Joint Will

1) Spouses and engaged couples, subject to the condition of marriage, as well as registered partners, may appoint each other or third parties as heirs in a joint will. Such a will is revocable.

2) The validity of one provision is not dependent on that of the other, unless specifically agreed otherwise.

Sections 584
through 586
Repealed

2. Judicial

§ 587

The testator may also make a will before a court, either in writing or orally. The written will must be signed by the testator in his or her own hand and delivered to the court in person. The court must inform the testator that the will must bear his or her handwritten signature, then seal the document,

and note on the envelope whose last will is contained therein. A record of the proceedings must be made, and the document must be deposited with the court (Section 577(2)).
§ 588
If the testator wishes to declare his will orally, the declaration shall be recorded in a protocol, and the same shall be sealed and deposited in the same manner as described in the preceding paragraph regarding the written document.
§ 589
The court that records the written or oral declaration of last will must consist of at least two judicial officers who have taken an oath, one of whom holds the office of judge in the place where the declaration is recorded. The role of the second judicial officer, other than the judge, may also be fulfilled by two other witnesses.
§ 590
In an emergency, the judicial officers may go to the testator to record his last will.
Incapacitated Witnesses in Last Dispositions
§ 591
Persons under the age of 18, persons who, due to a disability, lack the capacity to attest to the testator’s last will in accordance with the respective form of the will, as well as those who do not understand the testator’s language, may not serve as witnesses in last dispositions.
§ 592
Repealed
§ 593
Repealed
§ 594
An heir or legatee is not a competent witness with respect to the estate intended for him or her, nor are his or her spouse, registered partner, parents, children, siblings, or persons related by marriage to the same degree, or any paid household members. To be valid, the disposition must be written in the testator’s own hand or confirmed by three witnesses who are not among the persons mentioned above.
§ 595

If the testator bequeaths an estate to the person who writes the last will, or to that person's spouse, registered partner, children, parents, siblings, or persons related by marriage to the same degree, the disposition must be established beyond doubt in the manner specified in the preceding paragraph.

§ 596

The provisions regarding the impartiality and capacity of a witness to establish the identity of the testator beyond doubt shall also apply to judicial officers who record a last will.

§ 597

Emergency Will

1) If there is an imminent risk that the testator will die or lose the capacity to make a will before he is able to express his last will in any other manner, he may also make a will orally or in writing (§ 579) in the presence of two competent witnesses, who must be present at the same time. In the event of a risk of infection, it is not necessary for both witnesses to be present at the same time. Persons who have reached the age of fourteen are also valid witnesses. A last will and testament declared in this manner loses its validity three months after the danger has ceased.

2) An oral last will must, at the request of any interested party, be confirmed by the consistent statements of the two witnesses; otherwise, this declaration of last will is invalid (§ 601).

§§ 598 to 600

Repealed

§ 601

Invalidity of Informal Last Dispositions

If the testator has failed to observe any of the requirements prescribed herein and not expressly left to mere discretion, the last declaration of intent is invalid.

Contract of Inheritance

1. Requirements for the Validity of a Contract of Inheritance

§ 602

1) An inheritance contract involves the promise of the future estate or a portion thereof and the acceptance of that promise.

2) A third party may also be appointed as an heir through an inheritance contract.

3) For an inheritance contract to be valid, the provisions governing last wills and testaments must have been complied with.

4) Judicial inheritance contracts are deposited ex officio. Extrajudicial inheritance contracts may be deposited in court by any party to the contract in person. A record of the deposit must be made.

§ 602a

The general provisions governing contracts also apply to inheritance contracts.

2. Effect of the inheritance contract

§ 602b

A contract of inheritance does not prevent the contracting parties from disposing of their assets during their lifetimes. The rights arising from the contract of inheritance are contingent upon the testator's death. In the event that the contractual heir does not survive the testator, those rights may neither be transferred to others nor may security be demanded in anticipation of the future inheritance.

§ 602c

If the testator has disposed of only a portion of the estate, the remaining portion does not pass to the contractual heir but to the statutory heirs. The rights of those entitled to a compulsory share remain reserved as they would be against any other final disposition.

§ 602d

3. Termination of the Contract of Inheritance

1) The inheritance contract may be revoked in accordance with the provisions of paragraph 2 or rendered void in accordance with statutory provisions.

2) A contract of inheritance may be unilaterally revoked for reasons justifying disinheritance (Sections 768 et seq.) or due to gross ingratitude (Section 948). Furthermore, an inheritance contract between spouses, registered partners, or persons living in a de facto partnership may be revoked in the event of the dissolution of the partnership. To be valid, the revocation must be in writing and the signature must be notarized.

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

§ 602e

Legacy Agreement

1) A legacy agreement serves to promise legacies (§ 535) and to accept such a promise.

2) The provisions governing the inheritance contract apply mutatis mutandis.

§ 603

Gift Upon Death

A gift upon death is to be regarded as a contract even after the death of the donor if the donor has not contractually reserved a right of revocation, the requirements of § 602 are met, and a written document has been delivered to the donee. The provisions of the Eighteenth Main Part on Gifts and § 602c apply.

10. Title

On Substitute and Revocable Inheritance

§ 604

Substitute Inheritance

1) In the event that the appointed or statutory heir does not acquire the inheritance, a substitute heir may be appointed; and if that substitute heir also fails to acquire it, a second or even further substitute heirs may be appointed.

2) Substitute heirs take precedence over persons entitled to accretion (§ 560) in any case.

§ 605

Presumed Substitute Inheritance

It is presumed that the decedent intended to appoint the descendants of appointed children as substitute heirs.

§ 606

Rights and Obligations of the Substitute Heir

The rights and obligations of the heir also apply to the substitute heir who takes his place, unless they pertain solely to the person of the heir according to the express will of the testator or the circumstances of the case. § 702 applies to restrictive conditions.

§ 607

Mutual Substitute Heirship

If only co-heirs are appointed as mutual substitute heirs, it is presumed that the testator intended to extend the shares specified in the appointment to the substitute inheritance as well. However, if, in addition to the co-heirs, another person is appointed as a substitute heir, the share of the inheritance that has become vacant shall devolve to all in equal shares.

§ 608

Reverse succession

1) The testator may appoint an heir in such a way that this heir inherits only after another heir. In case of doubt, the reversionary heir is also a substitute heir.

2) Unless the testator has provided otherwise, the reversionary inheritance takes effect upon the death of the preliminary heir.

§ 609

Residual Reversionary Inheritance

A reversionary inheritance on the residue exists if, according to the testator's will, the reversionary heir is to receive only what remains upon the death of the prior heir.

§ 610

Reinterpretation of Testamentary Provisions

1) If the testator has prohibited the heir from making a will regarding the estate or has instructed the heir to make a will in favor of a specific person, this shall, in case of doubt, be reinterpreted as a reversionary inheritance on the residue—namely, in the case of a prohibition, in favor of the statutory heirs, and in the case of an instruction, in favor of the specific person.

2) In cases of doubt, a prohibition on disposing of property does not preclude the right to bequeath it.

§ 611

Revocationary Succession Among Contemporaries

If the reversionary heirs are contemporaries of the testator, he may appoint them as reversionary heirs without any numerical limitation. Contemporaries are natural persons who have already been conceived (§ 22) or born at the time the reversionary succession is established.

§ 612

Restriction on Reversionary Succession

If the reversionary heirs are not yet contemporaries of the testator at the time the will is executed, the reversionary succession is limited to two reversionary events for money and other movable property, and to one reversionary event for immovable property.

§ 613

Rights of the preliminary heir

1) Until the reversionary interest takes effect, the appointed preliminary heir holds a limited right of ownership, along with the rights and obligations of a usufructuary.

2) Dispositions of property belonging to the estate subject to reversionary succession are permissible with the consent of the reversionary heir; otherwise, they are permissible only to fulfill the estate's obligations, to prevent damage to the estate, or to the extent that they are made within the scope of ordinary administration.

3) If the preliminary heir receives money or another item as a result of a disposition of an item of the estate subject to reversionary succession, this substitute item becomes part of the estate in case of doubt.

4) However, if the ordered reversionary succession is a reversionary succession on the residue, the preliminary heir may dispose of items of the estate inter vivos like any owner.

§ 614

Interpretation of a Substitute or Residual Inheritance

If a substitute or reversionary inheritance is expressed ambiguously, it must be interpreted in such a way that the heir's freedom to dispose of the property is restricted as little as possible. This also applies to the question of whether a substitute or reversionary inheritance was established at all.

Extinction of Substitute and Residual Inheritance

§ 615

1) In case of doubt, a substitute inheritance expires as soon as the appointed heir has accepted the inheritance. A reversionary inheritance expires if there is no longer a designated reversionary heir or if it was established subject to a condition precedent that cannot ultimately be fulfilled.

2) In case of doubt, the right of a reversionary heir passes to his heirs (§ 537) even if he does not live to see the reversionary inheritance take effect.

§ 616

1) If a reversionary heir is designated for a person presumed to be incapable of making a will, the reversionary inheritance is invalid in cases of doubt if that person was capable of making a will at the time the testamentary disposition was made.

2) If a reversionary heir is designated for a person who is currently incapable of making a will, the reversionary inheritance shall, in case of doubt, cease to exist if that person subsequently regains the capacity to make a will. The reversionary inheritance shall not be reinstated if the person subsequently becomes incapable of making a will again.

§ 617

A substitute or reversionary inheritance bequeathed by a testator to his or her child at a time when the child had no children of his or her own shall, in case of doubt, lapse if the child later leaves behind children who are eligible to inherit.

Entail

Sections 618
through 645
Repealed

§ 646

Distinction between substitute or reversionary inheritances and foundations

Foundations differ from substitute or reversionary inheritances. The provisions governing foundations are contained in the laws regulating personal and corporate law.

11. Main Section

On Bequests

§ 647

For a bequest to be valid (§ 535), it must be made by a testator who is competent to make a will—that is, a person who is capable of inheriting—through a valid final declaration of intent.

§ 648

The testator may also predetermine a bequest in favor of one or more co-heirs; in this regard, they are to be regarded solely as legatees.

§ 649

Bequests generally fall to all heirs, even in the case where an item belonging to a co-heir has been bequeathed, in proportion to their share of the inheritance. It is, however, up to the testator to decide whether he wishes to specifically entrust the payment of the bequest to a co-heir or to a legatee.

§ 650

A legatee may not refuse to fully perform the additional bequest entrusted to him on the grounds that it exceeds the value of the bequest intended for him. However, if he does not accept the bequest, the person to whom it falls must assume the obligation or transfer the bequest that has fallen to him to the designated legatee.

§ 651

A testator who has bequeathed a legacy to a specific class of persons, such as relatives, servants, or the poor, may leave the distribution of the proceeds these persons and what each is to receive, to the heir or a third party. If the testator has not specified this, the choice is reserved to the heir.

§ 652

Substitute or Revocable Legacies

The testator may provide for a substitute or reversionary legacy; in such cases, the provisions set forth in the preceding section shall apply.

Objects of a bequest

§ 653

Anything that is in common circulation: property, rights, services, and other acts that have value may be bequeathed.

§ 654

If items are bequeathed that are in general circulation but which the legatee is personally unable to possess, the legatee shall be compensated for their fair market value.

§ 655

General Rule of Interpretation for Bequests

Words are also taken in their ordinary meaning in bequests, unless it can be proven that the testator was in the habit of attaching a specific meaning of his own to certain expressions or that the bequest would otherwise be ineffective.

Special provisions regarding bequests

a) of items of a certain kind

§ 656

If the testator has bequeathed one or more items of a certain kind, but without further specification, and if several such items are present in the estate, the heir has the right to choose. However, the heir must select an item that the legatee can make use of. If the legatee is permitted to take or choose one of the several items, the legatee may also choose the best one.

§ 657

If the testator has expressly bequeathed one or more items of a certain kind exclusively from his own property, and no such items are found in the estate at all, the bequest loses its effect. If they are found in the prescribed quantity, the legatee must be content with what is available.

§ 658

If the testator bequeaths one or more items of a certain kind without expressly specifying that they are to be taken from his own property, and no such items are found in the estate, the heir must procure them for the legatee in a form appropriate to the legatee's status and needs. A bequest of a sum of money obligates the heir to pay it, regardless of whether cash is present in the estate or not.

§ 659

The testator may also entrust the selection of which item the legatee is to receive from among several to a third party. If the third party declines or dies before making a selection, the court shall determine the bequest with due regard to the legatee's status and needs. This judicial determination also applies in the event that the legatee dies before making the selection entrusted to him.

b) The bequest of a specific item

§ 660

The legatee may not claim a bequest of a specific item, if it is repeated in one or more dispositions, both in kind and in value. Other bequests, even if they consist of items of the same kind or the same amount, are due to the legatee as many times as they have been repeated.

§ 661

The bequest is void if the bequeathed item was already owned by the legatee at the time of the testator's last disposition. If the legatee subsequently acquired it, the fair market value shall be paid to him. However, if he received it from the testator himself, and without consideration, the bequest shall be deemed revoked.

§ 662

c) of a Third-Party Item

A bequest of a third-party item that belongs neither to the testator nor to the heir or legatee who is to deliver it to a third party is void. If the aforementioned persons have a share or claim to the item, the bequest is to be understood only with respect to that claim or share. If the bequeathed

If the property is pledged or encumbered, the recipient also assumes the encumbrances attached to it. However, if the testator expressly stipulates that a specific third-party property is to be purchased and delivered to the legatee, but the owner refuses to sell it for the appraised price, this value must be paid to the legatee.

d) a claim

§ 663

A bequest of a claim that the testator is obligated to make to the legatee obligates the heir to surrender the promissory note or to issue to the legatee a release from the debt and any accrued interest.

§ 664

If the testator bequeaths to someone a claim that he is to assert against a third party, the heir must transfer the claim, together with the accrued and future interest, to the legatee.

§ 665

The bequest of a debt that the decedent is required to pay to the legatee has the effect that the heir must acknowledge the debt expressly designated by the decedent or identified by the legatee, and must settle it—regardless of the terms or deadlines contained in the promissory note—no later than the deadline set for the payment of the remaining bequests. However, such acknowledgment may not be to the detriment of the testator's unsecured creditors.

§ 666

The remission of the debt applies only to existing debts, not to those arising after the bequest has been made. If a lien or suretyship is remitted by a bequest, this does not imply that the debt itself has been remitted. If payment deadlines are extended, 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 he intended to discharge the debt through the bequest. In this case, the heir pays the sum twice, once as a debt and then as a bequest.

§ 668

However, a bequest of all outstanding claims does not include claims arising from public securities, nor capital secured by real property, nor claims arising from rights in rem.

e) of the marital property

Sections 669
through 671
Repealed

f) for maintenance; for upbringing; or for food

§ 672

A legacy of maintenance includes food, clothing, housing, and other necessities for life, as well as the necessary education. All of this is also understood to include upbringing. Upbringing ends upon reaching the age of majority. Board includes food and drink for life.

§ 673

The extent of the legacies mentioned in the preceding paragraph, if it is not evident from the testator's express will or from his implied will as expressed through previous support, must be determined according to the status proper to the legatee or to what he has been prepared for through the support he has received.

§ 674

g) Movable property; household goods

"Movable property" (furniture) refers only to items necessary for the proper use of the dwelling; "household goods" or "furnishings" include, in addition, the equipment necessary for the management of the household. Tools used for the operation of a business are not included, unless otherwise specified.

h) of a container

§ 675

If a container has been bequeathed to someone, which does not exist on its own but is merely part of a whole, it is generally presumed that only those items contained therein at the time of the testator's death—and which the container is by its nature intended to hold or which the testator customarily used for that purpose—are intended to be bequeathed.

§ 676

If, on the other hand, the container is movable or is an object in its own right, the legatee is entitled only to the container, not to the items contained therein.

i) Legacy of Care

§ 677

1) A person close to the testator who has provided care to the testator for at least six months during the last three years prior to the testator's death, to a degree that is not merely insignificant, is entitled to a statutory legacy for such care, unless a bequest has been granted or remuneration has been agreed upon.

2) Care includes any activity that serves to provide a person in need of care with the necessary support and assistance to the greatest extent possible, as well as to improve their ability to lead a self-determined, needs-oriented life.

3) Close relatives are persons from the circle of the decedent's statutory heirs, their spouse, registered partner, or domestic partner and their children, as well as the decedent's domestic partner and that person's children.

§ 678

1) The amount of the bequest depends on the nature, duration, and scope of the benefits.

2) In any case, the bequest is not payable in addition to the statutory share or other benefits from the estate only if the testator has so provided. The bequest may be revoked only if there is a ground for disinheritance.

§ 679

Repealed

§ 680

Repealed

§ 681

m) Regarding the term: children

The term "children" refers, if the testator bequeaths to the children of another, only to the sons and daughters; but if he bequeaths to his own children, it also includes the descendants who take their place and who were already conceived at the time of the testator's death.

§ 682

n) Relatives

A legacy left to relatives without further specification shall be distributed among those who are next in line under the statutory order of succession, and the rule set forth in § 559 above regarding the distribution of an estate among persons who are deemed to be a single person shall also apply to legacies.

§ 683

o) Domestic Servants

If the testator has left a bequest to his or her servants and has designated them merely by virtue of their employment relationship, it is presumed that those who are in such a relationship at the time of his or her death are to receive it. However, in this case, as in the others, the presumption may be rebutted by stronger grounds for presumption to the contrary.

§ 684

Date of Devolution for Legacies

As a general rule (§ 699), the legatee acquires a right to the legacy for himself and his successors immediately upon the testator's death. However, the right of ownership to the bequeathed property may be acquired only in accordance with the provisions set forth in Part 5 regarding the acquisition of ownership.

Date of Payment

§ 685

Bequests of individual items of the estate and related rights, small rewards for servants, and charitable bequests may be claimed immediately, while others may be claimed only after one year from the testator's death.

§ 686

In the case of a bequest of a single item of the estate, the legatee is also entitled to interest accrued since the testator's death, any benefits derived therefrom, and any other increase in value. Conversely, the legatee also bears all encumbrances attached to the bequest and even the loss if it is diminished or entirely destroyed through no fault of another.

§ 687

If a person is bequeathed an amount to be paid at regular intervals, such as annually, monthly, or similarly, the legatee is entitled to the full amount for that period even if he or she has lived only until the beginning of the period. However, the amount may not be claimed until the term has expired. The first term begins to run on the date of the testator's death.

§ 688

Right of the Legatee to Security

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

§ 689

To whom does a settled bequest accrue?

A bequest that the legatee cannot or will not accept passes to the substitute legatee (§ 652). If there is no substitute legatee, and if the entire bequest is intended for several persons 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 settled bequest remains in the estate.

Right of the heir when the encumbrances exhaust the estate

§ 690

If the entire estate is exhausted by bequests, the heir may claim nothing more than reimbursement for 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 apply for the appointment of a curator.

§ 691

If not all legatees can be satisfied from the estate, the legatee's maintenance shall be paid before all others, and the legatee is entitled to maintenance from the date of the opening of the succession.

or even exceed

§ 692

If the estate is insufficient to pay the debts, other necessary expenses, and to satisfy all bequests, the legatees shall suffer a proportional reduction. Therefore, as long as such a risk exists, the heir is not obligated to satisfy the bequests without security.

§ 693

However, if the legatees have already received the legacies, the deduction shall be determined based on the value of the legacy at the time of receipt and the benefits derived therefrom. Nevertheless, the legatee remains free, even

, even after receiving the bequest, to avoid the contribution by returning the bequest or the aforementioned value and the benefits derived therefrom to the estate; in consideration of improvements and deteriorations, he shall be treated as a bona fide possessor.

On statutory contributions to public institutions

§ 694

Contributions that a testator has set aside in his will, in accordance with public regulations, for the support of hospitals for the poor, the disabled, and the sick, as well as for public education, are not to be regarded as bequests; they constitute a public obligation, must be paid even by the statutory heirs, and cannot be assessed according to the principles of private law, but only in accordance with public regulations.

12. Main Section

On the Restriction and Revocation of the Last Will

§ 695

The testator's right to restrict or amend his last will

The testator may restrict his disposition to a condition, to a specific time, by means of an instruction, or by a declared intention. He may also amend his will or codicil or revoke it entirely.

Types of Restrictions on a Last Will and Testament

1. Condition

§ 696

A condition is an event upon which a right is made dependent. The condition is affirmative or negative, depending on whether it relates to the occurrence or non-occurrence of the event. It is suspensive if the intended right takes effect only after its fulfillment; it is resolutive if the intended right is lost upon its occurrence.

Provisions

§ 697

a) on incomprehensible

Conditions that are entirely incomprehensible shall be deemed not to have been included.

§ 698

b) Impossible or unlawful

A disposition by which a person is granted a right subject to a suspensive condition that is impossible is void, even if the fulfillment of the condition subsequently became impossible and the testator became aware of the impossibility. A resolutive condition that is impossible is deemed not to have been attached. All of the foregoing also applies to unlawful conditions.

§ 699

c) Possible and Permissible Conditions

If the conditions are possible and permissible, the right dependent upon them may be acquired only through their exact fulfillment, whether they depend on chance, on the will of the beneficiary, the legatee, or a third party.

§ 700

d) Condition of not marrying or entering into a registered partnership

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

§ 701

e) if the condition was fulfilled during the testator's lifetime

If the condition prescribed in the last testament has already been fulfilled during the testator's lifetime, fulfillment of the condition after the testator's death need only be repeated if the condition consists of an act by the heir or legatee that can be repeated by him or her.

§ 702

Whether the condition is to be extended to the substitute beneficiaries

A condition imposed on the heir or legatee shall not, without an express declaration by the testator, be extended to the heir or legatee appointed by the testator.

§ 703

Effect of a possible suspensive condition

To acquire an estate bequeathed subject to a suspensive condition, it is necessary that the beneficiary survive the fulfillment of the condition and be eligible to inherit at the time the condition is fulfilled.

2. Time

§ 704

If it is uncertain whether the time to which the testator has restricted the intended right will come or not, this restriction is regarded as a condition.

§ 705

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

§ 706

If it is evident that the time specified in the final disposition can never arrive, the determination of that time shall be regarded as the imposition of an impossible condition. Only in the event that the testator likely erred merely in the calculation of the time shall the time be determined in accordance with the probable intent of the testator.

Legal relationship in the case of a condition or a time between the beneficiary and the person succeeding them

§ 707

As long as the rights of the heir or legatee remain suspended due to a condition that has not yet been fulfilled or a time that has not yet arrived, the same rights and obligations as in the case of a reversionary succession shall apply, in the first instance between the statutory heir and the appointed heir, and in the second instance between the heir and the legatee, with respect to the provisional possession and enjoyment of the estate or legacy.

§ 708

Anyone who receives an inheritance or a bequest subject to a negative or resolutive condition, or only for a specified period, has, against the person to whom the inheritance or bequest accrues upon the occurrence of the condition or the specified time, the same rights and obligations as a prior heir or prior legatee has against the reversionary heir or reversionary legatee (§ 613).

3. Mandate

§ 709

If the testator has bequeathed an estate to someone under a mandate, this mandate shall be regarded as a resolutive condition, such that failure to fulfill the mandate shall result in forfeiture of the estate (§ 696).

§ 710

If the instruction cannot be carried out exactly as specified, one must at least attempt to fulfill it as closely as possible. If this is also not possible, the beneficiary retains the bequest intended for them, unless the testator's intent clearly indicates otherwise. Anyone who has rendered themselves incapable of fulfilling the instruction forfeits the bequest intended for them.

§ 711

If the testator has expressed the intention for which the bequest is intended but has not made it mandatory, the beneficiary cannot be required to use the bequest for that purpose.

§ 712

An instruction by which the testator commands his heir to perform an impossible or unlawful act, with the proviso that, if the heir fails to comply with the instruction, he must pay a legacy to a third party, is invalid.

§ 712a

If an animal is named as a beneficiary in a will, the relevant provision shall be deemed an instruction to provide for the animal in a manner appropriate to its nature.

Regarding the revocation of such instructions, namely:

1. by creating a new disposition; a will

§ 713

A prior will is revoked by a subsequent valid will not only with respect to the appointment of heirs but also with respect to the remaining provisions, unless the testator clearly indicates in the latter that the prior will is to remain in force in whole or in part. This provision also applies if the heir is appointed in the subsequent will to receive only a portion of the estate. The remaining portion does not pass to the heirs named in the earlier will, but to the statutory heirs.

or codicils

§ 714

A later codicil, of which several may coexist, revokes earlier bequests or codicils only to the extent that they conflict with it.
§ 715
If it cannot be determined which will or codicil is the later one, both shall apply to the extent that they can coexist, and the provisions established in the main section regarding joint ownership shall apply.
§ 716
Notwithstanding any previously declared irrevocability
Any clause appended to a will or codicil stating that any subsequent disposition shall be null and void—either in general or, if not specifically identified—shall be deemed not to have been included.
2. by revocation
§ 717
If the testator wishes to revoke his disposition without making a new one, he must expressly revoke it either orally or in writing, or destroy the document.
§ 718
Revocation is valid only if made in a state in which one is capable of declaring a last will.
a) an express
§ 719
An oral revocation of a judicial or extrajudicial last will requires as many and such witnesses as are necessary for the validity of an oral will; a written revocation, however, requires a statement written and signed by the testator in his own hand or at least countersigned by him and the witnesses required for a written will.
§ 720
An instruction by the testator, whereby he prohibits the heir or legatee from contesting the last will under threat of forfeiture of a benefit, shall have no effect in the event that only the authenticity or the meaning of the declaration is contested.
b) Tacit

§ 721

Anyone who cuts through, crosses out, or erases the signature or the entire content of a will or codicil nullifies it. If, of several identical documents, only one has been nullified, this does not imply revocation.

§ 722

If the aforementioned damage to the document occurred by accident or if the document has been lost, the last will does not lose its effect unless the accident and the content of the document are proven otherwise.

§ 723

If a testator has destroyed a later disposition but left the earlier written disposition intact, the earlier written disposition shall take effect again. An earlier oral disposition shall not thereby be revived.

§ 724

c) Presumed

1) The revocation of a bequest is presumed if the testator

1. has collected the bequeathed claim or otherwise caused it to lapse,
2. has sold the bequeathed item and has not received it back, or
3. has altered the item in such a way that it loses its previous form and designation.

2) However, if the debtor has settled the claim of his own accord, the sale of the bequest has taken place by court or official order, or the item has been altered without the testator's consent, the bequest remains valid.

§ 725

2a. due to the loss of spousal status

1) Upon dissolution of the marriage, registered partnership, or cohabitation during the testator's lifetime, any testamentary dispositions made prior thereto that concern the former spouse, registered partner, or cohabiting partner are revoked, unless the testator has expressly provided otherwise. The same applies to the annulment of filiation or the revocation or annulment of adoption, even if it occurs after the testator's death, with respect to testamentary dispositions in favor of the former family member.

2) In case of doubt, the testamentary disposition is also revoked if the testator or the person named in the will has initiated legal proceedings to dissolve the marriage or registered partnership or to revoke or annul the adoption. The same applies if the testator has initiated legal proceedings to establish paternity and it subsequently turns out that the alleged relative is not in fact descended from the testator.

§ 726

3. By Renunciation of the Heirs

If neither an heir nor a reversionary heir is willing or able to accept the estate, the right of inheritance passes to the statutory heirs. However, they are obligated to comply with the testator's other dispositions. If they also renounce the inheritance, the legatees are considered heirs on a pro rata basis.

13. Main Section

On statutory succession

Cases of statutory succession

§ 727

If the decedent has not left a valid will, if the will does not dispose of all of his or her estate, if the decedent has not properly provided for the persons to whom he or she was required by law to bequeath a share of the estate, or if the appointed heirs are unable or unwilling to accept the inheritance, then statutory succession applies in whole or in part.

§ 728

In the absence of a valid last will and testament, the entire estate of the deceased shall pass to the statutory heirs. However, if a valid last will and testament exists, they shall receive that portion of the estate which is not bequeathed to anyone in the will.

§ 729

Reduced Statutory Share and Consequences of Disinheritance

1) If a person entitled to a statutory share has been deprived of it by a testamentary disposition, they may invoke the law and claim the statutory share to which they are entitled.

2) If the decedent has ordered the complete or partial deprivation of the statutory share, it is presumed that he also intended to deprive the disinherited person of their statutory share.
3) In the case of intestate succession, the descendants of the disinherited person inherit in their place, even if the disinherited person survived the testator.

Statutory Heirs

§ 730

1) Statutory heirs are the spouse or registered partner and those persons who are related to the decedent in the closest line of descent.
2) Repealed

I. Statutory Inheritance Rights of Relatives

§ 731

1) The first line includes those who are related to the decedent as their ancestor, namely: his children and their descendants.
2) The second line includes the decedent's father and mother, along with those who are related to him through his father and mother, namely: his siblings and their descendants.
3) The third line includes the grandparents, along with the parents' siblings and their descendants.
4) In the fourth line, only the testator's first great-grandparents are entitled to inherit.

1. Line: The Children

§ 732

If the decedent has children of the first degree, the entire estate shall devolve to them, whether they are male or female, and whether they were born during the decedent's lifetime or after his death. If there are multiple children, they shall divide the estate into equal shares according to their number. Grandchildren of surviving children and great-grandchildren of surviving grandchildren have no right to inherit.

§ 733

If a child of the decedent has predeceased him or her, and if one or more grandchildren of that child are alive, the share that would have belonged to the deceased child shall pass entirely to the surviving grandchild or, if there are several, to them in equal shares. If one of these grandchildren has also died and left great-grandchildren, the share of the deceased grandchild shall be distributed in the same manner to

... among the great-grandchildren in equal shares. If the decedent has descendants of even more distant degree, the division shall be made proportionally in accordance with the rule just stated.
§ 734
In this manner, an estate is divided not only when grandchildren of deceased children with surviving children or more distant descendants are combined with closer descendants of the decedent, but also when the estate is to be divided solely among grandchildren of different children or among great-grandchildren of different grandchildren. Thus, the grandchildren left by each child, and the great-grandchildren left by each grandchild—whether there are many or few of them—shall never receive more or less than the deceased child or the deceased grandchild would have received had they remained alive.
2. Line: The parents and their descendants
§ 735
If there is no one descended from the decedent himself, the inheritance passes to those related to him in the second line, namely: to his parents and their descendants. If both parents are still alive, the entire inheritance is due to them in equal shares. If one of these parents is deceased, the surviving children or descendants of that parent shall succeed to his or her rights, and the half that would have been due to the deceased shall be divided among them in accordance with the principles set forth in §§ 732 to 734 regarding the division of the estate among the children and more distant descendants of the decedent.
§ 736
If both of the decedent's parents are deceased, the half of the estate that would have gone to the father shall be divided among his surviving children and their descendants; the other half, which would have gone to the mother, shall be divided among her children and their descendants in accordance with §§ 732–734. If there are no children of these parents other than those begotten jointly by them or their descendants, they shall divide the two halves equally among themselves. However, if there are other children besides these who were begotten by the father or by the mother or by both in another marriage, the children begotten jointly by the father and the mother

or their descendants shall receive their due share of both the paternal and maternal halves, equal to that of their half-siblings.

§ 737

If one of the decedent's deceased parents has left behind neither children nor descendants, the entire estate passes to the other surviving parent. If that parent is also deceased, the entire estate is distributed among their children and descendants in accordance with the principles already set forth.

3. Line: The grandparents and their descendants

§ 738

If the testator's parents have died without descendants, the estate passes to the third line, namely: to the testator's grandparents and their descendants. The estate 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 is divided equally among the grandparents on both sides, if they are both still alive. If one or both of the grandparents on either side have died, the half allocated to that side is divided among the children and descendants of those grandparents according to the principles by which, in the second line of succession, the entire estate must be divided among the children and descendants of the testator's parents (§§ 735–737).

§ 740

If both grandparents on the paternal or maternal side have died, and there are no descendants of either the grandfather or the grandmother on that side, the entire estate passes to the surviving grandparents on the other side or, upon their death, to their surviving children and descendants.

4. Line: The great-grandparents

§ 741

1) Upon the complete extinction of the third line, the great-grandparents of the decedent are entitled to statutory succession. One half of the estate goes to the grandparents of the decedent's father, and the other

half. Each of the two sets of grandparents shall share each half of the estate in equal parts. If one member of a set of grandparents is missing, the one-eighth of the estate attributable to that member shall pass to the surviving member of that set of grandparents. If a set of grandparents is missing, the other set of grandparents on the same side of the testator shall be entitled to its one-fourth.

2) If the sets of grandparents on one side of the decedent's parents are missing, the sets of grandparents on the other side of the decedent's parents are entitled to the half of the estate that would have gone to them to the same extent as they are entitled to the half of the estate that would have gone to them directly.

Sections 742
through 749

Repealed

§ 750

If a person is related to the decedent through more than one line of descent, he or she is entitled to the inheritance rights from each line that would be due to him or her as a relative of that particular line (§ 736).

§ 751

Exclusion of more distant relatives

The right of succession with respect to freely inheritable property is limited to these four lines of kinship.

II. Statutory right of inheritance of legitimate children

§ 752

Repealed

§ 753

Repealed

§ 754

III. Illegitimate children

Repealed

§ 755

IV. Adopted children

Repealed

§ 756

V. Inheritance rights of the parents with respect to the children mentioned in §§ 752 through 754

Repealed

II. Statutory Inheritance Rights of a Spouse or Registered Partner

§ 757

1) The spouse or registered partner of the decedent is a statutory heir to half of the estate if there are children of the decedent and their descendants, and to two-thirds of the estate if there are parents and siblings of the decedent or grandparents. If there are descendants of deceased grandparents in addition to the grandparents, the spouse or registered partner also receives, from the remaining one-third of the estate, the portion that would otherwise go to the descendants of the deceased grandparents. The same applies to those shares of the estate that would otherwise go to the descendants of deceased siblings. In all other cases, the spouse or registered partner receives the entire estate.

2) The spouse's share of the estate includes everything that the spouse receives from the decedent's estate pursuant to a marital agreement or a contract of inheritance. For a registered partner, this applies with respect to a contract of inheritance.

§ 758

Unless the spouse or registered partner has been lawfully disinherited, they are entitled, as a statutory advance bequest, to the right to continue living in the shared residence and to the movable property belonging to the shared household, to the extent that such property is necessary for the continuation of the household in accordance with the previous living conditions.

§ 759

1) The spouse's statutory right of inheritance expires if the marriage has been declared invalid by a court, or if the couple has been divorced or separated.

2) If the former spouses remarry or if the court's judgment of separation ceases to be effective, the spouse's statutory right of inheritance is revived.

3) This provision applies mutatis mutandis to registered partnerships.

§ 760

Intestate Succession

If there is no person entitled to inherit or if no one accepts the inheritance, the estate, as an intestate estate, reverts to the state.

§ 761

Deviations from the General Order of Succession

The deviations from the statutory order of succession set forth in this main section, as they pertain to farm estates and the estates of clergy, are contained in the political laws.

14. Main Section

On the Statutory Share and Its Inclusion in the Statutory or Inheritance Share

Entitlement to the Statutory Share

§ 762

The statutory share is the portion of the value of the decedent's estate that is to be allocated to the beneficiary of the statutory share.

§ 763

The descendants and the spouse or registered partner of the decedent are entitled to a statutory share.

§ 764

1) A person listed in § 763 is entitled to a statutory share if they would be entitled to inherit under intestate succession, have not been disinherited, and have not waived their statutory share.

2) The descendants of a person who is disinherited, disqualified from inheriting, or predeceased are entitled to a statutory share if they meet the requirements of paragraph 1. In case of doubt, the waiver of the statutory share and the renunciation of the inheritance also apply to the descendants. The descendants of a predeceased beneficiary of a statutory share whose statutory share has been reduced must be content with the reduced statutory share.

3) A person whose statutory share has been reduced may still rely on their entitlement to a statutory share if they are entitled to an inheritance under an inheritance contract, a will, or the law.

Amount

§ 765

1) Every person entitled to a statutory share is entitled to half of what would be due to them under the statutory order of succession.

2) The spouse or registered partner is entitled to double the statutory share if they have contributed significantly to the accumulation of the decedent's estate and the increase in assets accrued during the marriage or registered partnership constitutes the majority of the estate.

§ 766

1) If one of the persons listed in § 763 is not entitled to a statutory share due to a waiver of the statutory share or renunciation of the inheritance, this does not, in case of doubt, increase the statutory shares of the other persons entitled to a statutory share.

2) However, if one of the persons listed in § 763 is not entitled to a statutory share or is entitled only to a reduced statutory share for other reasons, and no descendants receive the statutory share in their place, the statutory shares of the other beneficiaries are increased proportionally; §§ 733 and 734 apply.

Modes of Performance

§ 766a

a) Payment and Coverage of the Statutory Share

1) The statutory share must be paid in cash. However, it may also be covered by a bequest upon the testator's death (Section 777) or a gift inter vivos (Section 778).

2) If the decedent has designated someone as entitled to a statutory share, it is presumed that the decedent intended to grant that person a monetary claim rather than a bequest.

§ 766b

b) Conditions and Encumbrances

If a bequest or gift within the meaning of §§ 777 and 778 is subject to conditions or encumbrances that prevent the realization of the bequeathed assets, this does not preclude its suitability for covering the statutory share; however, any resulting lack of or reduction in benefit must be taken into account when valuing the bequest or gift.

§ 766c

c) Monetary Statutory Share

To the extent that the statutory share is not covered, or not fully covered, by a gift or donation within the meaning of §§ 777 and 778, the statutory heir may demand the statutory share itself or its supplement in cash.

§ 766d

Obligor of the Statutory Share

1) The claim to the statutory share must be satisfied by the estate and, after distribution, by the heirs.

2) If the statutory share is not covered, or not fully covered, by a bequest or gift within the meaning of §§ 777 and 778, the legatees, in addition to the heirs, must contribute proportionally to its coverage up to the value of the estate; however, this does not apply to the spouse or registered partner with a statutory advance bequest, the cohabiting partner with such a statutory bequest, and the beneficiary of a care bequest.

§ 766e

Acquisition and Maturity

1) The beneficiary of the statutory share acquires the claim for himself and his successors upon the death of the testator.

2) The beneficiary of the statutory share may not claim the monetary statutory share until one year after the testator's death.

§ 766f

Deferral and Payment in Installments of the Statutory Share

1) The heir may request a deferral of the statutory share or payment of the statutory share in installments if immediate fulfillment of the entire statutory share claim would constitute an unreasonable hardship for the heir due to the nature of the estate assets, particularly if it would force the heir to give up the family home or to sell an asset that constitutes the economic basis of life for the heir and his or her family. The interests of the beneficiary of the statutory share must be given due consideration.

2) In the event of a deferral or payment in installments, interest shall accrue on the claim for the statutory share. In addition, the beneficiary of the statutory share may demand security. The court shall determine the amount and due date of the interest, as well as the nature and extent of the security, in accordance with equity.

3) A final decision pursuant to paragraphs 1 and 2 may be set aside or modified by the court upon application if circumstances have changed significantly since the decision was rendered.

4) The probate court has jurisdiction to rule on the motions referred to in paragraphs 1 through 3. If a legal dispute regarding the right to a compulsory share is pending, the motions referred to in paragraphs 1 and 2 must be filed in that proceeding.

Disinheritance

§ 767

a) General Provisions

Disinheritance is the total or partial deprivation of the statutory share by testamentary disposition.

§ 768

b) Grounds for Disinheritance

A person entitled to a statutory share may be disinherited if they

1. has committed a criminal offense against the decedent that can only be committed intentionally and is punishable by imprisonment for more than one year,

2. has committed a criminal offense against the testator's spouse, registered partner, cohabiting partner, or lineal relatives, the testator's siblings and their children, spouses, registered partners, or cohabiting partners, as well as the testator's stepchildren, which can only be committed intentionally and is punishable by imprisonment for more than one year,

3. intentionally has thwarted or attempted to thwart the fulfillment of the testator's true last will (§ 541),

4. has caused the testator severe emotional distress in a reprehensible manner,

5. has otherwise grossly neglected his or her family law obligations toward the testator, or

6. has been sentenced to life imprisonment or twenty years' imprisonment for one or more intentional criminal offenses.

§ 769

c) Disinheritance with good intentions

If, due to the indebtedness or extravagant lifestyle of a person entitled to a statutory share, there is a risk that the statutory share to which they are entitled will be lost entirely or for the most part to their children, the statutory share may be withdrawn from them in favor of their children.

§ 770

d) Form of Declaration and Causality of the Reason

1) Disinheritance may be effected expressly or tacitly by omission in the testamentary disposition.

2) The ground for disinheritance must have been the cause of the disinheritance by the testator.

§ 771

e) Revocation of Disinheritance and Forgiveness

1) Disinheritance may be revoked, either expressly or tacitly, by subsequently including the previously disinherited person in the will or by revoking the will that ordered the disinheritance.

2) If the testator was no longer able to revoke the disinheritance due to lack of testamentary capacity, the disinheritance is invalid if the testator has indicated that he has forgiven the disinherited person.

§ 772

f) Burden of Proof

1) The existence of a ground for disinheritance must be proven by the party liable for the statutory share.

2) If grounds for disinheritance exist, it is presumed that these grounds were the cause of the express or implied disinheritance.

§ 773

g) Disinheritance without Cause and Omission

1) If the testator has expressly or tacitly disinherited a beneficiary of the statutory share due to a specific act that does not constitute grounds for disinheritance, it is presumed that he intended to grant them the statutory share and not to bequeath them a portion of the estate.

2) If the testator had children and their descendants whose births he was unaware of at the time of making a testamentary disposition, it is presumed that he intended to bequeath something to them. If he also had other children, it is presumed that he would have provided for the child of whom he was unaware at least as much as for the child who received the least. If the child unknown to him was his only child, the will is deemed revoked, unless the testator would have drawn up this will even had he been aware of his child.

§ 773a

Reduction of the Statutory Share

1) The testator may reduce the statutory share to half by will.

2) The reduction of the statutory share must have been expressly provided for in the will.

3) Section 771(1) applies mutatis mutandis to the reduction of the statutory share.

§ 774

Necessary maintenance of the beneficiary of the statutory share

Even if a beneficiary of the statutory share is unworthy of inheritance or has been disinherited, they are still entitled to necessary maintenance.

Determination and Calculation of the Statutory Share

§ 775

1) At the request of a person entitled to a statutory share, the entire estate shall be precisely described and appraised for the purpose of determining the statutory share.

2) The valuation shall be based on the date of the decedent's death. Until the monetary statutory share is paid, the statutory heir is entitled to statutory interest.

§ 776

1) Debts and other encumbrances that were already attached to the estate during the testator's lifetime shall be deducted from the estate, as shall all costs incurred after the opening of the succession and before the distribution of the estate that are associated with the administration, management, and settlement of the estate.

2) However, the statutory share is calculated without regard to bequests and other encumbrances arising from the last will.

§ 777

Offsetting of Gifts Against the Estate

1) Anything that the beneficiary of the statutory share receives as an inheritance, a bequest, or—following the testator's death—as a beneficiary of a foundation established by the testator or a comparable estate shall be credited against the monetary statutory share, i.e., deducted from it.

2) Bequests upon death must be valued as of the date of the decedent's death.

Addition and Offset of Inter Vivos Gifts

§ 778

a) General

1) Gifts received by the beneficiary of the statutory share or by a third party from the decedent during the decedent's lifetime or upon death shall be added to the estate in accordance with the following provisions and set off against any monetary statutory share of the donee.

2) The following are also considered gifts in this sense

1. the provision of a dowry for a child,
2. an advance on the statutory share,
3. compensation for a waiver of inheritance or a statutory share,
4. the dedication of assets to a foundation,
5. the conferral of the status of beneficiary of a foundation, to the extent that the testator has dedicated his or her assets to it, as well as
6. any other benefit which, in terms of its economic substance, is equivalent to a gratuitous legal transaction inter vivos.

3) The granting of a genuine discretionary benefit in the cases referred to in paragraph 2, items 5 and 6, shall not be deemed a gift.

§ 779

b) Gifts to Persons Not Entitled to a Statutory Share

1) At the request of a person entitled to a compulsory portion, gifts that the decedent actually made in the last two years prior to his or her death to persons who do not belong to the group of persons entitled to a compulsory portion (§ 763) shall be included in the calculation of the estate.

2) A descendant is entitled to this right only with respect to gifts made by the decedent at a time when he or she had a child entitled to a compulsory portion; the spouse or registered partner is entitled to this right only with respect to gifts made during his or her marriage or registered partnership with the decedent.

§ 780

c) Gifts to Persons Entitled to a Statutory Share

1) At the request of a person entitled to a compulsory share or an heir, gifts made to persons who are entitled to a compulsory share (§ 763) must be added to the estate and deducted from the compulsory share of the person who received the gift or the person who succeeds to that person's rights. A donee who, at the time of the gift, generally belonged to the group of persons entitled to a compulsory portion (Section 763) and who is therefore not entitled to a compulsory portion because he or she has waived his or her compulsory portion or renounced the inheritance may likewise demand the inclusion and set-off of gifts to persons entitled to a compulsory portion.

2) A legatee may also demand the addition and set-off to the extent that he or she is required to contribute to the fulfillment of the statutory share or suffers a proportionate reduction.

d) Exceptions

§ 781

Gifts made by the decedent from income without diminishing the principal estate, for charitable purposes, in fulfillment of a moral obligation, or for reasons of propriety, shall not be added to or set off against the statutory share, unless the decedent and the donee have agreed otherwise.

§ 782

Gifts to a beneficiary of a statutory share shall not be set off against that beneficiary's statutory share to the extent that the decedent has provided by will or agreed with the beneficiary to waive such set-off. In such a case, the gift exempt from set-off shall be excluded from the calculation of the statutory share of the beneficiary exempt from set-off shall not be included in the calculation for beneficiaries of a statutory share who have been exempted. The agreement waiving such inclusion must be in writing; the rescission of this agreement must comply with the formal requirements for a waiver of a statutory share.

§ 783

e) Right to Information

Any person entitled to demand the inclusion of certain gifts has a right to information regarding such gifts from the estate, the heirs, and the donee.

§ 783a

Deferral and Payment in Installments of the Claim to a Statutory Share

1) The heir may request a deferral of the statutory share or payment of the statutory share in installments if immediate fulfillment of the entire claim to the statutory share would constitute an unreasonable hardship for the heir due to the nature of the estate assets, particularly if it would force the heir to give up the family home or to sell an asset that constitutes the economic. The interests of the beneficiary of the statutory share must be given due consideration.

2) In the event of a deferral or payment in installments, interest shall accrue on the claim for the statutory share. In addition, the beneficiary of the statutory share may demand security. The court shall determine the amount and due date of the interest, as well as the nature and extent of the security, in accordance with the principles of equity.

3) A final decision under paragraphs 1 and 2 may be set aside or modified by the court upon application if circumstances have changed significantly since the decision was rendered.

4) The probate court has jurisdiction to rule on the applications under subsections (1) through (3). If a legal dispute regarding the claim to a compulsory share is pending, the applications under subsections (1) and (2) must be filed in that proceeding.

§ 784

f) Calculation Method

1) A gift that is added to the estate pursuant to the preceding provisions shall be included in the calculation. The statutory shares shall be determined on the basis of the estate thus increased.

2) From a statutory share increased in this manner, the gift to the donee entitled to a statutory share shall be deducted to the extent that it is to be credited against his or her statutory share.

§ 785

g) Valuation of the Gift

The value of the gifted item must be determined as of the date the gift was actually made. This value must then be adjusted to the date of death in accordance with the state consumer price index.

Liability of the Donee

§ 786

1) If gifts are added to or offset against the statutory shares when determining them, but the estate is insufficient to cover the statutory shares, the beneficiary whose statutory share has been reduced may demand payment of the shortfall from the donee. This does not apply to the dowry received by a child, to the extent that the child was entitled to it under § 1220.

2) Multiple donees are liable for the shortfall in the statutory share in proportion to the value of their gifts.

3) If the donee does not pay the shortfall or the share for which he is liable under paragraph 2, he is liable only with the property transferred to him.

§ 787

1) If the donee no longer possesses the gifted item or its value, or if its value has diminished, the donee is liable with his or her entire estate if he or she has allowed this loss to occur in bad faith.

2) Section 766f, concerning the deferral and installment payment of the claim to a compulsory share, applies mutatis mutandis to the claim for payment of the shortfall.

§ 788

1) A donee entitled to a statutory share (§ 764) is liable to another beneficiary whose statutory share has been reduced only to the extent that, as a result of the gift, he has received more than the statutory share to which he would have been entitled had the gifts to be added been taken into account.

2) If the donee predeceased the testator, waived his or her statutory share, or renounced the inheritance, he or she or his or her heirs are entitled to an exemption from liability in the amount of his or her hypothetical statutory share, to be calculated as of the testator's date of death. The gift must be included even if the testator waived its set-off against the statutory share.

3) To the extent that the donee or his or her heir has already asserted a limitation of liability, a person who is entitled to the statutory share in place of the statutory heir or whose statutory share is increased by the death of the statutory heir may not assert any further such limitation of liability.

§ 789

If the donee was not among the persons entitled to a compulsory share at the time of the gift (§ 763), the donee is not liable if the decedent actually made the gift more than two years before his or her death.

Setoff against the inheritance share

§ 790

In the case of succession by will and in the case of intestate succession, the heir must have an inter vivos gift (§ 778) set off against his or her inheritance if the decedent has so provided by will or codicil or has agreed to this with the donee. This agreement and its rescission must be in writing; however, if concluded only after the gift has been made, it must comply with the formal requirements for a renunciation of inheritance.

§ 791

In the case of intestate succession by children, a child must, at the request of another child, have an inter vivos gift (§ 778) set off against the inheritance, unless the decedent made the gift from income without diminishing the family estate or provided for the waiver of such set-off by will or codicil or agreed to it with the donee. This agreement and its termination must be in writing.

§ 792

A descendant's share of the inheritance includes not only what he himself has received, but also what his ancestors—whose place he takes—received in this manner. Similarly, anyone who receives a share of the inheritance by way of accretion (§ 560) must have gifts made to the person whose vacated share he is taking into account.

§ 793

1) The assets to be taken into account in the set-off must be valued as of the date on which the gift was actually made. This value must then be adjusted to the date of death in accordance with the state consumer price index and added to the estate.

2) The assets to be set off shall be deducted from the share of the heir subject to set-off. The heir subject to set-off is not obligated to surrender the gift.

Sections 794 and
795 Repealed

§ 796

Claim of the Spouse or Registered Partner to Reasonable Support

Except in the cases provided for in Sections 759 and 774, the spouse or registered partner is entitled to reasonable maintenance from the heirs, commensurate with the circumstances, up to the value of the estate, so long as he or she does not enter into a new marriage or registered partnership. This claim shall include everything that the entitled person receives from the decedent by way of contractual or testamentary bequests, as a statutory share of the estate, as a compulsory portion, or through benefits under public or private law; likewise, it shall include the person's own assets or income from gainful employment actually performed by the person or from such employment that may reasonably be expected of the person under the circumstances.

15. Main Section

Taking Possession of the Inheritance

Conditions for the Legal Acceptance of an Inheritance

§ 797

No one may take possession of an inheritance on their own authority. The inheritance must be adjudicated in court, and the court must effect the transfer of the estate, that is, the transfer into legal possession.

§ 798

The specific provisions governing judicial proceedings determine the extent to which the court must act ex officio following a death, as well as the deadlines and precautions to be observed in handling such matters. These provisions establish what the heir or any other person with a claim to the estate must do in order to take possession of what is due to them.

§ 798a

If the court transfers an insolvent estate in lieu of payment, the transfer order constitutes a title to acquisition.

Evidence of Title; Declaration of Acceptance of the Inheritance

§ 799

Anyone wishing to take possession of an inheritance must prove to the court the legal title to it—whether it accrues to them by a last will and testament, a valid contract of inheritance, or by law—and expressly declare that they accept the inheritance.

§ 800

The acceptance of the inheritance or the declaration of acceptance must simultaneously state whether it is unconditional or subject to the legal benefit of the inventory.

§ 801

Effect of the Unconditional

An unconditional declaration of acceptance of an inheritance has the effect that the heir is liable to all creditors of the decedent for their claims and to all legatees for their legacies, even if the estate is insufficient.

§ 802

and the conditional declaration

If the inheritance is accepted subject to the legal benefit of the inventory, the court shall immediately take inventory at the expense of the estate. Such an heir is bound to the creditors and legatees only to the extent that the estate suffices for their claims, as well as his own claims to which he is entitled apart from his right of inheritance.

Right to Accept or Renounce the Inheritance Conditionally or Unconditionally

§ 803

The testator may not deprive the heir of this legal benefit, nor may he prohibit the drawing up of an inventory. Even a waiver of this right made in an inheritance agreement between spouses or registered partners is of no effect.

§ 804

The drawing up of an inventory may also be required of a person entitled to a statutory share.

§ 805

Anyone capable of managing their own affairs is free to accept the inheritance unconditionally or subject to the legal benefit described above, or to renounce it. Guardians and curators must follow the regulations issued by the competent authority (§ 233).

§ 806

The heir may no longer revoke his or her judicial declaration of acceptance of the inheritance, nor may he or she amend the unconditional acceptance and reserve the legal benefit of the inventory.

§ 807

If, among several co-heirs, some accept the inheritance unconditionally, while others—or even just one of them—accept it subject to the aforementioned legal benefit, an inventory must be drawn up, and the estate proceedings must be based on the declaration of acceptance of the inheritance limited to this condition. In this case, as well as in all cases in which an inventory must be drawn up, even a person who has made an unconditional declaration of acceptance of the inheritance shall enjoy the legal benefit of the inventory as long as the inheritance has not yet been transferred to him.

§ 808

If a person is appointed as an heir who would have been entitled to the inheritance in whole or in part even without a last will and testament, that person is not authorized to invoke statutory succession and thereby frustrate the last will and testament. That person must either accept the inheritance pursuant to the last will and testament or renounce it entirely. However, persons entitled to a statutory share may renounce the inheritance subject to their statutory share.

§ 809

Transfer of the Right to Inherit

If the heir dies before accepting or renouncing the inheritance that has fallen to him, his heirs shall, unless the testator has excluded them or designated other reversionary heirs, succeed to the right to accept or renounce the inheritance (§ 537).

Arrangements Prior to Acceptance of the Inheritance

§ 810

a) Administration

1) An heir who, upon accepting the inheritance, provides sufficient proof of his or her right to inherit, has the right to use and administer the estate's assets and to represent the estate, unless the probate court orders otherwise. If this applies to more than one person, they shall exercise this right jointly, unless they agree otherwise.

2) Administrative and representative acts prior to the submission of declarations of acceptance of the entire estate, as well as all disposals of items from the estate's assets, require the approval of the probate court if they do not form part of the ordinary course of business. Approval shall be denied if the act would clearly be detrimental to the estate.

3) If, based on the case file, the preparation of an inventory is to be expected, assets whose sale does not form 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 take any further measures to secure or satisfy the testator's creditors beyond what they themselves request. However, the creditors are not required to wait for a declaration of acceptance of the inheritance. They may assert their claims against the estate and request that a curator be appointed to represent the estate, against whom they may enforce their claims.

§ 812

c) Separation of the Estate from the Heir's Assets

If a creditor of the estate, a legatee, or a beneficiary of a compulsory portion fears that his claim may be jeopardized by the commingling of the estate with the heir's assets, he may, prior to the transfer of the estate, demand that the estate be separated from the heir's assets, placed in the custody of the court, or administered by an estate curator, and that his claim thereto be noted and settled. In such a case, however, the heir shall no longer be liable to him from his own assets, even if the heir has unconditionally accepted the inheritance.

d) Convening of the Estate Creditors

§ 813

The heir or the appointed estate administrator is free to request the issuance of an edict, by which all creditors are summoned to file and state their claims within a period of time appropriate to the circumstances, for the purpose of ascertaining the extent of the debts, and to refrain from satisfying the creditors until the deadline has passed.

§ 814

Effect of the Summons

The effect of this judicial summons is that creditors who have not filed their claims within the specified time limit shall have no further claim against the estate, once it has been exhausted by the payment of the filed claims, except to the extent that they hold a lien.

§ 815

or the failure to do so

If the heir fails to exercise the discretion granted to him regarding the judicial summons, or if he immediately satisfies some of the creditors who have filed claims without regard for the rights of the others, and if some creditors remain unpaid due to the insufficiency of the estate, he shall be liable to them, notwithstanding the conditional declaration of acceptance of the inheritance, with his entire estate to the extent that they would have received payment if the estate had been used to satisfy the creditors in accordance with the statutory order.

e) Certificate of the Execution of the Last Will

§ 816

either by the executor of the will

If the testator has appointed an executor of his last will, it is at the executor’s discretion whether to undertake this task. If he has undertaken it, he is obligated either to carry out the testator’s instructions himself as an agent or to urge the negligent heir to carry them out.

or the heir

§ 817

If no executor of the last will has been appointed, or if the appointed executor fails to assume the duties of the office, it is the immediate responsibility of the heir to fulfill the testator’s will as far as possible or to ensure its fulfillment, and to provide evidence thereof to the court. With respect to specific legatees, the heir need only demonstrate that he has notified them of the bequest to which they are entitled (§ 688).

§ 818

The taxes the heir must pay before taking possession of the estate, and in the event that the decedent owed money to the state treasury

, the political ordinances contain specific provisions on this matter.

§ 819

When the inheritance is to be transferred

As soon as the lawful heir is recognized by the court on the basis of the submitted declaration of acceptance of the inheritance, and the obligations have been fulfilled by the court, the inheritance is transferred to him and the proceedings are concluded. Furthermore, in order to effect the transfer of ownership of immovable property, the heir must comply with the provisions of § 436.

Liability of Joint Heirs

§ 820

Multiple heirs who have accepted a joint inheritance without the legal benefit of an inventory are jointly and severally liable to all creditors of the estate and legatees, even after the estate has been settled, each for all and all for one. Among themselves, however, they are liable to contribute in proportion to their respective shares of the inheritance.

§ 821

If the joint heirs have availed themselves of the legal benefit of the inventory, they are jointly and severally liable to the creditors of the estate and legatees prior to the distribution of the estate in accordance with § 550. After the distribution of the estate has taken place, each individual is liable for the liabilities not exceeding the estate's assets only in proportion to his or her share of the inheritance.

§ 822

Security Measures for the Heir's Creditors

1) Prior to the transfer of the estate, the heir's creditors may enforce their claims only against those specific assets of the estate over which the probate court has granted the heir the right of free disposal.

2) To secure claims against an heir, provisional dispositions may be made in favor of the heir's creditors with respect to the estate to which the heir has become entitled prior to the transfer of the estate, provided the conditions set forth in Art. 274 EO are met. Depending on the objective to be achieved, the necessary security measures (Art. 274 and 277 EO) may be ordered by means of the provisional disposition.

§ 823

Inheritance Actions

Even after receiving a final judgment, the possessor may be sued by anyone claiming a better or equal right to the inheritance for the transfer or division of the estate. Ownership of individual items of the estate is pursued not through an action for inheritance but through an action for ownership.

§ 824

Effect thereof

If the defendant is ordered to transfer the estate in whole or in part, claims for the return of fruits received by the possessor or for reimbursement of expenses incurred by the possessor in the estate shall be assessed in accordance with the principles established with regard to the possessor acting in good faith or bad faith (Art. 517 and 519 SR). A third-party possessor in good faith is not liable to anyone for the items of the estate acquired in the meantime.

16. Main Section

On Joint Ownership and Other Rights in Rem

Sections 825
through 858
Repealed

Section 2

On Personal Property Rights

17. Main Section

On Contracts and Legal Transactions in General

§ 859

Basis of Personal Property Rights

Personal property rights, by virtue of which one person is obligated to perform a service for another, are based directly on a law, a legal transaction, or a damage suffered.

Promise of a reward

§ 860

A promise of a reward for a service or a result (reward offer) that is not directed at specific persons becomes binding upon public announcement. A reward offer that involves a contest is valid only if the announcement specifies a deadline for entries.

§ 860a

Until the performance is completed, the offer may be revoked in the same form in which it was announced, or in an equally effective form, or by special notice, unless the announcement expressly waives this right or sets a time limit. However, the revocation is ineffective against a person who has performed the service in reliance on the offer if that person demonstrates that, at that time, the revocation had not come to his or her knowledge through no fault of his or her own.

§ 860b

If the performance has been accomplished by several persons, the reward shall be due to the person who first accomplished the performance, unless the offer indicates otherwise; in the event of simultaneous completion, it shall be divided equally among all of them.

Conclusion of the Contract

§ 861

Anyone who declares that they will transfer a right to another person—that is, that they will grant them something, give them something, do something for them, or refrain from doing something on their behalf—makes a promise; but if the other party validly accepts the promise, a contract is formed through the mutual consent of both parties. As long as negotiations are ongoing and the promise has not yet been made or has not been accepted either in advance or subsequently, no contract is formed.

§ 862

The promise (offer) must be accepted within the time limit set by the offeror. In the absence of such a period, an offer made to a person present or by telephone from person to person must be accepted immediately; an offer otherwise made to an absent person must be accepted no later than the time at which the offeror, assuming the offer arrived in a timely manner, may expect the response to arrive, provided the response was sent in a timely and proper manner; otherwise, the offer lapses. The offer cannot be withdrawn before the expiration of the acceptance period. It also does not lapse if a party dies or becomes legally incapacitated during the acceptance period, unless the circumstances indicate a different intention on the part of the offeror.

§ 862a

Acceptance is deemed timely if the declaration has reached the offeror within the acceptance period. However, despite its delay, the contract is concluded if the offeror must have recognized that the declaration of acceptance was sent in a timely manner and nevertheless does not immediately notify the other party of his withdrawal.

Classification of Contracts

§ 863

1) One may express one's intent not only expressly through words and generally accepted signs, but also tacitly through acts which, when all circumstances are considered, leave no reasonable grounds for doubt.

2) With regard to the meaning and effect of acts and omissions, consideration must be given to the customs and practices prevailing in good faith.

§ 864

1) If an express declaration of acceptance is not to be expected given the nature of the transaction or commercial practice, the contract is concluded when the offer has actually been complied with within the time limit specified for this purpose or within a time limit appropriate to the circumstances.

2) The retention, use, or consumption of an item sent to the recipient without his or her prompting shall not be deemed acceptance of an offer. The recipient is not obligated to store or return the item; he may dispose of it. However, if it must be apparent to him under the circumstances that the item was sent to him in error, he must notify the sender within a reasonable period or return the item to the sender.

§ 864a

Clauses with unusual content in pre-formulated terms and conditions used by one party to a contract do not become part of the contract if they result in a significant imbalance in the contractual rights and obligations and the other party could not reasonably have expected them, even under the circumstances—particularly given their outward appearance—unless the first party specifically drew the other party's attention to them.

Requirements for a Valid Contract

1. Legal Capacity of Persons

§ 865

Repealed

§ 866

Repealed

§ 867

The requirements for the validity of a contract with a municipality under the special supervision of the public administration (§ 27) or its individual members and representatives are to be derived from the constitution of said municipality and the political laws (§ 290).

§ 868

Repealed

2. True Consent

§ 869

Consent to a contract must be freely, seriously, definitely, and clearly expressed. If the declaration is incomprehensible, entirely indefinite, or if acceptance occurs under terms other than those under which the promise was made, no contract is formed. Anyone who, in order to benefit another, uses ambiguous expressions or engages in a sham act, shall pay compensation.

§ 870

1) A party who has been induced to enter into a contract by the other party through deceit or through unjustified and well-founded fear is not bound to perform it.

2) Whether the fear was well-founded must be determined based on the magnitude and likelihood of the danger and on the physical and mental constitution of the person threatened.

§ 871

If a party was, with respect to the content of a statement made by him or received by the other party,, concerning the main subject matter or a material characteristic thereof, to which the intention was primarily directed and declared, he shall not be bound by the declaration if the error was caused by the other party or should have been apparent to the other party from the circumstances, or was clarified in a timely manner.

§ 872

If, however, the error concerns neither the main subject matter nor an essential characteristic thereof, but rather an incidental circumstance, the contract remains valid insofar as both parties have consented to the main subject matter and have not declared the secondary circumstance to be their primary intention, the contract remains valid; however, the party who was misled is entitled to appropriate compensation from the party who caused the error.

§ 873

These same principles also apply to a mistake regarding the identity of the person to whom a promise was made, insofar as, without the mistake, the contract would either not have been formed at all or would not have been formed in that manner.

§ 874

In any case, the person who has brought about a contract through deceit or undue fear must provide compensation for the adverse consequences.

§ 875

If one of the contracting parties has been induced by a third party, through deceit or unjustified and well-founded fear, to enter into a contract or to make a mistaken declaration, the contract is valid. Only in the event that the other party participated in the third party's action or must have clearly known of it do §§ 870 through 874 apply.

§ 876

The foregoing provisions (§§ 869 to 875) apply mutatis mutandis to other declarations of intent that are to be made to another person.

§ 877

Anyone who demands the rescission of a contract due to lack of consent must, in return, return everything they have received from such a contract to their advantage.

3. Possibility and Permissibility

§ 878

What is positively impossible cannot be the subject of a valid contract. If both the possible and the impossible are stipulated, the contract remains valid in respect of the former, unless the contract otherwise provides that one provision cannot be separated from the other. A party who knew or should have known of the impossibility at the time the contract was concluded must compensate the other party—unless the same applies to the other party—for the damage suffered as a result of relying on the validity of the contract.

§ 879

1) A contract that violates a statutory prohibition or public policy is void.

2) In particular, the following contracts are void:

1. if a consideration is stipulated for the negotiation of a marriage contract;

2. if a legal representative settles a dispute entrusted to him in whole or in part on his own behalf or secures a promise of a specific portion of the amount awarded to the party;

3. if an inheritance or bequest expected from a third party is disposed of while that person is still alive;

4. if a person exploits another's recklessness, distress, mental incapacity, inexperience, or emotional distress by having a consideration promised or granted to himself or a third party for a service, the value of which is grossly disproportionate to the value of the service.

3) A clause contained in pre-formulated terms and conditions that does not define one of the principal obligations of either party is void in any event if, taking into account all the circumstances of the case, it results in a significant imbalance in the contractual rights and obligations to the detriment of one party.

§ 880

If the subject matter of a contract is withdrawn from circulation before its delivery, it is as if the contract had never been concluded.

§ 880a

If a person has promised another a performance by a third party, this shall be deemed a promise to secure such performance from the third party; however, if the person has guaranteed the success of the performance, he shall be liable for full satisfaction if the third party's performance fails to materialize.

Contracts for the Benefit of Third Parties

§ 881

1) If a person has obtained a promise of performance from a third party, they may demand that performance be rendered to the third party.

2) Whether and at what point the third party also directly acquires the right to demand performance from the promisor is to be determined by the agreement and the nature and purpose of the contract. In case of doubt, the third party acquires this right if the performance is intended primarily for his benefit.

3) Unless otherwise agreed, the right to the performance promised by the transferee to a third party in connection with a transfer of property is deemed to have been acquired by the third party upon delivery of the property.

§ 882

1) If the third party rejects the right acquired under the contract, the right is deemed not to have been acquired.

2) The promisor may also assert defenses arising from the contract against third parties.

Form of Contracts

§ 883

A contract may be concluded orally or in writing, in court or outside of court, with or without witnesses. This diversity of form makes no difference with respect to its binding effect, except in cases specified by law.

§ 884

If the parties have reserved the right to require a specific form for a contract, it is presumed that they do not wish to be bound until that form has been fulfilled.

§ 885

Even if a formal document has not yet been drawn up, but a memorandum setting forth the main points has been drawn up and signed by the parties (pointation), such a memorandum already establishes the rights and obligations expressed therein.

§ 886

A contract for which the law or the parties' intent requires the written form is concluded by the signatures of the parties or, if they are illiterate or unable to sign due to physical disability, by the affixing of their legally certified signature or by the affixing of their signature in the presence of two witnesses, one of whom signs the party's name. The written conclusion of the contract may be replaced by judicial certification. A mechanical reproduction of a handwritten signature is sufficient only where it is customary in business transactions.

§ 887

Repealed

Joint Liability or Entitlement

§ 888

If two or more persons promise the same right to a thing to a person or accept it from him, both the claim and the obligation are shared in accordance with the principles of joint ownership.

§ 889

Except in the cases specified by law, each of several co-debtors of a divisible thing is liable only for his share; likewise, each of several co-owners of a divisible thing must be content with the share to which he is entitled.

§ 890

In the case of indivisible things, however, if there is only one creditor, he may demand such things from any co-debtor. But if there are several creditors and only one debtor, the debtor is not obligated to surrender the thing to a single co-creditor without security; he may insist on the agreement of all co-creditors or demand judicial custody of the thing. *Correlation*

§ 891

If several persons jointly and severally promise to deliver the same thing, such that one is expressly bound for all and all are bound for one, each individual is liable for the whole. It is then up to the creditor to decide whether to demand the entire amount from all or some of the joint debtors, or in proportions of his choosing, or whether to demand it from a single debtor. Even after filing a lawsuit, he retains this choice if he withdraws from the lawsuit; and if he is satisfied only in part by one or another joint debtor, he may demand the remainder from the others.

§ 892

If, on the other hand, a debtor has promised the same total amount to several persons, and these persons have been expressly authorized to claim it jointly and severally, the debtor must pay the total amount to the creditor who first makes a claim against him.

§ 893

As soon as one co-debtor has paid the entire amount to the creditor, the creditor may no longer claim anything from the remaining co-debtors; and as soon as one co-creditor has

has been fully satisfied by the debtor, the remaining co-creditors have no further claim.
§ 894
A co-debtor may not cause the others any disadvantage by entering into more onerous terms with the creditor, and any leniency or release granted to a co-debtor for his own benefit does not extend to the others.
§ 895
The extent to which, among several co-creditors to whom the same entire sum has been promised in undivided shares, the one who has received the entire claim for himself is liable to the other creditors must be determined by the specific legal relationships existing between the co-creditors. If no such relationship exists, one is not accountable to the other.
§ 896
A joint and several debtor who has discharged the entire debt from his own share is entitled, even without a formal assignment of rights, to demand reimbursement from the others in equal shares, provided that no other special relationship exists among them. If one of them was incapable of entering into the obligation, or is unable to fulfill his obligation, such a defaulting share must likewise be assumed by all the co-obligors. The discharge of a co-obligor may not prejudice the others in claiming reimbursement (§ 894).
Ancillary Provisions in Contracts
1. Conditions
§ 897
With regard to conditions in contracts, the same provisions apply as those established for conditions attached to declarations of last will.
§ 898
Agreements made under conditions that would not be considered valid in a will are void.
§ 899
If the condition stipulated in a contract has already been fulfilled prior to the contract, it need only be repeated in the contract if it

an act of the person who is to acquire the right and can be repeated by that person.

§ 900

A right promised subject to a condition precedent also passes to the heirs.

§ 901

2. Motivation

If the parties have expressly made the motive or ultimate purpose of their consent a condition, such motive or purpose shall be treated as any other condition. Furthermore, such statements have no effect on the validity of contracts for consideration. In the case of contracts without consideration, however, the provisions set forth in the preceding provisions shall apply.

3. Time, Place, and Manner of Performance

§ 902

1) A time limit determined by contract or law shall, unless otherwise specified, be calculated such that, in the case of a time limit determined by days, the day on which the event from which the time limit begins to run falls shall not be counted.

2) The end of a period of time determined by weeks, months, or years falls on the day of the last week or the last month that, by its name or number, corresponds to the day of the event from which the period begins; however, if that day does not exist in the last month, it falls on the last day of that month.

3) A half-month shall be understood to mean 15 days; the middle of a month shall be understood to mean the 15th day of that month.

§ 903

A right whose acquisition is tied to a specific date is acquired at the beginning of that date. The legal consequences of non-performance of an obligation or of a default do not take effect until the end of the last day of the period. If the last day designated for the submission of a declaration or for the performance of an obligation falls on a Sunday or a day treated as equivalent to a Sunday (Art. 1 FAHG), it is replaced, unless otherwise agreed, by the next business day.

§ 904

If no specific time has been set for the performance of the contract, performance may be demanded immediately, that is, without undue delay. If the obligor has reserved the right to determine the time of performance at his discretion, one must either await his death and seek recourse from his heirs or, if the obligation is merely personal and non-hereditary, have the time of performance determined by the court in accordance with equity. The latter also applies if the obligor has promised performance as soon as possible or as practicable. Incidentally, the provisions set forth above (§§ 704 to 706) regarding the time limits attached to the final dispositions 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 take place at the place where the debtor had his domicile at the time the contract was concluded, or, if the obligation arose in the course of the debtor's commercial or business enterprise, at the place of business. The place of performance shall be decisive for the measure and weight.

2) The mere fact that the debtor bears the shipping costs does not automatically mean that the location to which the goods are to be shipped constitutes the place of performance for the debtor.

§ 905a

If a thing is owed that is specified only by its kind, it must be delivered in an average quality and condition.

§ 906

If the promise can be fulfilled in several ways, the obligor has the choice; however, once a choice has been made, the obligor may not unilaterally revoke it.

§ 907

If a contract is expressly concluded subject to a right of choice, and that choice is thwarted by the accidental destruction of one or more of the options, the party entitled to the choice is not bound by the contract. However, if the obligor is at fault, he must be liable to the entitled party for the thwarting of the choice.

§ 907a

1) A monetary obligation must be performed at the creditor's domicile or place of business by delivering the monetary amount there or transferring it to a bank account designated by the creditor. If, after the claim arose, the creditor's domicile or place of business or their bank account details have changed, the creditor bears any resulting increase in the risk and costs of performance.

2) If a monetary obligation is fulfilled by bank transfer, the debtor must issue the transfer order in sufficient time to ensure that the amount owed is credited to the creditor's account by the due date. If the due date has not been determined in advance, but rather is triggered by the performance of the consideration, the issuance of an invoice, a request for payment, or a similar circumstance, the debtor must issue the transfer order without undue delay after the occurrence of the circumstance determining the due date. The debtor bears the risk of any delay or failure in the crediting of the creditor's account, provided that the cause thereof does not lie with the creditor's bank.

§ 907b

1) If a monetary debt denominated in a 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 is based on the exchange rate applicable at the place of payment at the time of payment. If the debtor delays payment, the creditor may choose between the exchange rate applicable at maturity and the exchange rate applicable at the time of payment.

§ 908

4. Deposit

Unless otherwise agreed, anything given upon the conclusion of a contract is to be regarded only as a sign of the conclusion or as security for the performance of the contract, and is called a deposit. If the contract is not performed due to the fault of one party, the non-defaulting party may retain the deposit received or demand the return of double the amount of the deposit given. However, if the non-defaulting party is not satisfied with this, it may insist on performance or, if this is no longer possible, on compensation.

5. Penalty

§ 909

If, upon the conclusion of a contract, an amount is specified which one or the other party must pay in the event that they wish to withdraw from the contract prior to performance, the contract is concluded subject to a penalty for withdrawal. In this case, either the contract must be performed or the penalty for withdrawal must be paid. Anyone who has performed the contract even in part, or who has accepted even a partial performance by the other party, may no longer withdraw from the contract even upon payment of the penalty.

§ 910

If a deposit is given and, at the same time, the right to withdraw from the contract is stipulated without specifying a specific penalty, the deposit serves as the penalty. In the event of withdrawal, the depositor forfeits the deposit, or the recipient returns double the amount.

§ 911

Anyone who is prevented from fulfilling the contract not by mere chance but through their own fault must also pay the penalty.

6. Incidental Charges

§ 912

The creditor is sometimes entitled to claim incidental charges from the debtor in addition to the principal debt. These consist of the accrescent and the fruits of the principal obligation, of the agreed or default interest, or of compensation for the damage caused or for the loss suffered by the other party due to the failure to properly fulfill the obligation, and finally of the amount stipulated by a party for this event.

§ 913

The extent to which a right in rem is associated with the right to accretion or to fruits is determined in the first and fourth chapters of Part 2. A mere personal right does not entitle the holder to incidental charges. The extent to which the creditor is entitled to such charges is to be derived partly from the specific types and provisions of the contracts, and partly from the main sections on the right to damages and compensation.

Rules of Interpretation for Contracts

§ 914

In interpreting contracts, one must not adhere to the literal meaning of the wording, but rather ascertain the intent of the parties and understand the contract in a manner consistent with the practice of good faith.

§ 915

In the case of contracts binding on one party, in case of doubt it is presumed that the obligor intended to impose the lesser rather than the greater burden; in the case of contracts binding on both parties, an ambiguous statement is interpreted to the detriment of the party who made it (§ 869).

§ 916

1) A declaration of intent made to another person for appearance's sake with that person's consent is void. If the purpose of such a declaration is to conceal another transaction, that transaction must be assessed according to its true nature.

2) The defense of a sham transaction may not be raised against a third party who has acquired rights in reliance on the declaration.

General Provisions on Contracts and Transactions for Consideration

§ 917

In a contract for consideration, either goods are exchanged for goods, or acts—including omissions—are exchanged for acts, or finally, goods are exchanged for acts and acts for goods.

§ 918

1) If a contract for consideration is not performed by one party at the proper time, at the proper place, or in the manner agreed upon, the other party may either demand performance and compensation for the delay or, after setting a reasonable deadline for remedial performance, declare the contract rescinded.

2) If performance is divisible for both parties, withdrawal due to a delay in a partial performance may be declared only with respect to the individual or all outstanding partial performances.

§ 919

If performance is required by a fixed time or within a fixed period, failing which the other party may withdraw from the contract, the party entitled to withdraw must, if it wishes to insist on performance, notify the other party without delay upon the expiration of that time; if it fails to do so, it may no longer 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 the delay of a partial performance, the remaining performances are of no interest to the recipient.

§ 920

If performance is prevented by the fault of the obligor or by a fortuitous event for which the obligor is responsible, the other party may either claim damages for non-performance or withdraw from the contract. In the event of partial prevention, the other party is entitled to withdraw 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 the other party.

§ 921

Withdrawal from the contract does not affect the right to compensation for damages caused by culpable non-performance. Any consideration already received must be returned or reimbursed in such a way that neither party profits from the other's loss.

§ 922

Warranty

1) Anyone who transfers an item to another person in exchange for payment warrants that the item conforms to the contract. The transferor is therefore liable to ensure that the item possesses the qualities stipulated in the contract or those that are customarily expected, that it conforms to the transferor's description, a sample, or a model, and that it can be used in accordance with the nature of the transaction or the agreement reached.

2) Whether the item conforms to the contract must also be assessed based on what the recipient can reasonably expect from the public statements made by the transferor or the manufacturer regarding the item, particularly in advertising and in the information accompanying the item. This also applies to public statements made by a person who has imported the item into the European Economic Area or who identifies themselves as the manufacturer by affixing their name, trademark, or other identifying mark to the item. However, such public statements do not bind the transferor if he was not aware of them nor could have been aware of them, if they were corrected at the time the contract was concluded, or if they could not have influenced the conclusion of the contract.

Warranty Cases

§ 923

Thus, anyone who attributes to the item qualities that it does not possess—whether such qualities were expressly stipulated or implied by the nature of the transaction—or who conceals unusual defects or encumbrances in the item, anyone who sells an item that no longer exists or an item belonging to another as their own, anyone who falsely claims that the item is suitable for a specific use or that it is free from the usual defects and encumbrances, shall be liable for this if the contrary fact comes to light.

§ 924

Presumption of Defectiveness

The transferor is liable for defects existing at the time of transfer. This is presumed until proven otherwise if the defect becomes apparent within six months of the transfer. The presumption does not apply if it is incompatible with the nature of the item or the defect.

§§ 925 to 927

Repealed

§ 928

If the defects of an item are obvious or if the encumbrances attached to the item are apparent from public records, no warranty applies except in cases of fraudulent concealment of the defect or an express assurance that the item is free from all defects and encumbrances. Debts and arrears attached to the item must always be accounted for.

§ 929

A person who knowingly takes possession of another's property has no claim to a warranty, just as a person who has expressly waived such a claim.

§ 930

If goods are delivered in bulk, that is, as they stand and lie, without count, measure, or weight, the transferor shall not be liable for any defects discovered therein, except in the case where a quality falsely represented by the transferor or stipulated by the recipient is lacking.

§ 931

Conditions of Warranty

If the transferee wishes to invoke the warranty due to a claim made by a third party against the item, he must notify his predecessor of the dispute. If he fails to do so, he does not yet lose the

Right to indemnification; however, the person preceding him may raise against him all defenses that were not raised against the third party, and thereby be released from liability to the extent that it is determined that these defenses, had they been properly raised, would have led to a different decision against the third party.

§ 932

Rights under the warranty

1) The transferee may, on account of a defect, demand either the repair (rectification or addition of what is missing) or the replacement of the item, or reduce the price, or rescind the contract.

2) Initially, the transferee may only demand repair or replacement of the item, unless such repair or replacement is impossible or would entail a disproportionately high cost for the transferor compared to the other remedy. Whether this is the case depends also 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 repair or replacement must be carried out within a reasonable time and with as little inconvenience as possible to the transferee, taking into account the nature of the item and its intended purpose. The costs of the repair or replacement shall be borne by the transferor.

4) If both repair and replacement are impossible or would entail a disproportionately high cost for the seller, the buyer is entitled to a price reduction or, unless the defect is minor, to rescind the contract. The same applies if the transferor refuses to remedy the defect or make a replacement, or fails to do so within a reasonable time, if such remedies would cause the transferee significant inconvenience, or if they are unreasonable for valid reasons attributable to the transferor.

§ 933

Warranty Period; Statute of Limitations

1) The transferor is liable for any defect that exists at the time of delivery of the item and becomes apparent within two years, or within three years in the case of immovable property, following that date. In the case of defects of title, the transferor is liable if the defect exists at the time of delivery of the item.

2) The transferee's rights under the warranty, as well as claims for a price reduction or termination of the contract, are barred three months after the expiration of the warranty period. In the case of defects of title, the statute of limitations begins two years, or three years for immovable property, after the date on which the transferee becomes aware of the defect. If the transferee notifies the transferor of the defect within the warranty period, or within the statute of limitations period for defects of title, the transferee may assert the defect without time limitation by raising a defense against the transferor's claim for payment.

3) The parties may agree to shorten or extend the periods provided for in paragraphs 1 and 2.

§ 933a

Damages

1) If the transferor is at fault for the defect, the transferee may also claim damages.

2) Due to the defect itself, the transferee may initially claim only repair or replacement as compensation. However, the transferee may claim monetary compensation if both repair and replacement are impossible or would entail a disproportionately high cost for the transferor. The same applies if the transferor refuses to repair or replace the item, or fails to do so within a reasonable time, if these remedies would cause the transferee significant inconvenience, or if they are unreasonable for valid reasons attributable to the transferor.

3) After the expiration of ten years from the transfer of the item, the transferee bears the burden of proving the transferor's fault for a claim for compensation based on the defect itself and for any further damage caused thereby.

§ 933b

Recourse of the Transferor Liable for Warranty

1) If a business operator has provided a warranty to a consumer, he may claim the warranty from his predecessor, provided that the latter is also a business operator, even after the expiration of the periods specified in § 933. The same applies to earlier transferors in relation to their predecessors if they themselves have provided a warranty to their successor due to the warranty rights of the last transferee. The claim is

limited to the losses incurred by the transferor as a result of his warranty obligation.
2) If the transferor has fulfilled his warranty obligation by repair or replacement, his claim under paragraph 1 also includes reimbursement for the expenses incurred by him as a result of the repair or replacement, provided that he requested his predecessor to remedy the defect immediately after the transferee notified him of the defect and the predecessor did not comply with this request within a reasonable period of time.
3) Claims under paragraph 1 are barred by the statute of limitations three months after the transferor has fulfilled his own warranty obligation, but no later than five years after the party liable for recourse has performed his obligation. The statute of limitations is suspended for the duration of the legal dispute by a third-party notice.
4) An agreement that excludes or limits a claim under paragraph 1 is binding only if it has been negotiated in detail and does not grossly disadvantage the transferor, taking into account all circumstances of the case.

Indemnification for Reduction by More Than Half

§ 934

In the case of mutually binding transactions, if one party has not received from the other even half of what it gave to the other, calculated at fair market value, the law grants the aggrieved party the right to demand rescission and restitution to the previous state. The other party, however, may choose to uphold the transaction by agreeing to compensate for the shortfall up to the fair market value. The disparity in value is determined as of the time the transaction was concluded.

§ 935

This remedy does not apply if a party has expressly waived it or has declared that they are taking the item at an extraordinary value out of special preference; if, although aware of the true value, they nevertheless agreed to the disproportionate value; furthermore, if the relationship between the parties suggests that they intended to enter into a contract combining elements of both consideration and gratuitousness, if the actual value can no longer be ascertained, and finally, if the item has been auctioned off by the court.

§ 936

On the Agreement of a Future Contract

An agreement to enter into a contract at a future date is binding only if both the time of conclusion and the essential terms of the contract have been determined, and the circumstances have not changed in the meantime in such a way as to frustrate the purpose expressly stated or implied by the circumstances, or to cause one or the other party to lose confidence in the agreement. In any case, such agreements must be enforced no later than one year after the agreed-upon date; otherwise, the right is extinguished.

§ 937

Waiver of Objections

General, indefinite waivers of objections to the validity of a contract are without effect.

18. Main Section

On Gifts

§ 938

Gift

A contract by which an item is transferred to someone without consideration is called a gift.

§ 939

To what extent a waiver constitutes a gift

Anyone who waives a right that is hoped for, has actually arisen, or is in doubt, without properly assigning it to another, or who waives the same right in favor of the obligor with the latter's consent, is not to be regarded as a donor.

Reward-based gift

§ 940

The nature of the gift is not altered if it was made out of gratitude, in recognition of the recipient's merits, or as a special reward for the recipient; however, the recipient must not have had a prior right of claim to it.

§ 941

If the donee had a legal claim to the reward, either because it had already been agreed upon by the parties or because it was prescribed by law, then the transaction ceases to be a gift and is to be regarded as a contract for consideration.

§ 942

Reciprocal Gifts

If gifts are stipulated in advance in such a way that the donor must receive a gift in return, no true gift arises in its entirety, but only with respect to the excess value.

§ 943

Form of the Gift Agreement

A gift agreement concluded merely orally, without actual delivery, does not confer any right of action on the donee. This right must be established by a written document.

§ 944

and the scope of a gift

An unrestricted owner may, subject to compliance with statutory provisions, also gift his or her entire present assets. However, a contract by which future assets are gifted is valid only to the extent that it does not exceed half of those assets.

§ 945

To what extent the donor is liable for the gift

Anyone who knowingly donates another person's property and conceals this fact from the donee is liable for the adverse consequences.

§ 946

Irrevocability of Gifts

As a general rule, gift agreements may not be revoked.

Exceptions

§ 947

1. Due to Indigence

If the donor subsequently falls into such poverty that he lacks the necessary means of support, he is entitled to demand annually from the donee the statutory interest on the amount gifted, to the extent that the gifted item or its value still exists and he lacks the necessary means of support, unless the donee himself is in equally impoverished circumstances.

Where there are several donees, the earlier donee is liable only to the extent that the contributions of the later donees are insufficient for maintenance.

2. Ingratitude

§ 948

If the donee is guilty of gross ingratitude toward his benefactor, the gift may be revoked. Gross ingratitude is understood to mean an injury to the body, honor, liberty, or property of such a nature that proceedings may be brought against the offender ex officio or at the request of the injured party under criminal law.

§ 949

The act of ingratitude renders the ungrateful party the improper owner of the gift and grants the injured party's heir—provided the latter has not forgiven the ingratitude and some portion of the gift remains in kind or in value—the right to bring an action for revocation even against the injuring party's heir.

§ 950

3. Reduction of Obligatory Maintenance

A person who is obligated to provide maintenance to another may not violate that person's right by making a gift to a third party. The person thus deprived is entitled to sue the donee for the difference between what the donor is now unable to provide and what the donee received. Where there are multiple donees, the provision above (§ 947) applies.

§§ 951 and 952 Repealed

§ 953

4. Creditors

Subject to the restriction of § 787, gifts may also be reclaimed if they have deprived creditors who already existed at the time of the gift. This right extends to creditors whose claims arose after the gift was made only if the donee can be shown to have acted in bad faith.

§ 954

5. Regarding Children Born After the Gift

The fact that a childless donor has children after a gift agreement has been concluded does not give either the donor or the children born subsequently the right to revoke the gift. However, in an emergency, the donor or the child born subsequently may assert the aforementioned right to statutory interest on the gifted amount against both the donee and the donee's heirs (§ 947).

§ 955

Gifts That Do Not Pass to the Heirs

If the donor has promised the donee support for a certain period, the heirs of the donee acquire neither a right nor an obligation to provide such support, unless the gift contract expressly provides otherwise.

§ 956

Repealed

19. Main Section

On the Custody Agreement

Custody Agreement

§ 957

If a person takes another's property into custody, a contract of custody is formed. The acceptance of a promise to take another's property—which has not yet been delivered—into custody does indeed bind the promising party; however, it does not yet constitute a contract of custody.

§ 958

Through the contract of deposit, the depositary acquires neither ownership, nor possession, nor a right of use; he is merely a holder with the duty to protect the item entrusted to him from damage.

§ 959

If he enters into a loan or rental agreement

If the custodian is permitted to use the deposited item at his request or through a voluntary offer by the depositor, the contract ceases to be a custody contract immediately upon such permission in the first case, but in the second case from the moment the offer is accepted or the deposited item is actually used; in the case of consumable items, it is converted into a loan agreement; in the case of non-consumable items, it is converted into a lease agreement, and the associated rights and obligations take effect.

§ 960

or into a power of attorney

Both movable and immovable property may be placed in custody. However, if the custodian is simultaneously entrusted with another transaction relating to the property in custody, he is regarded as a possessor.

Obligations and Rights of the Custodian

§ 961

The principal duty of the depositary is to carefully preserve the item entrusted to him for the specified period and, upon its expiration, to return it to the depositor in the same condition in which he received it, together with any accrued gains.

§ 962

The depositary must return the item to the depositor upon request even before the expiration of the period and may only claim compensation for any damage incurred. However, the depositary may not return the item entrusted to him earlier, unless an unforeseen circumstance renders him unable to keep the item safely or without his own detriment.

§ 963

If the term of custody has not been expressly determined nor can it be inferred from ancillary circumstances, the custody may be terminated at will.

§ 964

The custodian is liable to the depositor for damage caused by a failure to exercise due care, but not for fortuitous events; not even if he could have saved the entrusted item—even if it were of greater value—by sacrificing his own property.

§ 965

However, if the depositary has made use of the deposited item, has entrusted it to a third party without necessity and without the depositor's permission, or has delayed its return, and the item sustains damage to which it would not have been exposed had it remained with the depositor, the depositary cannot claim that the damage was accidental, and the damage shall be attributed to him.

§ 966

Repealed

§ 967

and of the Depositor

The depositor is obligated to compensate the custodian for any damage culpably caused and for the costs incurred to preserve the deposited item or to increase its ongoing utility. If, in an emergency, the custodian has sacrificed his own property to save the deposited item, he may demand reasonable compensation. However, the mutual claims of the depositary and the depositor of a movable item may be asserted only within 30 days from the date of return.

§ 968

Sequester

If a disputed item is placed in the custody of a third party by the disputing parties or by the court, the custodian is called a sequestrator. The rights and obligations of the sequestrator are determined in accordance with the principles set forth herein.

§ 969

Whether the custodian is entitled to remuneration

Remuneration for safekeeping may be claimed only if it has been expressly agreed upon or tacitly implied based on the custodian's status.

Hospitality

§ 970

1) Innkeepers who provide lodging to guests are liable as custodians for the property brought in by their guests, unless they can prove that the damage was neither caused by them or their employees nor by third parties entering or leaving the premises. If the injured party contributed to the occurrence of the damage, the judge shall decide, based on the circumstances, whether and to what extent compensation is due.

2) Items are considered to have been brought in if they have been handed over to the innkeeper or one of his employees or placed in a location designated or specified by them. Likewise, business owners who maintain stables and storage facilities are liable for the animals and vehicles kept there and for the items located on them.

3) The owners of bathing establishments are treated the same as innkeepers with regard to the items customarily brought in by bathers.

4) Liability under paragraphs 1 and 3 is limited to a maximum amount of 2,000 francs, unless the items have been specifically handed over to the business operator for safekeeping or unless the liability relates to movable property, animals, or items on them that are kept with business operators who maintain storage rooms and stables (para. 2).

§ 970a

A notice of disclaimer of liability has no legal effect. The innkeeper is liable for valuables, money, and securities only up to the amount of 1,000 francs, unless he has accepted these items for safekeeping with knowledge of their nature or unless the damage was caused by him or his employees.

§ 970b

The claim for compensation arising from accommodation expires if the injured party does not notify the innkeeper without delay after becoming aware of the damage. However, this does not apply if the items were accepted by the innkeeper for safekeeping.

§ 970c

The persons referred to in § 970 have the right to retain the items brought in to secure their claims arising from lodging and meals, as well as their expenses incurred on behalf of the guests.

20. Main Section

On the Loan Agreement

§ 971

Loan Agreement

If a non-consumable item is handed over to someone solely for use free of charge for a specified period, a loan agreement is formed. A contract in which one promises to lend an item to someone without handing it over is binding, but does not yet constitute a loan agreement.

Rights and Obligations of the Borrower

§ 972

1. In consideration of the use

The borrower acquires the right to make ordinary or specifically defined use of the item. Upon the expiration of the term, the borrower is obligated to return the same item.

2. Return

§ 973

If no time for return has been set, but the purpose of the use has been specified, the borrower is obligated not to delay the use and to return the item as soon as possible.

§ 974

If neither the duration nor the intended use has been specified, no true contract is formed, but rather a non-binding loan of use (precarium), and the lender may demand the return of the borrowed item at will.

§ 975

In the event of a dispute regarding the duration of use, the borrower must prove the right to longer-term use.

§ 976

Even if the lent item becomes indispensable to the lender before the expiration of the term and before the end of use, the lender has no right to reclaim the item earlier without an express agreement.

§ 977

Although the borrower is generally entitled to return the borrowed item even before the specified time, if early return is burdensome to the lender, it may not take place against the lender’s will.

3. Damage

§ 978

If the borrower uses the borrowed item in a manner other than that agreed upon, or permits a third party to use it without authorization, the borrower is liable to the lender, and the lender is also entitled to demand the immediate return of the item.

§ 979

If the borrowed item is damaged or destroyed, the borrower must compensate not only for the damage initially caused by his own fault, but also for any incidental damage resulting from an unlawful act, in the same manner as the custodian of an item (§ 965).

§ 980

The fact that the borrower pays the value of a lost item does not entitle him to retain it for himself if it is found again against the will of the if the owner is willing to return the value received.

§ 981

4. Maintenance Costs

The borrower must bear the costs ordinarily associated with the use of the item. Although the borrower must advance extraordinary maintenance costs in the meantime—provided the borrower cannot or will not leave the item to the lender's care—these costs will be reimbursed to the borrower as they would be to a bona fide possessor.

§ 982

Limitation of Reciprocal Claims

If, after taking back the borrowed item, the lender does not complain of misuse or excessive wear and tear within 30 days, or if, after returning the item, the borrower has not reported the extraordinary costs incurred for the item within the same period, the right to sue is extinguished.

21. Main Section

On the Loan Agreement

§ 983

Loan

If consumable goods are handed over to a person on the condition that, while he may dispose of them at will, he must return an equal amount of the same kind and quality after a certain period of time, a loan agreement is formed. It is not to be confused with the contract (§ 936), which is also binding, to provide a loan in the future.

§ 984

Types of Loans

A loan is granted either in money or in other consumable goods, either without interest or in exchange for interest. In the latter case, it is also called an interest contract.

Cash loans

§ 985

A cash loan may consist of coins, paper money, or government bonds.

a) In coin or paper money

§ 986

The extent to which a loan in coin may be entered into at all, and the currency in which such a loan or a loan in paper money is to be repaid, are determined by the relevant special provisions.

§ 987

If a lender has stipulated that payment be made in a specific type of currency, payment must be made in that exact type of currency.

§ 988

Legal changes in currency without a change in intrinsic value are borne by the lender. The lender shall receive payment in the specified currency, regardless of whether its face value has increased or decreased in the meantime. However, if the intrinsic value is changed, payment must be made in proportion to the intrinsic value that the specified currency had at the time of the loan.

§ 989

If, at the time of repayment, coins of the same type are not in circulation in the state, the debtor must satisfy the creditor with coins of similar value, in such quantity and of such kind that the creditor receives the intrinsic value of what was given at the time of the loan.

b) in promissory notes

§ 990

In public promissory notes, loans may be validly concluded in such a way that the debt is repaid either with a public promissory note that is entirely identical to the one lent, or by repaying the amount based on the value that the promissory note had at the time of the loan.

§ 991

If a private promissory note or goods have been given in lieu of money, the debtor is only obligated to return either the promissory note or the goods received undamaged, or to compensate the creditor for the damage to be proven by the latter.

§ 992

c) Loans of Other Consumable Items

In the case of loans that are not made in money but in other consumable goods, provided that the return of goods of the same kind, quality, and quantity has been stipulated, it makes no difference whether their value has risen or fallen in the meantime.

Interest

§§ 993 to 998

Repealed

§ 999

Interest on monetary loans shall be paid in the same currency as the principal itself.

§ 1000

1) Unless otherwise specified, interest agreed upon without a specified rate or required by law shall be payable at a rate of five percent per annum.

2) The creditor of a monetary claim may demand interest on interest if the parties have expressly agreed to this. Otherwise, if interest due is the subject of a lawsuit, the creditor may demand compound interest from the date the lawsuit is filed. If no agreement has been reached regarding the rate of compound interest, five percent per annum shall also be payable.

3) If the parties have not agreed on the due date 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 Note

For a promissory note relating to a loan agreement to constitute full proof, it must specify both the actual lender or creditor and the actual borrower or debtor, the subject matter and amount of the loan, and, if it is in money, the type thereof, as well as all conditions relating to the payment of the principal debt and any interest to be paid, be specified honestly and clearly. The external form of a promissory note required for its probative force is prescribed by the Rules of Court.

22. Main Section

On Power of Attorney and Other Forms of Business Management

Agreement on Power of Attorney

§ 1002

The contract by which a person undertakes to perform a business entrusted to him in the name of another is called a power of attorney contract.

§ 1003

Persons who have been publicly appointed to perform specific duties are obligated to inform the appointing authority without delay, in response to a related request, whether they accept or decline the appointment; otherwise, they remain liable to the appointing authority for any resulting loss.

§ 1004

Classification of Agency as Uncompensated or Compensated

If a reward is required for the performance of another's business, either expressly or, depending on the circumstances of the agent, even tacitly, the contract is classified as one for consideration; otherwise, it is classified as one without consideration.

§ 1005

Oral or Written

Agreements of agency may be concluded orally or in writing. The document issued by the principal in this regard is called a power of attorney.

§ 1006

General or Special

There are general and special powers of attorney, depending on whether a person is entrusted with the handling of all or only some matters. Special powers of attorney may cover only judicial or only extrajudicial matters in general, or they may concern individual matters of one or the other type.

Unlimited or limited

§ 1007

Powers of attorney are granted either with unrestricted or restricted authority to act. The former authorizes the agent to conduct the business to the best of his knowledge and belief; the latter, however, prescribes the limits of the scope and the manner in which he is to conduct it.

§ 1008

The following transactions: the sale or acquisition for consideration of property in another's name; the conclusion of loans or borrowings; the collection of money or monetary value; the initiation of legal proceedings; the taking, acceptance, or refusal of oaths; or the conclusion of settlements; require a special power of attorney specific to these types of transactions. However, if an inheritance is to be unconditionally accepted or renounced, partnership agreements drawn up, gifts made, or rights relinquished without consideration, a special power of attorney issued for the specific transaction is necessary. General powers of attorney, even if unrestricted, are sufficient in these cases only if the type of transaction has been specified in the power of attorney.

Rights and Obligations of the Agent

§ 1009

The agent is obligated to conduct the business diligently and in good faith, in accordance with his promise and the power of attorney granted to him, and to remit all profits arising from the business to the principal. Even if he has a limited power of attorney, he is entitled to use all means that are necessarily connected with the nature of the business or are in accordance with the principal's stated intention. However, if he exceeds the limits of the power of attorney, he is liable for the consequences.

§ 1009a

1) If the agent 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 principal has waived any claim against him for the surrender of any fees, commissions, or non-monetary benefits (benefits), as well as to the assertion of civil claims for compensation in relation to these benefits, provided that:

a) the principal has correctly fulfilled his disclosure obligations prior to the execution of the transaction; and

b) the Principal has the transaction executed after disclosure has taken place.

2) The holder of power is obligated to inform the grantor of power of the legal consequences under paragraph 1, e.g., in the General Terms and Conditions or other pre-formulated terms and conditions.

3) Minor non-monetary benefits that may improve the quality of service for the client and whose scope and nature do not suggest

that they impair the bank's, investment firm's, or asset management company's duty to act in the best possible interest of its customers, may in any case be retained by the holder of authority, provided they have been unambiguously disclosed to the customer.

§ 1010

If the principal entrusts the transaction to a third party without necessity, he shall be solely liable for the outcome. However, if the appointment of a representative is expressly permitted in the power of attorney or is unavoidable due to the circumstances, he shall be liable only for any fault committed in the selection of the person.

§ 1011

If a transaction is entrusted to several agents at the same time, the participation of all of them is necessary for the transaction to be valid and for the principal to be bound, unless full authority has been expressly granted to one or more of them in the power of attorney.

§ 1012

The agent is liable to compensate the principal for any damage caused by his fault and to present the accounts relating to the transaction whenever the principal so requests.

§ 1013

Agents are not authorized to demand a reward for their services, except in the case provided for in § 1004. They are not permitted to accept gifts from third parties in connection with the management of the business without the principal's consent. Any gifts received shall be deposited into the charity fund.

of the principal

§ 1014

The principal is obligated to reimburse the agent for all expenses incurred that were necessary or useful for the conduct of the business, even if the endeavor was unsuccessful, and, upon request, to provide the agent with a reasonable advance to cover cash outlays; the principal must also compensate the agent for all damages arising from the principal's fault or connected with the performance of the mandate.

§ 1015

If the principal suffers damage only incidentally in the course of the agency, he may, in the event that he undertook the agency without compensation, claim an amount that would have been due to him under a contract for services as compensation for his efforts, based on the highest estimated value.

§ 1016

If the agent exceeds the limits of his authority, the principal is bound only to the extent that he approves the transaction or retains the benefit arising from the transaction.

in consideration of a third party

§ 1017

To the extent that the agent acts on behalf of the principal in accordance with the terms of the power of attorney, the agent may acquire rights and impose obligations on the principal. Thus, if the agent has entered into a contract with a third party within the limits of the general power of attorney, the rights and obligations created thereby accrue to the principal and the third party, but not to the agent. A secret power of attorney granted to the agent has no effect on the rights of the third party.

§ 1018

Even in the case where the principal has appointed an agent who is incapable of binding himself, the transactions concluded within the limits of the power of attorney are binding on both the principal and the third party.

§ 1019

Repealed

§ 1020

Termination of the Contract by Revocation

The principal is free to revoke the power of attorney at will; however, he must not only reimburse the agent for expenses incurred in the meantime and for any other damage suffered, but also pay a portion of the remuneration commensurate with the effort expended. This also applies if the completion of the transaction has been prevented by an act of God.

§ 1021

Termination

The principal may also terminate the accepted power of attorney. However, if the principal terminates it before the completion of a specific transaction entrusted to the agent or a transaction commenced pursuant to the general power of attorney, the principal must compensate the agent for all resulting damages, unless an unforeseen and unavoidable obstacle has arisen.

Death

§ 1022

As a general rule, the power of attorney is terminated by the death of both the principal and the agent. However, if the transaction already commenced cannot be interrupted without obvious detriment to the heirs, or if the power of attorney itself extends to the principal's death, the agent has the right and the duty to complete the transaction.

§ 1023

Powers of attorney issued and accepted by a body (association) are terminated upon the dissolution of the association.

§ 1024

or Insolvency Proceedings

If insolvency proceedings are opened against the principal's assets, acts of representation by the agent are not legally effective as of the announcement of the opening of the insolvency proceedings. The opening of insolvency proceedings against the agent's assets terminates the agent's power of attorney.

To what extent the obligation continues

§ 1025

If the power of attorney is terminated by revocation, cancellation, or the death of the principal or the agent, transactions that cannot be postponed must nevertheless be continued until the principal or the principal's heirs have issued or could reasonably have issued a different instruction.

§ 1026

Furthermore, contracts concluded with a third party who, through no fault of their own, was unaware of the revocation of the power of attorney remain binding, and the principal may seek compensation for their loss only from the agent who concealed the revocation.

Tacit Authorization of Servants

§ 1027

The provisions contained in this chapter also apply to the owners of an estate, a ship, a store, or other business who entrust the management to a factor, a ship's captain, a store clerk, or other business agents.

§ 1028

The rights of such agents are to be determined primarily by the instrument of their appointment, such as the authority to sign (business name) duly announced among merchants.

§ 1029

If the power of attorney has not been granted in writing, its scope shall be determined by the subject matter and the nature of the business. A person who has entrusted the management of a business to another is presumed to have also granted that person the authority to do everything that the management itself requires and that is customarily associated with it (§ 1009).

§ 1030

If the owner of a business or trade permits his servant or apprentice to sell goods in the store or outside of it, they are presumed to be authorized to receive payment and to issue receipts therefor.

§ 1031

However, the authority to sell goods on behalf of the owner does not extend to the right to purchase goods on his behalf; furthermore, carriers may neither appropriate the value of the goods entrusted to them nor borrow money against them, unless this has been expressly stipulated in the waybills.

§ 1032

Employers and heads of households are not obligated to pay for anything borrowed in their name by their servants or other members of the household. In such cases, the borrower must provide proof of the order given.

§ 1033

However, if there is a proper ledger between the borrower and the lender in which the borrowed items are recorded, it is presumed that the person presenting this ledger is authorized to borrow the goods.

§ 1034

Judicial and Statutory Authorization

The right of guardians and curators to manage the affairs of those under their care is based on the order of the court that appointed them. The father and the husband are granted the authority to represent the child and the wife is granted by law. The relevant provisions are set forth in the appropriate sections.

§ 1035

Management of Affairs Without Authority

As a general rule, anyone who has not been granted authority either by express or implied contract, by the court, or by law, may not interfere in the affairs of another. If such a person has taken it upon themselves to do so, they are liable for all consequences.

§ 1036

In an emergency

Anyone who, although not authorized, manages another's business to avert imminent harm is entitled to reimbursement from the person whose business they managed for necessary and reasonable expenses, even if the effort proved fruitless through no fault of their own (§ 403).

or for the benefit of another

§ 1037

Anyone who wishes to undertake another person's business solely for the benefit of that person must seek that person's consent. If the agent has failed to comply with this requirement but has conducted the business at his own expense to the clear and substantial benefit of the other party, the latter must reimburse him for the expenses incurred.

§ 1038

However, if the clear and substantial benefit is not evident, or if the agent has made such significant changes to another's property on his own initiative that the property becomes unusable for the purpose for which the other party previously used it, the other party is not obligated to provide compensation; rather, he may demand that the agent restore the property to its previous condition at his own expense or, if that is not possible, provide him with full satisfaction.

§ 1039

Anyone who has undertaken another's business without a mandate must continue it until completion and, like an agent, render a detailed account thereof.

§ 1040

Against the Will of the Other

If a person undertakes another's business against the owner's validly expressed will or, through such interference, prevents the lawful agent from conducting the business, he is liable not only for the resulting damage and loss of profit but also forfeits the expenses incurred, insofar as they cannot be recovered in kind.

Use of a Thing for the Benefit of Another

§ 1041

If an item has been used for the benefit of another without the owner's consent, the owner may demand its return in kind or, if this is no longer possible, the value it had at the time of use, even if the benefit was subsequently nullified.

§ 1042

Anyone who incurs an expense on behalf of another that the latter would have had to incur themselves under the law has the right to demand reimbursement.

§ 1043

If, in an emergency, a person has sacrificed his property to avert greater harm to himself and others, all those who benefited from it must compensate him proportionately. The more detailed application of this provision to maritime perils is a matter of maritime law.

§ 1044

The distribution of war damages shall be determined by the political authorities in accordance with special regulations.

23. Main Section

On the Contract of Exchange

Barter

§ 1045

Barter is a contract whereby one thing is transferred in exchange for another. Actual delivery is not necessary for the formation of the contract, but only for its performance and for the acquisition of ownership.

§ 1046

Money is not the subject matter of a contract of exchange; however, gold and silver may be exchanged as commodities, and even as coins, to the extent that they are to be exchanged only for other coins—namely, gold for silver, and smaller for larger pieces.

§ 1047

Rights and Obligations of the Parties to the Exchange

Under the terms of the contract, the parties to the exchange are obligated to deliver and accept the exchanged items, in accordance with the agreement, together with all their components and accessories, at the proper time, at the proper place, and in the same condition in which they were at the time the contract was concluded, for free possession.

§ 1048

In particular, with regard to risk

If a time has been stipulated for the handover, and if in the meantime either the specific item exchanged is taken out of circulation by a prohibition or is accidentally destroyed in whole or in more than half of its value, the exchange shall be deemed not to have been concluded.

§ 1049

Other accidental deteriorations of the item and encumbrances occurring in the meantime shall be borne by the owner. However, if items have been treated as a lump sum, the transferee shall bear the accidental loss of individual items, provided that this has not otherwise altered the value of the whole by more than half.

and the benefits prior to delivery

§ 1050

The owner is entitled to the benefits of the exchanged item until the agreed time of delivery. From that time on, they, together with any increase in value, belong to the transferee, even if the item has not yet been delivered.

§ 1051

If no time for the delivery of the specific item has been agreed upon, and neither party is at fault, the above provisions regarding risk and enjoyment (§§ 1048–1050) shall apply to the time of delivery itself, unless the parties have agreed otherwise.

§ 1052

A party seeking to compel delivery must have fulfilled its obligation or be prepared to fulfill it. The party obligated to perform first may also refuse to perform until the consideration has been provided or secured, if such performance is jeopardized by the other party's poor financial circumstances, of which the former was not required to be aware at the time the contract was concluded.

24. Main Section

On the Contract of Sale

§ 1053

Contract of Sale

By a contract of sale, an item is transferred to another party for a specified sum of money. Like exchange, it is one of the means of acquiring ownership. Acquisition occurs only upon delivery of the object of sale. Until delivery, the seller retains ownership.

§ 1054

Requirements of the Sales Contract

The nature of the consent required from the buyer and seller, and the types of goods that may be bought and sold, are determined by the general rules of contract law. The purchase price must consist of cash and may be neither indefinite nor unlawful.

The purchase price must

§ 1055

a) consist of cash

If an item is sold partly for money and partly for another item, the contract is deemed a sale or an exchange, depending on whether the monetary value exceeds or falls short of the fair market value of the item given; if the values are equal, it is deemed a sale.

b) Specified

§ 1056

The buyer and seller may also entrust the determination of the price to a specific third party. If this third party fails to set a price within the agreed period, or if, in the absence of an agreed period, one party withdraws before the price is determined, the sales contract shall be deemed not to have been concluded.

§ 1057

If the determination of the price is left to several persons, the decision shall be made by a majority vote. If the votes are so divided that the price cannot be set even by an actual majority of votes, the sale shall be deemed not to have taken place.

§ 1058

The value agreed upon in a previous sale may also serve as a basis for determining 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 shall be assumed.

c) not be unlawful

§ 1059

If a tax exists on goods, the higher price is unlawful, and the buyer may demand compensation from the political authority for any violation, however minor.

§ 1060

Except in this case, the sale may be contested by either the buyer or the seller solely on the grounds of a breach exceeding half the price (§§ 934, 935). This contestation also applies if the determination of the purchase price has been left to a third party.

§ 1061

Obligations of the Seller

The seller is obligated to take good care of the item until the time of delivery and to hand it over to the buyer in accordance with the provisions set forth above regarding exchange (§ 1047).

and the buyer

§ 1062

The buyer, on the other hand, is obligated to take delivery of the item immediately or at the agreed time, while at the same time paying the purchase price in cash; otherwise, the seller is entitled to refuse to deliver the item to him.

§ 1063

If the item is handed over to the buyer by the seller without receiving the purchase price, the item is sold on credit, and ownership of the item passes immediately to the buyer.

§ 1064

Risk and Benefits of the Subject Matter of the Sale

With regard to the risk and benefits of an item that has been purchased but not yet delivered, the same provisions apply as those set forth for a contract of exchange (§§ 1048 to 1051).

§ 1065

Purchase of an Expected Item

When items that are still to be expected are purchased, the provisions set forth in the main section on speculative transactions shall apply.

§ 1066

General Provision

In all cases arising from a sales contract that are not expressly provided for by law, the provisions set forth in the main sections on contracts in general, and on contracts of exchange in particular, shall apply.

§ 1067

Special Types or Ancillary Agreements of a Sales Contract

Special types or ancillary agreements of a sales contract include: the right of repurchase, resale, or pre-emption; sale on trial; sale subject to a better buyer; and the sales order.

Sale with a right of repurchase

§ 1068

The right to redeem a sold item is called the right of repurchase. If this right is granted to the seller in general and without further specification, the purchased item is returned by one party in a condition no worse than when it was sold, while the other party returns the purchase price paid, and the benefits derived by both parties from the money and the item in the meantime are set off against each other.

§ 1069

If the buyer has improved the purchased item at his own expense or incurred extraordinary costs to preserve it, he is entitled to compensation as a bona fide possessor; however, he is also liable if, through his fault, the value has been altered or the return has been prevented.

§ 1070

The right of repurchase applies only to immovable property and is held by the seller only during his or her lifetime. The seller may not transfer this right to heirs or to any other person. If the right is registered in the public records, the property may also be reclaimed from a third party, who will be treated according to whether his or her possession is in good faith or not.

§ 1071

Purchase with a Right of Resale

The right stipulated by the buyer to sell the property back to the seller is subject to the same restrictions, and the provisions governing the right of repurchase apply to it. However, if the condition of resale or repurchase is disguised and has actually been used to conceal a lien or a loan transaction, the provision of § 916 applies.

Reservation of the Right of First Refusal

§ 1072

Anyone who sells an item on the condition that the buyer, if intending to resell it, must offer to redeem it from the seller, has the right of first refusal.

§ 1073

The right of first refusal is generally a personal right. With respect to real property, it may be converted into a real right by registration in the public records.

§ 1074

Furthermore, the right of first refusal may neither be assigned to a third party nor transferred to the heirs of the entitled party.

§ 1075

The entitled party must actually exercise the right of first refusal within 24 hours for movable property and within 30 days for immovable property following the offer. Upon the expiration of this period, the right of first refusal expires. Art. 66a SR remains reserved.

§ 1076

In the event of a judicial sale of property encumbered with this right, the right of first refusal has no effect other than that the entitled party listed in the public registry must be specifically summoned to the sale.

§ 1077

Unless otherwise agreed, the person entitled to exercise the right of first refusal must pay the full price offered by a third party. If the person cannot fulfill the ancillary conditions offered in addition to the ordinary purchase price, and if these cannot be offset by an appraised 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 specific agreement.

§ 1079

If the owner has not offered to redeem the property to the entitled party, he must be liable for all damages. In the case of a real right of first refusal, the sold property may be reclaimed from the third party, and the third party shall be treated according to the nature of his good-faith or bad-faith possession.

Purchase on Trial

§ 1080

A sale on approval is concluded subject to the condition, at the buyer's discretion, that the buyer approve the goods. In case of doubt, this condition is a suspensive one; the buyer is not bound by the sale prior to approval, and the seller ceases to be bound if the buyer does not approve the goods by the end of the trial period.

§ 1081

If the item has already been delivered for the purpose of inspection or trial, the buyer's silence until the expiration of the trial period shall be deemed approval.

§ 1082

If the trial period has not been specified by agreement, it is presumed to be three days for movable property and one year for immovable property.

Sale Subject to a Better Buyer

§ 1083

If the sale is agreed upon with the reservation that the seller, should a better buyer come forward within a specified period, is authorized to give preference to the latter, then, in the event that the item has not been delivered, the effectiveness of the contract is deferred until the condition is fulfilled.

§ 1084

Once the purchased item has been delivered, the sales contract is concluded; however, it is rescinded upon the occurrence of the condition. In the absence of an express time limit, the period agreed upon at the time of purchase is presumed to apply.

§ 1085

The seller determines whether the new buyer is a better choice. The seller may prefer the second buyer even if the first buyer was willing to pay more. Upon rescission of the contract, the benefits derived from the item and the money offset each other.

With regard to improvements or deteriorations, the buyer is treated as a bona fide possessor.

Sales Agency

§ 1086

If a person delivers his movable property to another for sale at a certain price, on the condition that the transferee shall, within a fixed period, either pay the agreed purchase price or return the property, the transferor is not entitled to reclaim the property before the expiration of that period; the transferee, however, must pay the agreed purchase price upon its expiration.

§ 1087

During the fixed period, the transferor remains the owner. The transferee is liable to the transferor for any damage caused by his fault, and upon return of the item, he shall be reimbursed only for those costs that are of benefit to the transferor.

§ 1088

If the item is immovable or if the price or payment term has not been determined, the transferee shall be regarded as a possessor. In no case may the item entrusted for sale be reclaimed from a third party who has acquired it in good faith from the transferee (§ 367).

§ 1089

The provisions established regarding contracts, and in particular regarding contracts of exchange and sale, shall generally apply to judicial sales as well, insofar as this Act or the Rules of Court do not contain specific provisions to the contrary.

25. Main Section

Lease Agreements

§ 1090

The following provisions apply to lease agreements (rental and lease agreements):

1. Section

Rental Agreement

1. Subsection General

Provisions

A. Definition and Scope

Art. 1

I. Definition

Under the lease agreement, the landlord undertakes to make a property available to the tenant for use, and the tenant undertakes to pay rent to the landlord in return.

II. Scope

Art. 2

1. Residential and Commercial Premises

1) The provisions governing the lease of residential and commercial premises also apply to items that the landlord makes available to the tenant for use along with these premises. Such items include, in particular, movable property, garages, parking spaces, and gardens.

2) They do not apply to vacation rentals that are leased for a maximum of six months.

Art. 3

2. Provisions on Protection Against Unreasonable Rent and Other Unreasonable Demands by the Landlord

1) The provisions regarding protection against unlawful rent increases and other unlawful demands by the landlord (Art. 55 et seq.) apply mutatis mutandis to non-agricultural lease agreements and other contracts that essentially govern the transfer of residential or commercial premises in exchange for payment.

2) They do not apply to the rental of luxury apartments with more than 150 m² of net living space and single-family homes with more than 200 m² of net living space. Art. 4

B. Tied Transactions

1) A tied transaction related to the lease of residential or commercial premises is void if the conclusion or continuation of the lease agreement is made contingent upon it and the tenant thereby assumes an obligation toward the landlord or a third party that is not directly related to the use of the leased property.

2) In particular, a tying arrangement within the meaning of paragraph 1 includes the tenant's obligation to purchase the leased property, furniture, or shares, or to enter into an insurance contract.

Art. 5

C. Duration of the Lease

1) The tenancy may be for a fixed term or indefinite.

2) The tenancy is for a fixed term if it is to end without notice upon the expiration of the agreed term.

3) All other leases are considered open-ended.

D. Obligations of the Landlord

Art. 6

I. General

1) The landlord is obligated to deliver the property at the agreed-upon time in a condition suitable for its intended use and to maintain it in that condition.

2) Any 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 handover report was prepared upon termination of the previous lease, the landlord must present it to the new tenant in anonymized form for review upon the tenant’s request at the time of handover of the property.

Art. 8

III. Taxes and Charges

The landlord shall bear the charges and public levies associated with the property.

E. Obligations of the Tenant

I. Payment of Rent and Utilities

Art. 9

1. Rent

The rent is the consideration that the tenant owes the landlord for the use of the property.

2. Utility Costs

Art. 10

a) In general

1) Utility costs are the payment for services provided by the landlord or a third party that are related to the use of the property.

2) The tenant must pay the customary ancillary costs incurred by him, unless otherwise agreed.
3) The government may issue regulations governing ancillary costs, in particular regarding:
a) their billing;
b) their deductibility;
c) energy procurement from an external utility;
d) Unleased residential and commercial premises.
Art. 11
b) Residential and Commercial Premises
1) For residential and commercial premises, the ancillary costs are the landlord's actual expenses for services related to the use of the premises, such as heating, hot water, and similar operating costs, as well as for public charges arising from the use of the premises.
2) The landlord must allow the tenant to inspect the receipts upon request. Art. 12
3. Payment Dates
The tenant must pay the rent and, if applicable, the ancillary costs at the end of each month, but no later than the end of the lease term, unless another date has been agreed upon.
Art. 13
4. Tenant's Delinquency
1) If, after taking possession of the property, the tenant is in arrears with the payment of rent or utility costs due, the landlord may set a payment deadline in writing and warn the tenant that the lease will be terminated if the deadline expires without payment. The payment deadline shall be at least 14 days.
2) If the tenant fails to pay within the specified period, the landlord may terminate the lease without notice; in the case of residential and commercial premises, the landlord may terminate the lease with at least 14 days' notice, effective as of any date.
Art. 14
II. Security Deposits by the Tenant
1) If the tenant of residential or commercial premises provides security in the form of cash or securities, the landlord must deposit it in a bank in a savings account or a securities account in the tenant's name.

2) In the case of residential premises, the landlord may demand no more than three months' rent as security.

3) The bank may release the security deposit only with the consent of both parties or based on a final court decision. If the landlord has not asserted any claim against the tenant in court within one year of the termination of the lease, the tenant may demand that the bank return the security deposit.

Art. 15

III. Diligence and Consideration

1) The tenant must use the property with due care.

2) The tenant of a real property must show consideration for the building's residents and neighbors.

3) If, despite a written warning from the landlord, the tenant continues to violate his duty of care or consideration to such an extent that the landlord or the residents can no longer reasonably be expected to continue the tenancy, the landlord may terminate the lease without notice; in the case of residential and commercial premises, the landlord may terminate the lease with at least 14 days' notice effective as of 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. Duty to Report

1) The tenant must report defects that he is not required to remedy himself to the landlord.

2) If the tenant fails to report such defects, he or she shall be liable for any damage incurred by the landlord as a result.

Art. 17

V. Obligation to Tolerate

1) The tenant must tolerate work on the property if it is necessary to remedy defects or to repair or prevent damage.

2) The tenant must allow the landlord to inspect the property after consultation with the tenant, to the extent that this is necessary for maintenance, sale, or re-letting.

3) The landlord must give the tenant timely notice of any work or inspections and, when carrying them out, take the tenant's interests into account;

The tenant's right to a reduction in rent (Art. 23) and to compensation for damages (Art. 24) remains reserved.

Art. 18

F. Non-performance or defective performance of the contract upon delivery of the item

1) If the lessor fails to deliver the property at the agreed time or delivers it with defects that preclude or substantially impair its suitability for the intended use, the lessee may proceed in accordance with §§ 918 to 921 regarding non-performance of contracts.

2) If the lessee accepts the item 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 arose during the lease term (Art. 20–25).

3) The lessee may also assert the claims under Articles 20 through 25 if the item has defects at the time of delivery:

a) which, while reducing the item's suitability for the intended use, neither preclude nor significantly impair it;

b) which the lessee would have to remedy at his own expense during the lease term (Art. 19).

G. Defects during the rental period

Art. 19

I. Tenant's Obligation to Perform Minor Cleaning and Repairs

The tenant must remedy, at his own expense, any defects that can be remedied by minor cleaning or repairs required for ordinary maintenance.

II. Tenant's Rights

Art. 20

1. In General

1) If defects arise in the property for which the tenant is neither responsible nor required to remedy at their own expense, or if the tenant is prevented from using the property in accordance with the contract, they may demand that the landlord:

a) remedy the defect;

b) reduce the rent proportionately;

c) pay damages.

2) The tenant of an immovable property may also deposit the rent (Art. 25 ff.).

2. Remedying the Defect

Art. 21

a) General Principle

If the landlord is aware of a defect and fails to remedy it within a reasonable period of time, the tenant may:

a) terminate the lease without notice if the defect precludes or substantially impairs the suitability of an immovable property for its intended use, or if the defect reduces the suitability of a movable property for its intended use;

b) have the defect remedied at the landlord's expense if it reduces but does not significantly impair the suitability of the item for its intended use.

Art. 22

b) Exception

The tenant is not entitled to have the defect remedied if the landlord provides a full replacement for the defective item within a reasonable period of time.

Art. 23

3. Reduction of Rent

If the suitability of the property for its intended use is impaired or reduced, the tenant may demand that the landlord reduce the rent accordingly from the time the tenant becomes aware of the defect until the defect is remedied.

Art. 24

4. Compensation

If the tenant has suffered damage as a result of the defect, the landlord must compensate the tenant for such damage unless the landlord proves that he is not at fault.

5. Deposit of Rent

Art. 25

a) General Principle

1) If the tenant of a real property demands that the landlord remedy a defect, the tenant must set a reasonable deadline in writing and may threaten that, if the deadline expires without action, the tenant will deposit future rent payments with the court. The tenant must notify the landlord of the deposit in writing.

2) Once the rent has been deposited, it is deemed to have been paid (Section 1425).

Art. 26

b) Release of Deposited Rent

1) Deposited rent is due to the landlord if the tenant has not asserted his claims against the landlord with the deposit court within four weeks of the due date of the first deposited rent.

2) The landlord may request the court of deposit to release the rent wrongfully deposited as soon as the tenant has notified the landlord of the deposit.

H. Amendments and Changes

Art. 27

I. By the landlord

1) The landlord may only carry out renovations or alterations to the property if they are reasonable for the tenant and if the lease has not been terminated.

2) When carrying out the work, the landlord must take the tenant's interests into account; the tenant's potential claims for a reduction in rent (Art. 23) and for damages (Art. 24) remain reserved.

Art. 28

II. By the tenant

1) The tenant may only carry out renovations and alterations to the property if the landlord has given his written consent.

2) If the landlord has given consent, he may demand restoration to the previous condition only if this has been agreed upon in writing.

3) If, upon termination of the lease, the property has gained significant value as a result of a renewal or modification to which the landlord has consented, the tenant may demand appropriate compensation; any further claims for compensation agreed upon in writing, as well as any agreed-upon exclusion of compensation, remain reserved. However, the tenant must file a lawsuit to claim compensation no later than twelve months after the termination of the lease; otherwise, the claim is forfeited.

J. Change of Ownership

Art. 29

I. Sale of the Property

1) If the landlord sells the property after the lease agreement has been concluded, the tenancy passes to the purchaser along with ownership of the property.

2) However, the new owner may:

a) in the case of residential and commercial premises, terminate the lease with the statutory notice period effective as of the next statutory date if he asserts a need for personal use for himself, close relatives, or relatives by marriage;

b) in the case of other property, terminate the lease with the statutory notice period effective as of the next statutory date, provided the contract does not permit earlier termination.

3) If the new owner terminates the lease earlier than the contract with the previous landlord would have permitted, the previous owner is liable to the tenant for all resulting damages.

4) The provisions on expropriation remain unaffected. Art. 30

II. Granting of Limited Real Rights

The provisions governing the transfer of ownership apply mutatis mutandis where the lessor grants a limited real right to a third party and this amounts to a change of ownership.

Art. 31

III. Entry in the Land Register

1) In the case of a lease of real property, it may be agreed that the relationship shall be noted in the land register.

2) The entry in the land register has the effect that any new owner must permit the tenant to use the property in accordance with the lease agreement.

3) In the event of a compulsory judicial sale, the lease, if registered in the land register, shall be treated as an easement. If the new owner is not required to assume the lease, the tenant must vacate the premises after giving proper notice of termination.

Art. 32

K. Subletting

1) The tenant may sublet the property in whole or in part with the landlord’s consent.

2) The tenant is liable to the landlord for ensuring that the subtenant does not use the property for any purpose other than that permitted to the subtenant. The landlord may directly require the subtenant to comply.

Art. 33

L. Assignment of the Lease to a Third Party

1) The tenant of commercial premises may transfer the lease to a third party with the landlord's written consent.

2) If the landlord agrees, the third party shall assume the lease in place of the tenant.

3) The tenant is released from his obligations to the landlord. However, he remains jointly and severally liable with the third party until the lease ends or may be terminated in accordance with the contract or the law, but for no longer than two years.

Art. 34

M. Early Return of the Property

1) If the tenant returns the property without observing the notice period or date, he is released from his obligations to the landlord only if he proposes a new tenant who is acceptable to the landlord; this new tenant must be solvent and willing to assume the lease on the same terms.

2) Otherwise, the tenant must pay the rent until the date on which the tenancy ends or may be terminated in accordance with the lease agreement or applicable law.

3) The landlord must allow a deduction for any:

a) saves in expenses and

b) gains from using the property for other purposes or has intentionally refrained from gaining.

Art. 35

N. Set-off

The landlord and the tenant may not waive in advance the right to set off claims and debts arising from the tenancy.

O. Termination of the Lease

Art. 36

I. Expiration of the Agreed Term

1) If the parties have expressly or tacitly agreed on a specific term, the tenancy ends without notice upon the expiration of that term.

2) If the parties tacitly continue the tenancy, it shall be deemed an indefinite tenancy.

II. Notice periods and dates

Art. 37

1. General

1) The parties may terminate the open-ended tenancy agreement in compliance with the statutory notice periods and dates, unless they have agreed upon a longer notice period or a different date.

2) If the parties do not comply with the notice period or date, the extrajudicial termination shall take effect on the next possible date. Section 563 of the Civil Procedure Code (ZPO) applies to judicial termination.

Art. 38

2. Real Property and Structures

In the case of the lease of immovable property and structures on movable property, the parties may terminate the lease with three months' notice to the end of a month.

Art. 39

3. Apartments

In the case of residential leases, either party may give three months' notice to terminate the lease at the end of a month.

Art. 40

4. Commercial Premises

In the case of leases for business premises, the parties may terminate the lease with six months' notice to the end of a month.

Art. 41

5. Single Rooms and Parking Spaces

In the case of the lease of furnished and unfurnished single rooms, as well as separately leased parking spaces or similar facilities, the parties may terminate the lease with four weeks' notice to the end of a month.

Art. 42

6. Movable property

In the case of the rental of movable property, the parties may terminate the agreement with three days' notice effective at any time.

III. Extraordinary termination

Art. 43

1. For good cause

For good cause that renders performance of the contract unreasonable for them, the parties may terminate the lease without notice; in the case of residential and commercial premises, they may terminate the lease with at least 14 days' notice at any time.

Art. 44

2. Tenant's Bankruptcy

1) If bankruptcy proceedings are initiated against the tenant's assets after the property has been taken over, the landlord of residential and commercial premises may demand security for future rent. To do so, the landlord must set a reasonable deadline in writing for the bankruptcy trustee.

2) If the landlord 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, subject to paragraph 2, both the tenant's heirs and the landlord may terminate the lease with the statutory notice period effective as of the next statutory date.

2) In the case of residential leases, the rights and obligations of the tenancy are transferred to the spouse, registered partner, cohabiting partner, direct lineal relatives, including adopted children and siblings of the previous tenant, provided that these persons lived in the same household with the previous tenant until his or her death, have a need for housing, and have not terminated the tenancy agreement within the meaning of paragraph 1. A cohabiting partner within the meaning of this provision is a person who, until the previous tenant's death, lived with the previous tenant in the apartment for at least three years in a household community established in an economic sense equivalent to a marriage, 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 intended for private use and leased by the landlord as part of his commercial activity may terminate the lease with a notice period of no more than 14 days, effective at the end of a month. The landlord is not entitled to compensation in this case.

IV. Form of Notice for Residential and Commercial Premises

Art. 47

1. In general

1) Landlords and tenants of residential and commercial premises must give notice in writing.

2) If the landlord does not terminate the lease through legal proceedings, the notice of termination must include the following minimum information:
a) the description of the leased property to which the notice of termination relates;
b) the date on which the notice takes effect.

2. Family residence

Art. 48

a) Termination by the tenant

1) If the leased property serves as the family home, a spouse may terminate the lease agreement only with the express written consent of the other spouse.
2) If the spouse is unable to obtain this consent or if it is refused without good cause, he or she may bring the matter before the court.
3) The same rule applies mutatis mutandis to registered partnerships.

Art. 49

b) Termination by the Landlord

Notice of termination by the landlord, as well as the setting of a payment deadline with a threat of termination (Art. 13), must be served separately on the tenant and the tenant's spouse or registered partner.

Art. 50

3. Invalidity of the termination

The termination is void if it does not comply with Art. 47 through 49.

P. Return of the Premises

Art. 51

I. In general

1) The tenant must return the property in the condition resulting from its use in accordance with the contract.
2) Agreements in which the lessee undertakes in advance to pay compensation upon termination of the lease that includes more than coverage of any damage are void.

Art. 52

II. Inspection of the Property and Notification to the Tenant

1) Upon return of the property, the landlord must inspect its condition and immediately notify the tenant of any defects for which the tenant is responsible.

2) If the landlord fails to do so, they forfeit their claims, unless the defects were not detectable during a routine inspection.

3) If the landlord discovers such defects later, he must notify the tenant immediately. However, the landlord must file a lawsuit to assert his claims no later than twelve months after the termination of the lease; otherwise, his claim is forfeited.

Q. Landlord's Right of Retention

Art. 53

I. Scope

1) To secure payment of the rent, the landlord of a real property has a right of retention over the movable property brought into the premises that belongs to the tenant or to family members living in the same household, provided such property is not exempt from attachment. The right of retention expires if the items are removed before they are listed in the inventory of retention, unless this occurs as a result of a court order and the landlord files a claim for his rights with the court within three days of the order's execution.

2) If the tenant moves out or the items are removed without the rent having been paid or secured, the landlord may retain the items at his own risk, but he must apply for a retention inventory within three days or surrender the items.

Art. 54

II. Third-Party Property

The landlord's right of retention under Art. 53 arises merely by the bringing of movable property into the rented dwelling and may therefore also be asserted against those creditors of the tenant who acquire a lien on the brought-in items before the landlord has filed a lawsuit in court for payment of the rent or has applied for an inventory of the movable property.

2. Subsection

Protection against Unlawful Rent and Other Unlawful Claims by the Landlord in the Lease of Residential and Commercial Premises

A. Unlawful Rent

Art. 55

I. Rule

1) Initial rents are prohibited if the landlord thereby profits from a subjective emergency or a dominant market position and thereby derives an unreasonable return from the leased property.

2) Rent increases, except in cases of indexation (Art. 57) or rent scaling (Art. 58), are prohibited if they result in an unreasonable return on the leased property.

Art. 56

II. Exceptions

An unreasonable return is not generated if the rent:

a) is within the range of rents customary in the locality or neighborhood for comparable residential and commercial premises, taking into account the location, construction, fixtures and fittings, condition of the leased property, and the period of construction;

b) are due to cost increases or additional services provided by the landlord;

c) in the case of newer buildings, remains within the range of the cost-covering gross return on investment;

d) serves solely to protect the purchasing power of the risk-bearing capital.

Art. 57

B. Indexed Rents

An agreement that the rent follows an index is valid only if the national consumer price index is used as the index.

Art. 58

C. Graduated rents

An agreement that the rent increases periodically by a certain amount is valid only if:

a) the lease is entered into for a term of at least three years;

b) the rent is increased no more than once a year; and

c) the amount of the increase is specified in Swiss francs.

Art. 59

D. Rent increases and other unilateral contract amendments by the landlord

1) The landlord may increase the rent at any time effective as of the next possible termination date. The landlord must notify the tenant of the rent increase in writing and provide a justification at least 14 days before the start of the notice period.

2) The notice must include the following minimum information:

a) the date on which the increase takes effect;

b) a justification for the increase.

3) The rent increase is void if:

a) the notice does not comply with paragraph 2;

b) the landlord threatens or gives notice of termination in the notice.

4) Paragraphs 1 through 3 apply mutatis mutandis if the landlord intends to unilaterally amend the lease agreement to the detriment of the tenant, specifically to reduce the landlord's previous services or to introduce new ancillary costs.

E. Challenging 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 property as unlawful within the meaning of Art. 55(1) and demand its reduction; otherwise, the tenant's claim is forfeited.

Art. 61

II. Request for Reduction During the Lease Term

1) The tenant may challenge the rent in court as unreasonable and demand a reduction effective as of the next possible termination date if the tenant has reason to believe that the landlord is deriving an unreasonable return from the leased property pursuant to Articles 55 and 56 due to a material change in the basis of calculation, particularly due to a reduction in costs.

2) The tenant must submit the request for a reduction in writing to the landlord; the landlord must respond within four weeks. If the landlord does not comply with the request, or only partially complies, or fails to respond within the deadline, the tenant may file a lawsuit within four weeks; otherwise, the tenant's claim is forfeited.

3) Paragraph 2 does not apply if the tenant submits a request for a reduction at the same time as challenging a rent increase.

Art. 62

III. Challenging Rent Increases and Other Unilateral Contract Amendments

1) The tenant may challenge a rent increase in court as invalid under Articles 55 and 56 within four weeks of being notified of it; otherwise, the tenant's right to do so is forfeited.

2) Paragraph 1 applies mutatis mutandis if the landlord unilaterally modifies the lease agreement in any other way to the detriment of the tenant, namely by reducing his previous services or introducing new ancillary costs.

Art. 63

IV. Challenge to Indexed Rents

Subject to the challenge of the initial rent, a party may, in the case of indexed rents, only assert in court that the increase or reduction in rent demanded by the other party is not justified by a corresponding change in the index.

Art. 64

V. Challenge to Graded Rents

Subject to the challenge of the initial rent, the tenant may not challenge graduated rents.

Art. 65

F. Continued validity of the lease agreement during the challenge proceedings

The existing lease agreement remains in full force and effect during the court proceedings.

3. Subsection

Protection against termination in the leasing of residential and commercial premises

A. Challengeability of the Termination

Art. 66

I. In general

Termination is voidable 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 contestable in particular if it is issued:

a) because the tenant is asserting claims arising from the lease in good faith;

b) because the landlord seeks to enforce a unilateral amendment to the contract at the tenant’s expense or a rent adjustment;

c) solely to induce the tenant to purchase the rented apartment;

d) during court proceedings related to the tenancy, unless the tenant has initiated the proceedings in bad faith;

e) due to changes in the tenant’s family situation that do not result in any significant disadvantages for the landlord.

2) Paragraph 1(d) does not apply to terminations:

a) due to the landlord's personal need for the property for themselves, close relatives, or in-laws;

b) due to the tenant's arrears in rent (Art. 13);

c) due to a serious breach of the tenant's duty of care and consideration (Art. 15, paras. 3 and 4);

d) as a result of the sale of the property (Art. 29);

e) for good cause (Art. 43);

f) due to the tenant's bankruptcy (Art. 36 IO).

B. Extension of the Lease

Art. 68

I. Tenant's Right

1) The tenant may request an extension of a fixed-term or open-ended lease if the termination of the lease would result in exceptional hardship for the tenant or their family that cannot be justified by the landlord's interests.

2) In weighing the interests involved, the court shall take into account, in particular:

a) the circumstances surrounding the conclusion of the contract and the content of the contract;

b) the duration of the tenancy;

c) the personal, family, and financial circumstances of the parties and their conduct;

d) any personal need 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 consider whether the tenant has taken all reasonable steps to avoid exceptional hardship.

Art. 69

II. Exclusion of Extension

1) An extension is not permitted in the case of terminations:

a) due to the tenant's failure to pay rent (Art. 13);

b) due to a serious breach of the tenant's duty of care and consideration (Art. 15, paras. 3 and 4);

c) due to the tenant's bankruptcy (Art. 36 IO);

d) of a lease agreement that was expressly concluded for a limited period only—until the start of construction or until the necessary permit is obtained—in view of an upcoming renovation or demolition project.

2) Extension is generally excluded if the landlord offers the tenant an equivalent replacement for the residential or commercial premises.

Art. 70

III. Duration of the Extension

1) The lease for residential and commercial premises may be extended for a maximum of one and a half years. Within the maximum duration, one or two extensions may be granted. The first extension may not exceed two-thirds of the maximum duration.

2) If the parties agree to an extension of the lease, they are not bound by any maximum duration, and the tenant may waive a second extension.

Art. 71

IV. Continued Validity of the Lease Agreement

The agreement shall continue to apply unchanged during the extension; statutory adjustment options remain reserved.

Art. 72

V. Termination during the extension

The tenant may terminate the lease as follows:

a) for extensions of up to one year, with four weeks' notice to the end of a month;

b) in the case of an extension of more than one year, with three months' notice to the end of a month.

Art. 73

C. Family Residence

1) If the rented property serves as the family home, the tenant's spouse may also contest the termination, raise objections to the judicial termination, demand an extension of the lease, or exercise the other rights to which the tenant is entitled upon termination.

2) Agreements regarding 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 procedure for extrajudicial and judicial terminations, as well as for requests for extension, is governed by the provisions of the Civil Procedure Code (ZPO).

Art. 75

E. Sublease

1) This subsection applies to subleases as long as the main lease has not been terminated. A sublease may only be extended for the duration of the main lease.

2) If the sublease is primarily intended to circumvent the provisions on protection against termination, the subtenant is granted protection against termination regardless of the main tenancy agreement. If the main tenancy agreement is terminated, the landlord succeeds to the contract with the subtenant in place of the tenant. Art. 76

F. Mandatory Provisions

1) The tenant may waive rights to which he is entitled under this subsection only if this is expressly provided for.

2) Any deviating agreements are void.

Section 2

Lease Agreement

A. Definition and Scope

Art. 77

I. Definition

Under a lease agreement, the lessor undertakes to grant the lessee the use of a usable thing or a usable right for the purpose of using it and reaping its fruits or yields, and the lessee undertakes to pay rent in return.

II. Scope

Art. 78

1. Residential and Commercial Premises

The provisions governing the lease of residential and commercial premises also apply to items that the lessor makes available to the lessee for use together with these premises.

Art. 79

2. Agricultural Leases

For lease agreements concerning agricultural businesses or land for agricultural use, the ABGB applies, with the exception of the provisions regarding the lease of residential and commercial premises.

Art. 80

B. Inventory

If the lease also includes equipment, livestock, or supplies, the parties must draw up a joint inventory of these items, signed by both parties, and participate in a joint valuation.

C. Obligations of the Lessor

Art. 81

I. Handover of the Property

1) The lessor is obligated to hand over the property at the agreed time in a condition suitable for the intended use and management.

2) If a handover report was drawn up upon termination of the previous lease, the lessor must present it to the new lessee for inspection upon the lessee's request at the time of handover of the property.

Art. 82

II. Major repairs

The lessor is obligated 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 notified him of their necessity.

Art. 83

III. Taxes and Charges

The lessor is responsible for the encumbrances and public charges associated with the property.

D. Obligations of the Lessee

I. Payment of the leasehold rent and ancillary costs

Art. 84

1. In general

1) The tenant must pay the rent and, if applicable, the incidental costs at the end of a lease year, but no later than the end of the lease term, unless another time has been agreed upon.

2) Article 10 applies to ancillary costs.

Art. 85

2. Tenant's Delay in Payment

1) If, after taking possession of the property, the tenant is in arrears with the payment of rent or ancillary costs due, the landlord may set a payment deadline of at least 14 days in writing and warn the tenant that the lease will be terminated if the deadline expires without payment.

2) If the tenant fails to pay within the set period, the landlord may terminate the lease without notice; in the case of residential and commercial premises, the lease may be terminated with at least 14 days' notice effective as of any date.

II. Diligence, Consideration, and Maintenance

Art. 86

1. Diligence and Consideration

1) The tenant must manage the property with due care and in accordance with the contract, in particular ensuring its long-term profitability.

2) The lessee of immovable property must show consideration for residents and neighbors.

Art. 87

2. Ordinary Maintenance

1) The tenant must ensure that the property is properly maintained.

2) He must carry out minor repairs and replace equipment and tools of minor value if they have become unusable due to age or wear and tear.

Art. 88

3. Breach of Duty

1) If, despite a written warning from the lessor, the tenant continues to breach his duty of care, consideration, or maintenance to such an extent that the lessor or the residents can no longer reasonably be expected to continue the lease, the lessor may terminate the lease without notice; in the case of residential and commercial premises, with at least 14 days' notice 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. Duty to Report

1) If major repairs are necessary or if a third party asserts rights to the leased property, the tenant must immediately notify the landlord.

2) If the tenant fails to make such a report, he shall be liable for any damage incurred by the landlord as a result.

Art. 90

IV. Obligation to Tolerate

1) The tenant must tolerate major repairs if they are necessary to remedy defects or to repair or prevent damage.

2) The tenant must allow the landlord to inspect the property, after consulting with the tenant, to the extent necessary for maintenance, sale, or re-leasing.

3) The lessor must give the lessee timely notice of any work or inspections and must take the lessee's interests into account when carrying them out; the provisions of the Tenancy Act (Art. 23 and 24) apply mutatis mutandis to any claims by the lessee for a reduction in rent and for damages.

Art. 91

E. Rights of the Lessee in the Event of Breach of Contract and Defects

1) The provisions of the Tenancy Act (Art. 18 and 20–25) apply mutatis mutandis if:

a) the lessor fails to deliver the property at the agreed time or delivers it in a defective condition;

b) defects in the property arise for which the lessee is neither responsible nor required to remedy at his own expense, or the lessee is prevented from using the property in accordance with the contract.

2) Any deviating agreements to the detriment of the lessee are void if they are contained in:

a) pre-formulated general terms and conditions;

b) lease agreements for residential and commercial premises.

F. Renewals and Amendments

Art. 92

I. By the Lessor

1) The lessor may make renovations and alterations to the property only if they are reasonable for the lessee and if the lease has not been terminated.

2) The lessor must take the lessee's interests into account when carrying out the work; for any claims by the lessee for a reduction

of the rent and for damages, the provisions of the tenancy law (Art. 23 and 24) apply mutatis mutandis.

Art. 93

II. By the tenant

1) The tenant requires the lessor's written consent for:

a) Changes to the customary management of the property that may be of significant importance beyond the lease term;

b) Renovations and alterations to the property that go beyond ordinary maintenance.

2) If the lessor has given consent, he may demand restoration to the previous condition only if this has been agreed upon in writing.

3) If the lessor has not consented in writing to a change under paragraph 1(a) and the tenant does not reverse it within a reasonable period, the lessor may terminate the lease without notice; in the case of residential and commercial premises, with at least 14 days' notice to any date.

Art. 94

G. Change of Ownership

The provisions on tenancy (Art. 29–31) apply mutatis mutandis to:

a) the sale of the leased property;

b) Granting of limited real rights in the leased property;

c) Registration of the lease in the land register. Art. 95

H. Sublease

1) The lessee may, with the lessor's consent, sublease or rent out the property in whole or in part.

2) The lessee is liable to the lessor for ensuring that the sublessee or tenant does not use the property in any manner other than that permitted to the lessee. The lessor may directly require the sublessee and tenant to comply.

Art. 96

J. Transfer of the Lease to a Third Party

Art. 33 applies mutatis mutandis to the transfer of the lease of business premises to a third party.

Art. 97

K. Premature Return of the Premises

1) If the lessee returns the property without observing the notice period or date, he is released from his obligations to the lessor only if he proposes a new lessee who is acceptable to the lessor; this new lessee must be solvent and willing to assume the lease agreement on the same terms.

2) Otherwise, the lessee must pay the rent until the date on which the leasehold relationship ends or may be terminated in accordance with the contract or the law.

3) The lessor must allow a deduction for any:

a) saves in expenses and

b) gains from using the property for other purposes or has intentionally refrained from gaining.

Art. 98

L. Set-off

Art. 35 applies mutatis mutandis to the set-off of claims and debts arising from the lease agreement.

M. Termination of the Lease

Art. 99

I. Expiration of the Agreed Term

1) If the parties have expressly or tacitly agreed on a specific term, the lease agreement shall terminate without notice upon the expiration of that term.

2) If the parties tacitly continue the lease, it shall remain in effect under the same terms and conditions for another year, unless otherwise agreed.

3) The parties may terminate the continued lease with the statutory notice period effective at the end of a lease year.

Art. 100

II. Notice Periods and Dates

1) The parties may terminate the lease agreement of indefinite duration with six months' notice to the end of a month, unless otherwise agreed upon and unless, given the nature of the leased property, a different intention of the parties is to be assumed.

2) In the case of an open-ended lease of residential or commercial premises, the parties may terminate the lease with at least six months' notice, effective at the end of a month. They may agree on a longer notice period and a different effective date.

3) If the parties do not comply with the notice period or the date, the extrajudicial termination shall take effect on the next possible date. Section 563 of the Swiss Civil Procedure Code (ZPO) applies to judicial termination.

III. Extraordinary Termination

Art. 101

1. For good cause

For good cause that renders performance of the contract unreasonable for them, the parties may terminate the lease without notice; in the case of residential and commercial premises, with at least 14 days' notice to any date. Art. 102

2. Bankruptcy of the Lessee

1) If bankruptcy proceedings are initiated against the lessee's assets after the property has been taken over, the lessor of residential and commercial premises may demand security for future rent. To this end, the lessor must set a reasonable deadline in writing for the bankruptcy trustee.

2) If the lessor does not receive security within this period, he may terminate the lease without notice.

Art. 103

3. Death of the Lessee

If the tenant dies, Art. 45 applies mutatis mutandis. Art. 104

IV. Form of Notice for Residential and Commercial Premises

1) Landlords and tenants of residential and commercial premises must provide written notice of termination.

2) If the lessor does not terminate the lease through legal proceedings, the notice of termination must include the following minimum information:

a) the description of the leased property to which the notice of termination relates;

b) the date on which the termination takes effect.

3) The notice of termination is void if it does not meet these requirements.

N. Return of the Property

Art. 105

I. In general

1) The tenant shall return the property and all its contents in the condition they are in at the time of return.

2) The tenant may claim compensation for improvements if they resulted from:
a) efforts that go beyond proper management;
b) renovations or alterations to which the landlord has given written consent.
3) The tenant must pay compensation for any deterioration that could have been avoided with proper management.
4) Agreements in which the tenant undertakes in advance to pay compensation upon termination of the lease that includes more than coverage of any damage are void.
Art. 106
II. Inspection of the Property and Notification to the Lessee
1) Upon return, the lessor must inspect the condition of the property and immediately notify the lessee of any defects for which the lessee is responsible.
2) If the lessor fails to do so, he forfeits his claims, unless the defects were not apparent upon a reasonable inspection.
3) If the lessor discovers such defects at a later date, he must notify the lessee immediately. However, the lessor must file a lawsuit to assert his claims no later than twelve months after the lease agreement has ended; otherwise, his claim is forfeited.
Art. 107
III. Replacement of Inventory Items
1) If the inventory was appraised at the time of handover, the tenant must, upon termination of the lease, return an inventory of the same type and appraised value or compensate for the difference in value.
2) The lessee is not required to compensate for missing items if he proves that the loss is attributable to the lessor’s fault or to force majeure.
3) The tenant may claim compensation for the increase in value resulting from his expenses and labor.
Art. 108
0. Right of Retention
With regard to lease payments, the lessor has the same scope and effect of the right of retention as the landlord has for rent claims (Art. 53 and 54):

a) lessors of residential and commercial premises with respect to the movable property brought in by the lessee;

b) lessors of land with respect to the movable property brought in by the lessee, as well as with respect to the livestock, farm equipment, and crops still present on the leased property.

Art. 109

P. Protection against termination in the lease of residential and commercial premises

1) The provisions of tenancy law (Art. 66–76) apply mutatis mutandis to protection against termination in the case of leases of residential and commercial premises.

2) The provisions regarding the family home (Art. 73) do not apply.

Sections 1091 to 1150

Repealed

26. Main Section

Contracts for Services

1. Contracts for Work

§ 1151

1) If a person undertakes to produce a work in return for remuneration, a contract for work and services is formed.

2) To the extent that this involves agency (§ 1002), the provisions regarding the agency agreement must also be observed.

§ 1152

If no remuneration is specified in the contract and it is not agreed that the work is to be performed without remuneration, a reasonable remuneration is deemed to have been agreed.

§ 1153

The contractor is obligated to perform the work personally or to have it performed under his personal responsibility.

§ 1154

If the party undertaking the manufacture of an item is to supply the materials for it, the contract shall, in case of doubt, be regarded as a sales contract; if, however, the customer supplies the materials, the contract shall, in case of doubt, be regarded as a contract for work and services.

§ 1155

Warranty

In the event of defects in the work, the provisions generally applicable to contracts for consideration (§§ 922 to 933b) shall apply.

§ 1156

1) If the work is not performed, the contractor is nevertheless entitled to the agreed remuneration if he was ready to perform the work and was prevented from doing so by circumstances attributable to the client; however, he must deduct any savings he realized as a result of the work not being performed, or any income he earned or intentionally failed to earn by using his resources elsewhere. If, as a result of such circumstances, the time available for performing the work was reduced, the contractor is entitled to reasonable compensation.

2) If the client fails to provide the cooperation necessary for the performance of the work, the contractor is also entitled to set a reasonable deadline for the client to remedy the situation, with the declaration that, upon the fruitless expiration of the deadline, the contract shall be deemed terminated.

§ 1157

If the work is destroyed by mere chance before it is accepted, the contractor may not demand payment. The loss of the materials is borne by the party who supplied them. However, if the work fails due to the obvious unsuitability of the materials provided by the customer or obviously incorrect instructions from the customer, the contractor is liable for the damage if he has not warned the customer.

§ 1158

As a general rule, payment is due upon completion of the work. However, if the work is performed in stages or involves expenses that the contractor has not borne, the contractor is entitled to demand a proportionate portion of the payment 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 accuracy, the contractor may not demand an increase in the remuneration even if the scope or cost of the estimated work turns out to be unforeseen.

2) If the contract is based on an estimate without a guarantee and a significant cost overrun proves unavoidable, the client may withdraw from the contract upon reasonable compensation for the work performed by the contractor. As soon as such a cost overrun proves unavoidable,

the contractor must notify the client immediately; otherwise, the contractor forfeits any claim for the additional work.

§ 1159a

A contract for work and services involving work that depends on the contractor's specific personal qualities terminates upon the contractor's death, and the contractor's heirs may claim only the price for the usable material prepared and a portion of the remuneration commensurate with the value of the work performed. If the client dies, the heirs remain bound by the contract.

2. Publishing Contract

§ 1160

Under a publishing contract, the author of a literary or artistic work or his or her legal successors (the publisher) undertake to transfer the work to a publisher for the purpose of publication, while the publisher undertakes to reproduce the work and distribute it.

§ 1161

1) The author's rights are transferred to the publisher to the extent and for as long as necessary for the performance of the contract.

2) The author must warrant to the publisher that he was entitled to grant the publishing rights at the time the contract was concluded and, if the work is eligible for protection, that he held the copyright thereto.

3) If the work had previously been published in whole or in part by a third party or otherwise published with the author's knowledge, the author must inform the publisher of this prior to the conclusion of the contract.

§ 1162

1) As long as the print runs of the work to which the publisher is entitled have not been exhausted, the author may not otherwise dispose of the work, either in its entirety or in parts, to the detriment of the publisher.

2) The publisher may continue to publish newspaper articles and individual short essays in magazines at any time.

3) The publisher may not republish contributions to anthologies or longer articles in magazines until three months have elapsed since the complete publication of the contribution.

§ 1163

1) If no provision has been made regarding the number of print runs, the publisher is entitled to only one print run.

2) Unless otherwise agreed, the size of the print run shall be determined by the publisher; however, at the publisher's request, the publisher must have at least as many copies printed as are necessary for a reasonable turnover, and may not arrange for any new printings after the completion of the first printing.
3) If the publishing rights have been transferred for several printings or for all printings, and the publisher fails to arrange for a new printing after the last one has gone out of print, the author may have the court set a deadline for the publisher to produce a new printing; upon the fruitless expiration of this deadline, the publisher forfeits his rights.
§ 1164
1) The publisher is obligated to reproduce the work without abridgments, additions, or alterations in an appropriate format, to ensure proper publicity, and to employ the customary means for its sale.
2) The setting of the price is at the publisher's discretion, but the publisher may not hinder sales by charging an excessive price.
§ 1165
1) The author retains the right to make corrections and improvements, provided they do not harm the publisher's interests or increase the publisher's liability; however, the author is liable for any unforeseen costs incurred as a result.
2) The publisher may not produce a new edition or print run, nor make a new reprint, without first giving the author an opportunity to make improvements.
§ 1166
1) If the publication of a special edition of several individual works by the same author has been entrusted to the publisher, this does not also grant the publisher the right to produce a complete works edition of these works.
2) Likewise, a publisher to whom a complete edition of all works or an entire genre of works by the same author has been entrusted does not have the right to produce special editions of the individual works.
§ 1167
Unless otherwise agreed with the publisher, the right to arrange for a translation of the work is reserved exclusively for the publisher.
§ 1168

1) A fee to the publisher is deemed to have been agreed upon if, under the circumstances, the transfer of the work could reasonably be expected only in exchange for a fee.

2) The amount of such a fee shall be determined by the court based on the expert opinion of experts.

3) If the publisher has the right to multiple printings, it is presumed that the same royalty and other contractual terms apply to each subsequent printing organized by the publisher as to the first printing.

§ 1169

1) The fee becomes due as soon as the entire work is printed or, if it appears in installments (volumes, issues, sheets), as soon as the installment is printed and ready for distribution.

2) If the fee is made dependent, in whole or in part, on expected sales, the publisher is obligated to provide a customary accounting and proof of sales.

3) Unless otherwise agreed, the publisher is entitled to the customary number of free copies.

§ 1170

1) If the work is lost by accident after delivery 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 must provide it to the publisher; otherwise, he is obligated to reproduce the work if this can be done with minimal effort.

3) In both cases, the author is entitled to reasonable compensation.

§ 1171

1) If the print run of the work already produced by the publisher is lost in whole or in part by accident before it has been distributed, the publisher is entitled to reproduce the lost copies at his own expense, without the author being entitled to demand a new fee for this.

2) The publisher is obligated to reproduce the lost copies if this can be done without disproportionately high costs.

§ 1172

1) The publishing contract shall terminate if the author dies before the work is completed or is unable, through no fault of his own, to complete it.

2) By way of exception, if the continuation of the contractual relationship in whole or in part appears possible and equitable, the court may approve it and order the necessary measures.

3) Repealed

§ 1173

1) If one or more authors undertake the adaptation of a work according to a plan submitted to them by the publisher, they are entitled only to the agreed-upon fee.

2) The publisher holds the copyright to the work.

3. Employment Contract

§ 1173a

The following provisions apply to the employment contract:

1. Section

The Individual Employment Contract

A. Definition and Formation

Art. 1

I. Definition

1) Through the individual employment contract, the employee undertakes, for a fixed or indefinite period, to perform work in the service of the employer, and the employer undertakes to pay a wage calculated either by time intervals (time wage) or according to the work performed (piece-rate wage).

2) An individual employment contract also includes a contract under which an employee undertakes to perform work on a regular basis for hours, half-days, or full days (part-time work) in the service of the employer.

Art. 2

II. Formation

1) Unless otherwise provided by law, an individual employment contract does not require any specific form to be valid.

2) It is also deemed to have been concluded if the employer accepts temporary work in their service, the performance of which, under the circumstances, can only be expected in exchange for wages.

3) If an employee performs work in good faith for the employer under an employment contract that is subsequently found to be invalid, both parties must fulfill the obligations arising from the employment relationship in the same manner as

under a valid contract until it is terminated by one or the other party due to the invalidity of the contract.

B. Obligations of the Employee

Art. 3

I. Personal Obligation to Work

The employee must personally perform the work undertaken under the contract, unless otherwise agreed or as may be implied by the circumstances. Art. 4

II. Duty of Care and Loyalty

1) The employee must perform the work assigned to him with due care and safeguard the employer's legitimate interests in good faith.

2) He must operate the employer's machinery, tools, technical equipment, and facilities, as well as vehicles, in a professional manner and handle them, as well as any materials provided to him for the performance of the work, with care.

3) During the term of the employment relationship, the employee may not perform work for remuneration for a third party to the extent that this violates his duty of loyalty, in particular by competing with the employer.

4) The employee may not use or disclose to others any confidential information—such as trade secrets and business secrets—that he or she learns while working for the employer during the term of the employment relationship; even after the employment relationship ends, the employee remains bound by a duty of confidentiality to the extent necessary to protect the employer's legitimate interests.

Art. 5

III. Duty of Accountability and Surrender

1) The employee must render an account to the employer for everything received from third parties in the course of his contractual activities on the employer's behalf, such as monetary sums, and must immediately surrender all such items to the employer.

2) The employee must also immediately surrender to the employer everything produced in the course of his contractual activities.

Art. 6

IV. Overtime Work

1) If, in addition to the working hours agreed upon, customary, or determined by a standard employment contract or collective bargaining agreement, the performance of overtime work becomes necessary, the employee is only obligated to do so to the extent

to the extent that he is able to perform it and it can reasonably be expected of him in good faith.

2) With the employee's consent, the employer may compensate for the overtime work within a reasonable period of time with time off of at least equal duration.

3) If overtime is not compensated with time off and nothing else has been agreed in writing or is stipulated in a standard employment contract or collective bargaining agreement, the employer must pay wages for the overtime, calculated based on the regular wage plus a premium of at least one-quarter.

Art. 7

V. Compliance with Orders and Instructions

1) The employer may issue general orders regarding the performance of work and the conduct of employees in the workplace or household and may give them specific instructions.

2) The employee must comply with the employer's general orders and the specific instructions given to him in good faith.

Art. 8

VI. Liability of the Employee

1) The employee is liable for any damage caused to the employer intentionally or through negligence.

2) The standard of care to which the employee is bound is determined by the specific employment relationship, taking into account the occupational risk, the level of education or specialized knowledge required for the work, as well as the employee's abilities and characteristics that the employer knew or should have known.

C. Employer's Obligations

I. Prohibition of Discrimination

Art. 8a

1. Equal Treatment of Women and Men

The employer may not discriminate against an employee within the meaning of the Equal Treatment Act on the basis of gender.

Art. 8b

2. Equal treatment of part-time and full-time employees or of employees with fixed-term and permanent contracts

An employer may not discriminate against a part-time employee in comparison with comparable full-time employees, or against an employee with a fixed-term contract in comparison with comparable employees with permanent contracts, unless objective reasons justify such differential treatment. Where appropriate, the pro rata temporis principle applies.

Art. 8c

3. Equal Treatment of Employees in Cases of Leave or Flexible Working Arrangements for Family Reasons

An employer may not disadvantage an employee because the employee requests or avails themselves of a leave of absence or flexible working arrangements for family reasons (Art. 34a through 34e and 36b).

Ia. Wages

Art. 9

1. Nature and Amount in General

1) The employer must pay the employee the wages that have been agreed upon, are customary, or are determined by a standard employment contract or a collective bargaining agreement.

2) If the employee lives in the same household as the employer, room and board constitute part of the wages, unless otherwise agreed or customary.

3) In an employment relationship, a lower wage may not be agreed upon for the same or equivalent work solely on the basis of an employee's gender compared to an employee of the opposite gender. The agreement of a lower wage is not justified by the fact that special protective provisions apply due to the employee's gender.

Art. 10

2. Share in Business Profits

1) If the employee is contractually entitled to a share of the profits, revenue, or other business results, the calculation of such share shall be based on the results of the fiscal year, as determined in accordance with statutory provisions and generally accepted commercial principles.

2) The employer must provide the employee—or, in the employee's stead, an expert jointly designated or appointed by the court—with the necessary information and grant access to the business records to the extent necessary for verification.
3) If a share in the company's profits has been agreed upon, the employee must also be provided, upon request, with a copy of the profit and loss statement for the fiscal year.

3. Commission

Art. 11

a) Accrual

1) If a commission for the employee on specific transactions has been agreed upon, the claim to such commission arises when the transaction with the third party is legally concluded.
2) In the case of transactions with staggered performance and insurance contracts, it may be agreed in writing that the right to commission arises upon the due date or payment of each installment.
3) The right to commission shall lapse retroactively if the transaction is not carried out by the employer through no fault of the employer's, or if the third party fails to fulfill its obligations; in the event of only partial fulfillment, the commission shall be reduced proportionately.

Art. 12

b) Settlement

1) Unless the employee is contractually obligated to prepare the commission statement, the employer must provide the employee with a written statement on each due date, specifying the transactions subject to commission.
2) The employer must provide the employee—or, in the employee's stead, an expert jointly designated or appointed by the court—with the necessary information and grant access to the books and documents relevant to the statement, to the extent necessary for verification.

Art. 13

4. Bonus

1) If the employer pays a special bonus in addition to wages on certain occasions, such as Christmas or the end of the fiscal year, the employee is entitled to it if agreed upon.

2) If the employment relationship ends before the occasion for the payment of the special allowance has occurred, the employee is entitled to a proportionate share thereof, if agreed upon.

II. Payment of Wages

Art. 14

1. Payment periods and dates

1) Unless shorter deadlines or other dates have been agreed upon or are customary, and unless otherwise provided for in a standard employment contract or collective bargaining agreement, the employee's wages shall be paid at the end of each month.

2) Unless a shorter period has been agreed upon or is customary, the commission shall be paid at the end of each month; however, if the execution of transactions takes more than six months, the due date for the commission on such transactions may be deferred by written agreement.

3) The share of the business results shall be paid as soon as they are determined, but no later than six months after the end of the fiscal year.

4) The employer shall grant the employee, in proportion to the work performed, any advance payment that the employee requires due to an emergency and that the employer is reasonably able to grant.

Art. 15

2. Wage Withholding

1) Provided it is agreed upon, customary, or stipulated by a standard employment contract or collective bargaining agreement, the employer may withhold a portion of the wages.

2) No more than one-tenth of the wages due on any given payday may be withheld, and no more than the wages for one workweek in total; however, a higher wage withholding may be provided for by a standard employment contract or a collective bargaining agreement.

3) Unless otherwise agreed, customary, or stipulated in a standard employment contract or collective bargaining agreement, the withheld wages shall serve as security for the employer's claims arising from the employment relationship and shall not be considered a contractual penalty.

Art. 16

3. Wage Security

1) Wages shall be paid to the employee in legal tender during working hours, unless otherwise agreed or customary; the employee shall be provided with a written statement of account.
2) The employer may set off counterclaims against the wage claim only to the extent that the wage claim is attachable; however, claims for compensation for intentionally caused damage may be set off without limitation.
3) Agreements regarding the use of wages in the employer's interest are void.

III. Wages in the Event of Inability to Work

Art. 17

1. In the event of default of acceptance by the employer

1) If work cannot be performed due to the employer's fault or if the employer is in default of acceptance of the work for other reasons, the employer remains obligated to pay wages without the employee being obligated to make subsequent performance.
2) The employee must allow the wages to be offset against any savings resulting from the inability to perform work, or against income earned from other work, or against income intentionally foregone.

2. In the event of the employee's inability to work

Art. 18

a) Principle

1) If an employee is prevented from performing work through no fault of his own due to personal reasons, such as illness, accident, fulfillment of legal obligations, or the exercise of a public office, and is prevented from performing work through no fault of his own, the employer shall pay him the wages for the period in question for a limited time, together with reasonable compensation for lost wages in kind, provided that the employment relationship has lasted more than three months or was entered into for more than three months.
2) If no longer periods are specified by agreement, standard employment contract, or collective bargaining agreement, the employer must pay wages for three weeks during the first year of service and thereafter for a reasonably longer period, depending on the duration of the employment relationship and the specific circumstances.
3) In the event of an employee's pregnancy and childbirth, the employer must pay wages in the same amount.

4) A provision deviating from the foregoing provisions may be agreed upon in a written agreement, standard employment contract, or collective bargaining agreement, provided that it is at least equivalent for the employee.

Art. 19

b) Exceptions

1) If the employee is compulsorily insured under statutory provisions against the economic consequences of involuntary absence from work for reasons attributable to the employee, the employer is not required to pay wages if the insurance benefits owed for the limited period cover at least four-fifths of the wages attributable to that period.

2) If the insurance benefits are lower, the employer must pay the difference between them and four-fifths of the wages.

3) If the employee is compensated for the performance of a public office, the employer is not required to pay the wages if the compensation covers at least four-fifths of the wages. Paragraph 2 applies mutatis mutandis. Art. 20

IV. Assignment and Pledging of Wage Claims

The employee may validly assign or pledge future wage claims only to the extent that they are attachable; upon request by a party, the court shall determine the non-attachable amount.

V. Piecework

Art. 21

1. Assignment of Work

1) If, under the terms of the contract, the employee is required to perform piecework exclusively for one employer, that employer must assign sufficient work.

2) If the employer, through no fault of his own, is unable to assign piecework as provided for in the contract, or if the circumstances of the business temporarily require the performance of time-wage work, such work may be assigned to the employee.

3) If the hourly wage is not determined by agreement, a standard employment contract, or a collective bargaining agreement, the employer must pay the employee the average piecework wage previously earned.

4) If the employer is unable to assign either sufficient piecework or hourly-wage work, the employer remains obligated, in accordance with the provisions regarding default of acceptance, to pay the wages that would have been payable had hourly-wage work been assigned.

Art. 22

2. Piecework Wages

1) If the employee is contractually required to perform piecework, the employer must notify the employee of the piecework rate before the start of each task.

2) If the employer fails to provide this notice, the employer must pay the wages at the rate established for the same or similar work.

VI. Tools, Materials, and Expenses

Art. 23

1. Tools and materials

1) Unless otherwise agreed or customary, the employer must provide the employee with the tools and materials necessary for the work.

2) If, with the employer's consent, the employee provides his or her own tools or materials for the performance of the work, he or she shall be reasonably compensated for them, unless otherwise agreed or customary.

2. Expenses

Art. 24

a) General

1) The employer shall reimburse the employee for all expenses necessarily incurred in the performance of the work; in the case of work at off-site locations, this also includes expenses necessary for subsistence.

2) By written agreement, standard employment contract, or collective bargaining agreement, a fixed compensation, such as a daily allowance or a flat-rate weekly or monthly payment, may be established as reimbursement for expenses; however, this must cover all necessary expenses incurred.

3) Agreements stipulating that the employee must bear all or part of the necessary expenses themselves are void.

Art. 25

b) Motor Vehicle

1) If, with the employer's consent, the employee uses a motor vehicle provided by the employer or by the employee himself for his work, he shall be reimbursed for the usual expenses for its operation and maintenance in proportion to its use for work.

2) If the employee, with the employer's consent, provides his or her own motor vehicle, the employer must also reimburse the employee for the vehicle's public taxes, the premiums for liability insurance, and reasonable compensation for wear and tear on the vehicle commensurate with its use for work.

3) If the employee, with the employer's consent, regularly uses a motor vehicle for work and is not required to have accident insurance, the employer must, at its own expense, provide the employee with adequate insurance against accidents involving the motor vehicle that may occur while working.

Art. 26

c) Due Date

1) Based on the employee's statement of account, reimbursement of expenses shall be paid together with the wages, unless a shorter period has been agreed upon or is customary.

2) If the employee regularly incurs expenses in the performance of his contractual duties, he shall be paid a reasonable advance at regular intervals, but at least monthly.

VII. Protection of the Employee's Privacy

Art. 27

1. In general

1) In the employment relationship, the employer must respect and protect the employee's dignity, take due care of the employee's health, and ensure that standards of decency are upheld. In particular, the employer must ensure that employees are not subjected to harassment or sexual harassment and that victims of harassment or sexual harassment do not suffer any further disadvantages.

2) To protect the life, health, and physical integrity of employees, the employer must take measures that are necessary based on experience, applicable according to the state of the art, and appropriate to the circumstances of the business or household, to the extent that this can reasonably be expected in light of the

individual employment relationship and the nature of the work.

2a) An employer may not discriminate against an employee in response to a complaint regarding a violation of rights related to the employment relationship or to the initiation of proceedings to enforce such rights. This also applies if the employee appears as a witness or provides information in such proceedings or supports such a complaint. If an employer violates the prohibition against discrimination, the employer must pay compensation to the affected employee. The compensation is determined based on the circumstances of the individual case and shall not exceed two months' wages. Articles 46 through 48 remain reserved.

3) Employees who are in an employment relationship lasting at least one month or in a part-time employment relationship lasting at least eight hours per week must be informed by the employer of the conditions applicable to that relationship within two months of the start of the employment relationship; if the employment relationship ends before the expiration of two months following its commencement, the information must be provided before that time. Excluded are employment relationships that, due to their duration or nature or due to other special conditions applicable to the employment relationship, do not require notification of the employee, such as, in particular, in the case of irregular employment relationships or in the case of casual work. The employee is to be informed by the provision of an employment contract or a document that ensures the employee's information in a manner equivalent to an employment contract and shall include, in particular, a statement regarding:

a) the employer's personal details, registered office, or place of residence;

b) the start date of employment; in the case of fixed-term employment contracts, the duration of the contract; the daily or weekly working hours and rest periods; the workplace; and the nature of the work. The information regarding the nature of the work includes the job title or functional designation assigned to the employee upon commencement of employment, as well as their rank;

c) the duration of leisure time and vacation;

d) the notice periods or the procedure for determining them;

e) any collective bargaining agreements or standard employment contracts that may apply to the employment relationship;

f) the wages (wages in cash and in kind), allowances, bonuses, and expenses, 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, provided that their employment relationship is governed by Liechtenstein law and lasts for at least one month, be informed in writing by the employer prior to their posting of the following conditions:

a) the duration of employment in the other country;

b) the currency in which the wages will be paid;

c) any benefits in cash or in kind associated with the posting to another country;

d) the conditions for repatriation.

5) In the cases referred to in paragraphs 3 and 4, the employer must inform the employee in writing within one month of any changes to the conditions applicable to their employment relationship.

6) In the cases referred to in paragraph 3(b), (c), and (d), the obligation to provide written notice to the employee may be fulfilled by referring to the collective and standard employment contracts applicable to the employment relationship. In these cases, the obligation to provide written notice to the employee regarding changes pursuant to paragraph 5 does not apply.

Art. 28

2. Living in the Employer's Household

1) If the employee lives in a shared household with the employer, the employer must provide adequate meals and proper accommodation.

2) If an employee is unable to work due to illness or accident through no fault of his or her own, the employer must, if the employee is not covered by mandatory insurance, provide care and medical treatment for a limited period of time: for three weeks during the first year of employment and thereafter for a reasonably longer period, depending on the duration of the employment relationship and the specific circumstances.

3) In the event of an employee's pregnancy and childbirth, the employer must provide the same benefits.

Art. 28a

3. Regarding the Processing of Personal Data

1) Subject to paragraph 2, the employer may process personal data concerning the employee, including personal data regarding criminal convictions and offenses, to the extent necessary for:

a) the decision regarding the establishment of the employment relationship, in particular the employee's suitability 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) Notwithstanding Article 9(1) of Regulation (EU) 2016/679, the processing of special categories of personal data is permitted if:

a) it is necessary for the exercise of rights or the fulfillment of legal obligations under labor law, social security law, and social protection law; and

b) there is no reason to believe that the data subject's legitimate interest in objecting to the processing outweighs such processing.

VIII. Leisure, Vacations, and Leave for Family Reasons

Art. 29

1. Leisure

1) The employer shall grant the employee one and a half days off each week, generally Saturday afternoon and Sunday, or, where circumstances do not permit this, one and a half full working days.

2) Under special circumstances, the employee may, with his or her consent, be granted, as an exception, several consecutive days off or, instead of one day off, two half-days off.

3) In addition, the employee shall be granted the customary hours and days off and, following termination of employment, the time necessary to seek other employment.

4) In determining time off, due consideration must be given to the interests of both the employer and the employee.

5) Repealed

2. Vacation

Art. 30

a) Duration of Vacation

1) The employer must grant the employee at least four weeks of vacation for each year of service, and at least five weeks of vacation to employees until they reach the age of 20.

2) For an incomplete year of service, vacation shall be granted in proportion to the duration of the employment relationship during the relevant year of service.

Art. 31

b) Reduction

1) If an employee is prevented from working for a total of more than one month during a calendar year, the employer may reduce the employee's vacation entitlement by one-twelfth for each full month of absence.

2) If the total period of absence does not exceed one month in the calendar year and is caused by reasons attributable to the employee—such as illness, accident, parental or caregiving leave, fulfillment of legal obligations, or the exercise of a public office—through no fault of the employee, the employer may not reduce the vacation entitlement.

3) The employer may also not reduce the vacation entitlement if:

a) an employee is prevented from working for up to five months due to pregnancy and childbirth;

b) an employee takes leave pursuant to Art. 34a, para. 2 or 3, or Art. 34b, para. 1 or 2.

Art. 32

c) Continuity and Timing

1) Vacation must generally be granted as a continuous period during the relevant calendar year, but no later than the following calendar year; for juvenile employees, at least two weeks of vacation must be consecutive.

2) The employer determines the timing of the vacation and must take the employee's wishes into account to the extent that this is compatible with the interests of the business or household.

Art. 33

d) Wages

1) The employer must pay the employee the full wages for the vacation period and reasonable compensation for any lost wages in kind.

2) Vacation time may not be compensated by monetary payments or other benefits during the term of the employment relationship.

3) If the employee performs paid work for a third party during the vacation and this infringes upon the employer's legitimate interests, the employer may withhold the vacation pay and reclaim any vacation pay already paid.

Art. 34

e) Deviating Provisions

1) A standard employment contract or collective bargaining agreement may provide for provisions deviating from the provisions of Art. 30, 31, and 32(1) if such provisions are, on the whole, at least equivalent for the employees.

2) This is without prejudice to the special provisions regarding vacation in the context of an apprenticeship or home-based work.

3. Leave for family reasons

Art. 34a

a) Maternity Leave

1) Upon childbirth, the employee is entitled to a leave of absence of 20 consecutive weeks. The entitlement arises no earlier than four weeks before childbirth.

2) If the newborn is hospitalized for at least two consecutive weeks immediately following birth, the entitlement under paragraph 1 is extended by the duration of the hospitalization, but by no more than eight weeks.

3) If the other parent dies within eight months of the child's birth, the employee is entitled to an additional two consecutive weeks of leave for the purpose of caring for the child. The period during which this leave may be taken begins upon the expiration of the leave under paragraphs 1 and 2 and ends when the child reaches the age of one.

Art. 34b

b) Paternity Leave

1) An employee who is the father of a child is entitled to a leave of two consecutive weeks for the purpose of caring for the child.

2) If the mother dies on the day of childbirth or during the 20 weeks following it, the employee is entitled to an additional leave of 20 consecutive weeks for the purpose of caring for the child. In the event of the newborn's hospitalization, Art. 34a para. 2 applies mutatis mutandis.

3) In the case of multiple births, the entitlements under paragraphs 1 and 2 apply only once.

4) The entitlements under paragraphs 1 and 2 arise upon the establishment of paternity.

5) The general period for taking leave lasts:

a) in the case of leave under paragraph 1, from the day of birth until the child reaches eight months of age;

b) in the case of leave under paragraph 2, from the date of the mother's death until the child reaches one year of age.

6) In the case of leave under paragraph 2, unused days of leave under paragraph 1 may be taken immediately following the leave under paragraph 2, irrespective of the expiration of the general time limit under paragraph 5(a).

7) If public holidays fall on working days during the leave under paragraph 1, or if the employee is simultaneously prevented from working during this leave for reasons under Article 18(1), the entitlement under paragraph 1 is extended by the corresponding number of days.

8) The following shall apply mutatis mutandis, provided that the entitlements under paragraphs 1 and 2 arise upon the establishment of the respective legal relationship:

a) Paragraph 1 to adoptive and foster fatherhood as well as adoptive and foster motherhood;

b) Paragraph 2 to adoptive fatherhood and adoptive motherhood.

Art. 34c

c) Parental Leave

1) If the employment relationship has lasted more than six months, the employee is entitled to four months of leave, provided that, as a parent, adoptive parent, or foster parent, the employee is primarily responsible for caring for the child.

2) If the employee lives in the same household as the child, there is a rebuttable presumption that he or she is the primary caregiver for the child; otherwise, he or she must prove this to the employer by other appropriate means.

3) The entitlement under paragraph 1 arises:

a) upon the live birth of a child; or

b) upon adoption or the establishment of a permanent foster care relationship.

4) The general period for taking parental leave lasts:

a) in the case of an entitlement under paragraph 3(a), from the date of the child's live birth until the child reaches the age of three;

b) in the case of an entitlement under paragraph 3(b), from the date the elective parenthood or foster parenthood relationship is established until the child reaches the age of five.

5) In the case of multiple births, the entitlement under paragraph 1 applies only once.

6) The entitlement under paragraph 1 is non-transferable.

7) If comparable parental leave has already been taken in another EEA Member State, the entitlement to leave under paragraph 1 shall be reduced accordingly.

8) For the purpose of calculating the duration of the employment relationship under paragraph 1, consecutive fixed-term employment relationships with the same employer shall be aggregated.

Art. 34d

d) Care Leave

If a child, a parent, or the spouse or registered partner of the employee, or a person living in the same household as the employee, requires care due to a health impairment, the employee is entitled to leave of absence for up to five working days per year of service.

Art. 34e

e) Leave of Absence Due to Force Majeure

1) In the event of illness or accident affecting a child, a parent, or the employee’s spouse or registered partner, the employee is entitled to leave of up to three working days per occurrence upon presentation of a medical certificate, provided that the employee’s immediate presence is urgently required and care cannot be arranged otherwise.

2) The employee shall be paid their full salary for the leave taken pursuant to paragraph 1.

f) Common Provisions

Art. 34f

aa) Information and Consultation

1) If the employee intends to take leave for family reasons pursuant to Art. 34a through 34d, he or she must, if possible, notify the employer of the planned leave no later than three months before the expected start date.

2) The employer has the right to postpone leave for family reasons under Art. 34b(1), Art. 34c, or Art. 34d for a reasonable period of time if taking such leave at that time would cause a serious disruption to the employer's operations.
3) If the employer requests a postponement of leave under paragraph 2, the employer must provide written justification within a reasonable period of time following receipt of the notice under paragraph 1. If the notice relates to parental or caregiving leave, the employer must first offer, where possible, a flexible form of leave under Article 34g.
4) The employee must inform the employer of any material changes to the eligibility requirements following the notice pursuant to paragraph 1.
5) During a leave of absence for family reasons, the employer must inform the employee of important company events that affect the interests of the employee on leave.

Art. 34g

bb) Arrangements

The employee is entitled to take parental and care leave on a full-time, part-time, or flexible basis, or on a daily or hourly basis. In doing so, the legitimate interests of both the employer and the employee must be taken into account.

Art. 34h

cc) Return to the Workplace

1) Following a leave of absence for family reasons, the employee has the right to return to their former position or, if this is not possible, to be assigned to equivalent work under conditions that are no less favorable to the employee.
2) The employee is also entitled to benefit from any improvements in working conditions to which they would have been entitled during their absence.

IX. Other obligations

Art. 35

1. Security deposit

1) If the employee provides the employer with a security deposit to secure his obligations arising from the employment relationship, the employer must keep it separate from his own assets and provide the employee with security for it.

2) The employer must return the security deposit no later than upon termination of the employment relationship, unless the date of return has been postponed by written agreement.

3) If the employer asserts claims arising from the employment relationship and these are disputed, the employer may withhold the security deposit to that extent until a decision is made, but must, at the employee's request, deposit the withheld amount with the court.

4) In the event of the employer's bankruptcy, the employee may demand the return of the security deposit, which is held separately from the employer's assets, subject to the employer's claims arising from the employment relationship.

Art. 36

2. Certificate

1) The employee may at any time request a reference from the employer that describes the nature and duration of the employment relationship as well as the employee's performance and conduct.

2) At the employee's specific request, the reference must be limited to information regarding the nature and duration of the employment relationship.

Art. 36a

3. Support 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 switch to a part-time employment relationship;

b) consider requests from part-time employees to switch to a full-time employment relationship or to increase their working hours;

c) provide employees with timely information about available positions to facilitate the transition from full-time to part-time employment and vice versa, and inform employee representatives about part-time work within the establishment or company;

d) facilitate part-time employees' access to managerial positions and vocational training, and promote their career advancement and professional mobility.

2) The employer must inform employees with fixed-term contracts about permanent positions becoming available in the establishment or company. The employer must also

facilitate their access to vocational training whenever possible. The employer shall, to the extent possible, inform the employee representatives about fixed-term employment relationships within the company.

Art. 36b

4. Flexible working arrangements for family reasons

1) An employee who has been employed by the same employer for at least six months may request flexible working arrangements from that employer for the purpose of childcare if he or she:

a) as a parent, adoptive parent, or foster parent, primarily cares for a child who has not yet reached the age of 15; or

b) provides care for a person under Art. 34d.

2) Article 34c(7) applies mutatis mutandis to the calculation of the duration of the employment relationship under paragraph 1.

3) The employer must respond in writing to the request under paragraph 1 within a reasonable period of time. If the employer does not grant the request or grants it only in part, the employer must provide a justification.

4) The employee has the right to return to the original work schedule:

a) after the expiration of the period agreed upon under paragraph 1;

b) at any earlier time, if the employee requests this and the employer agrees to the request.

5) When considering a request under paragraph 1 or 4, the employer shall take into account both its own interests and those of the employee.

D. Employee Welfare

Art. 37

I. Employer's Obligations

1) If the employer makes contributions to employee welfare or if the employees make contributions thereto, the employer shall transfer these contributions to a foundation, a cooperative, or a public-law institution.

2) If the employer's contributions and any employee contributions are used for the employee's benefit to purchase health, accident, life, disability, or death insurance from a licensed insurance company or a recognized health insurance fund, the employer is not required to make the transfer pursuant to the preceding paragraph if the employee

is entitled to an independent claim against the insurer upon the occurrence of the insured event.

3) If the employee is required to make contributions to an employee welfare fund, the employer is obligated to make at least the same amount of contributions at the same time.

4) The employer must provide the employee with the necessary information regarding the employee's claims against an employee welfare fund or an insurance carrier.

II. Obligations of the Employee Welfare Fund

1. Employee's Claim

Art. 38

a) In the case of savings institutions

1) If the employee has made contributions to a savings institution for old-age, survivors', or disability benefits and receives no benefits from it upon termination of the employment relationship, the employee has a claim against it that corresponds to at least the employee's contributions plus interest.

2) If contributions have been made by the employee and the employer, or, pursuant to an 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 contribution years, in both cases including interest.

3) If contributions have been made for 20 or more years, the claim shall correspond to the total savings balance formed by the contributions of the employee and the employer, including interest.

4) If the savings plan includes risk insurance, the costs of covering 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 an employee has made contributions to an insurance institution for old-age, survivors', or disability benefits and does not receive any benefits from that institution upon termination of the employment relationship, the employee has a claim against the institution equal to at least the amount of the contributions, less the expenses incurred to cover a risk during the term of the employment relationship.

2) If contributions have been made by the employee and the employer, or, pursuant to an agreement, by the employer alone, for five or more years, the employee's claim shall correspond to a portion of the reserve fund calculated as of the date of termination of the employment relationship that is commensurate with the number of years of contributions.

3) If contributions have been made for 25 or more years, the employee's claim shall correspond to the total reserve fund.

4) Repealed

5) The employee welfare institution may, by regulation, establish a different rule for determining the employee's claim, provided that it is at least equivalent for the employee.

Art. 40

2. Fulfilment of the Obligation

Repealed

Art. 41

E. Rights to Inventions and Designs

1) Inventions and designs that the employee creates in the course of his or her employment and in fulfillment of his or her contractual obligations, or to the creation of which he or she contributes, belong to the employer regardless of their eligibility for protection.

2) By written agreement, the employer may reserve the right to acquire inventions and designs created by the employee in the course of his or her employment but not in fulfillment of his or her contractual obligations.

3) An employee who creates an invention or design in accordance with paragraph 2 must notify the employer in writing; the employer must inform the employee in writing within six months whether it intends to acquire the invention or design or to release it to the employee.

4) If the invention or design is not released to the employee, the employer must pay the employee special, appropriate compensation; in determining which, all circumstances must be taken into account, such as the economic value of the invention or design, the employer's contribution, the use of the employer's auxiliary personnel and facilities, as well as the employee's expenses and his or her position within the company.

Art. 42

Repealed

F. Transfer of the Employment Relationship

Art. 43

I. Effects

1) If a company, business, or part of a company or business is transferred by contract or merger, the employment relationship, along with all rights and obligations, is also transferred from the transferor to the transferee, provided that the employee does not object to the transfer. No transfer shall take place with respect to rights to benefits from occupational or non-occupational social insurance institutions that are not required by law.

2) A transfer of an enterprise, business, or part of an enterprise or business is defined as the transfer of an economic unit that retains its identity, understood as an organized pooling of resources for the pursuit of a primary or secondary economic activity.

3) An enterprise or business is defined as a public or private entity that engages in an economic activity, regardless of whether it pursues profit-making purposes or not.

4) The transfer of an enterprise, business, or part of an enterprise or business does not constitute grounds for termination by the transferor or transferee. This is subject to economic, technical, or organizational reasons that entail changes in the employment relationship.

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 is presumed.

6) If a collective bargaining agreement applies to the employment relationship, the purchaser 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 is terminated upon the expiration of the statutory notice period; the transferee of the business and the employee are obligated to fulfill the contract until that time.

8) The former employer and the purchaser of the business are jointly and severally liable for the employee’s claims that became due prior to the transfer and that become due thereafter up to the date on which the employment relationship

or, if the employee refuses the transfer, is terminated.
9) Otherwise, the employer is not entitled to transfer the rights arising from the employment relationship to a third party, unless otherwise agreed or implied by the circumstances.
10) If the company, the business, or the part of the company or business 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 maintained during the period necessary for the re-establishment or reappointment of the employee representatives.
Art. 43a
II. Information and Consultation
1) If an enterprise, establishment, or part of an enterprise or establishment is transferred, the employee representatives must be informed of the transfer and consulted. The information must be provided before the time at which the employees are directly affected by the transfer.
2) As part of the notification and consultation process pursuant to paragraph 1, the employee representatives must be notified in writing of:
a) the date or planned date of the transfer;
b) the reason for the transfer;
c) the legal, economic, and social consequences of the transfer for the employees.
3) If measures are planned with regard to the employees affected by a transfer, the employee representatives must be informed of these in a timely manner and consulted in order to reach an agreement, if possible.
4) In the absence of an employee representative body, the information specified in paragraphs 2 and 3 must be communicated to the employees in writing.
5) The obligations set forth in this article apply regardless of whether the decision leading to the transfer is made by the employer or by an enterprise controlling the employer.
6) In the event of violations of the duty to inform and consult, the objection that the violation stems from the fact that the information was not provided by an enterprise controlling the employer shall not be taken into account.
Art. 43b

III. Insolvency proceedings concerning the assets of the transferor

Articles 43(1) and 4 through 9 do not apply to transfers of companies, businesses, or parts of companies or businesses where bankruptcy or restructuring proceedings without self-administration, or proceedings aimed at the liquidation of assets, have been initiated against the transferor.

G. Termination of the Employment Relationship

I. Fixed-term employment relationship

Art. 44

a) General Principle

1) A fixed-term employment relationship ends without notice.

2) If a fixed-term employment relationship is tacitly continued after the agreed term has expired, it is deemed to be an indefinite employment relationship.

3) After ten years, either party may terminate a fixed-term employment relationship entered into 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 no more than three times for a total duration of up to five years. If the duration is longer, it is considered a permanent employment relationship.

2) Paragraph 1 does not apply 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 contract of indefinite duration may be terminated by either party.

2) The party giving notice must provide written justification for the termination if the other party requests it.

2. Notice periods

Art. 45a

a) In general

1) Different notice periods may not be set for employers and employees; if there is a conflicting agreement, the longer period applies to both.

2) However, if the employer has terminated the employment relationship for economic reasons or has announced an intention to do so, shorter notice periods may be agreed upon for the employee by mutual agreement, standard employment contract, or collective bargaining agreement.

Art. 45b

b) During the Probationary Period

1) The employment relationship may be terminated at any time during the probationary period with a notice period of seven days to the end of a workweek; the probationary period is the first month of the employment relationship.

2) Different arrangements may be made by written agreement, standard employment contract, or collective bargaining agreement; however, the probationary period may not be extended beyond a maximum of three months.

3) If the probationary period is effectively shortened due to illness, accident, or the fulfillment of a legal obligation not voluntarily assumed, the probationary period shall be extended accordingly.

Art. 45c

c) After the Expiration of the Probationary Period

1) The employment relationship may be terminated during the first year of service with one month's notice, during the second through the ninth year of service with two months' notice, and thereafter with three months' notice, in each case effective at the end of a month.

2) These notice periods may be modified by written agreement, a standard employment contract, or a collective bargaining agreement; however, they may be reduced to less than one month only by a collective bargaining agreement and only for the first year of service.

III. Protection against dismissal

1. Unfair dismissal

Art. 46

a) Principle

1) The termination of an employment relationship is deemed abusive if a party gives notice:

a) on the basis of a characteristic inherent to the other party's personality, unless such a characteristic is related to the employment relationship or significantly impairs cooperation within the workplace;

b) because the other party is exercising a constitutional right, unless the exercise of that right violates an obligation arising from the employment relationship or significantly impairs cooperation within the workplace;

c) solely to prevent the other party from asserting claims arising from the employment relationship;

d) because the other party is asserting claims arising from the employment relationship in good faith;

e) because the other party is fulfilling a legal obligation that was not voluntarily assumed.

2) Termination of the employment relationship by the employer is also deemed abusive if it is issued:

a) because the employee belongs to or does not belong to an employees' association, or because he or she lawfully engages in trade union activities;

b) while the employee is an elected employee representative in a company-based or affiliated institution, and the employer cannot prove that it had just cause for termination;

c) in violation of the duties to inform, consult, and give notice within the meaning of Articles 43a, 59b, and 59c;

d) because the employee refuses to switch from a full-time to a part-time employment relationship or vice versa. Termination for operational necessity remains 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 supports employee representation;

f) due to the employee's application for or use of leave of absence or flexible working arrangements for family reasons (Art. 34a through 34d and 36b).

Art. 47

b) Sanctions

1) The party that terminates the employment relationship in bad faith must pay compensation to the other party.

2) The compensation shall be determined by the judge after considering all circumstances, but may not exceed an amount corresponding to the employee's salary for

six months. Claims for damages based on other legal grounds are reserved.

3) If the termination under Art. 46(2)(c) is deemed abusive, the compensation may not exceed the employee's salary for two months.

Art. 48

c) Procedure and Relaxation of the Burden of Proof

1) Anyone wishing to claim compensation under Articles 46 and 47 must file a written objection to the termination with the terminating party no later than the end of the notice period.

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 their claim for compensation. If a lawsuit is not filed within 180 days after the termination of the employment relationship, the claim is forfeited.

3) If, during the proceedings, the employee presents facts suggesting that the termination was based on the employee's application for or use of leave for family reasons under Articles 34a through 34d, the employer bears the burden of proving that the termination was based on other grounds.

Art. 49

2. Termination at an Inopportune Time by the Employer

1) After the probationary period has expired, the employer may not terminate the employment relationship:

a) while the employee is wholly or partially unable to perform work through no fault of their own due to illness or accident, specifically for 30 days during the first year of service, 90 days from the second year of service, and 180 days from the sixth year of service;

b) during pregnancy, while an employee is on maternity leave (Art. 34a para. 1) and during the additional leave in the event of the death of the other parent (Art. 34a para. 3), as well as while an employee is on paternity leave in the event of the mother's death (Art. 34b para. 2).

2) A notice of termination given during one of the waiting periods specified in paragraph 1 is void; if, however, the notice of termination was given before the start of such a period but the notice period had not yet expired by that time, the expiration of the notice period is suspended and shall not resume until the waiting period has ended.

3) If a specific date applies to the termination of the employment relationship, such as the end of a month or a workweek, and this date does not coincide with the end of the extended notice period, the notice period is extended until the next such date.

Art. 50–52

Repealed

IV. Termination without notice

1. Requirements

Art. 53

a) For good cause

1) For good cause, both the employer and the employee may terminate the employment relationship without notice at any time; the employer must provide written justification for the termination without notice if the other party so requests.

2) A just cause is, in particular, any circumstance under which the party terminating the contract cannot reasonably be expected, in good faith, to continue the employment relationship.

3) The court shall decide at its discretion whether such circumstances exist, but may in no case recognize the employee's inability to perform work through no fault of their own as a good cause.

Art. 54

b) Due to Threat to Wages

1) If the employer becomes insolvent, the employee may terminate the employment relationship without notice, provided that security for his claims arising from the employment relationship is not provided within a reasonable period of time.

2) Section 38(1) of the Insolvency Code remains reserved.

2. Consequences

Art. 55

a) in the case of justified termination

1) If the compelling reason for the termination of the employment relationship without notice lies in the breach of contract by one of the contracting parties, that party shall be liable for full damages, taking into account all claims arising from the employment relationship.

2) In other cases, the court shall determine the financial consequences of termination without notice at its discretion, taking all circumstances into account.

Art. 56

b) In the case of unjustified dismissal or refusal to commence work

1) If the employer terminates the employee's employment without notice and without just cause, the employee is entitled to compensation for what he would have earned had the employment relationship been terminated with observance of the notice period or upon expiration of the fixed-term contract.

2) The employee must have deducted from this amount what he has saved as a result of the termination of the employment relationship and what he has earned or intentionally failed to earn through other work.

3) The judge may order the employer to pay the employee compensation, which the judge shall determine at his or her discretion after considering all circumstances; however, this compensation may not exceed the employee's wages for six months.

4) If the employee is denied the opportunity to take up an agreed-upon position without good cause, he is entitled to compensation equivalent to one-fourth of his monthly wages; in addition, he is entitled to compensation for further damages.

Art. 57

c) In the event of unjustified failure to assume or abandonment of the position

1) If an employee fails to report to work without good cause or leaves the job without notice, the employer is entitled to compensation equal to one-fourth of the employee's monthly wages; the employer is also entitled to compensation for any additional damages.

2) If the employer has suffered no damage or damage less than the compensation specified in the preceding paragraph, the court shall reduce it at its discretion.

3) If the claim for compensation is not extinguished by set-off, it must be asserted in court within 30 days of the employee's failure to take up employment 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 terminates upon the death of the employee.

2) However, the employer must pay the employee's wages for an additional month, and for two additional months following five years of service, calculated from the date of death, provided that the employee leaves behind a spouse, a registered partner, or minor children, or, in the absence of such heirs, other persons toward whom the employee had a duty of support.

Art. 59

2. Death of the Employer

1) Upon the death of the employer, the employment relationship passes to the heirs; the provisions regarding the transfer of the employment relationship in the event of a business succession apply mutatis mutandis.

2) If the employment relationship was entered into primarily with regard to the person of the employer, it terminates upon the employer's death; however, the employee may claim reasonable compensation for the damage incurred as a result of the premature termination of the employment relationship.

Va. Mass Layoffs

Art. 59a

1. Definitions and Scope

1) Mass layoffs are defined as terminations,

a) which the employer plans to implement in a business for one or more reasons unrelated to the employees themselves, and

b) which, regardless of the size of the business, affect at least 20 employees within 90 days.

2) A termination within the meaning of paragraph 1 is equivalent to other types of termination of the employment relationship that

a) are planned for one or more reasons unrelated to the employee's personal circumstances,

b) are initiated by the employer, and

c) affect at least five employees.

Such dismissals are included in the calculation of the minimum number under paragraph 1(b).

3) Articles 59b through 59c also apply:

a) in cases of early termination of fixed-term employment contracts;

b) in cases where the decision regarding the planned mass layoff is made by a company controlling the employer.

4) The right to terminate employment without notice for good cause remains unaffected. Terminations without notice are not included in the calculation of the minimum number under paragraph 1.

Art. 59b

2. Notification and Consultation

1) 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 layoffs through measures such as retraining,

the employer must inform and consult with the employee representatives in a timely manner. Experts may be consulted by both the employer and the employee representatives.

2) In the course of the information and consultation pursuant to paragraph 1, the employer must provide the employee representative body with all relevant information in a timely manner. In particular, the employer must inform the employee representative body in writing of:

a) the reasons for the planned mass layoff;

b) the number and categories of employees affected and the reasons for their selection;

c) the number of employees normally employed;

d) the period during which the planned mass layoffs are to take place;

e) the procedure for determining severance payments (social plan).

Art. 59c

3. Involvement of the Office of Economic Affairs

1) The employer must notify the Office of Economic Affairs of a planned mass layoff and submit a report on the outcome of the information and consultation process pursuant to Art. 59b. This notification must contain all information required under Art. 59b(2) as well as all other relevant information regarding the planned mass layoff. A copy of the notification shall be provided to the employee representatives.

2) Planned mass layoffs shall take effect no earlier than 30 days after receipt of the notice referred to in paragraph 1, unless otherwise provided by contract or law. If there is a legitimate interest and a prospect of mitigating the consequences of the planned mass layoff, the Office

extend this period to 60 days. It shall inform the employee representatives of the extension.

3) The Office of Economic Affairs shall, within the period specified in paragraph 2, seek ways to mitigate the consequences of the planned mass layoff. It may consult with the employer and the employee representative body.

Art. 59d Repealed

VI. Consequences of the Termination of the Employment Relationship

Art. 60

1. Due Date of Claims

1) Upon termination of the employment relationship, all claims arising from the employment relationship become due.

2) For commission claims arising from transactions that are fulfilled in whole or in part after the termination of the employment relationship, the due date may be deferred by written agreement, but generally not for more than six months, for transactions with staggered performance, not more than one year; and for insurance contracts and transactions whose execution requires more than six months, not more than two years.

3) The claim to a share of the business results becomes due in accordance with Art. 14(3).

Art. 61

2. Obligations to Return Property

1) Upon termination of the employment relationship, each party must return to the other everything it received from the other party or from third parties on the other party's behalf during the term of the employment relationship.

2) In particular, the employee must return vehicles and travel documents and reimburse any advances on wages or expenses to the extent that they exceed his or her claims.

3) The parties' rights of retention 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 must pay the employee severance pay.

2) If an employee dies during the employment relationship, the compensation shall be paid to the surviving spouse, the surviving registered partner, or the minor children; in the absence of such heirs, it shall be paid to other persons toward whom the employee had a duty of support.

Art. 63

b) Amount and Due Date

1) The amount of compensation may be determined by written agreement, standard employment contract, or collective bargaining agreement, but may not be less than the amount corresponding to the employee's wages for two months.

2) If the amount of compensation is not specified, it shall be determined by the court at its discretion after considering all circumstances, but may not exceed an amount equivalent to the employee's wages for eight months.

3) Compensation may be reduced or waived if the employment relationship is terminated by the employee without just cause or by the employer for just cause without notice, or if the employer would be placed in financial distress by the payment of compensation.

4) Compensation is due upon termination of the employment relationship; however, a later due date may be determined by written agreement, a standard employment contract, or a collective bargaining agreement, or ordered by the court.

Art. 64

c) Compensation

1) The employer is not required to pay compensation to the extent that an employee welfare institution is obligated to provide future pension benefits that exceed the contributions made by the employee—including interest in the case of savings schemes—after deducting expenses incurred to cover a risk for the duration of the employment relationship.

2) The employer is also not required to pay compensation to the extent that the employer bindingly guarantees future pension benefits to the employee or has such benefits guaranteed by a third party.

VII. Non-Competition Clause

Art. 65

1. Requirements

1) An employee with legal capacity may agree in writing with the employer to refrain from any competing activity after the termination of the employment relationship, in particular to neither operate a business on his or her own account that competes with the employer's business, nor to work in or participate in such a business.
2) The non-competition clause is binding only if the employment relationship grants the employee access to the customer base or to manufacturing and trade secrets, and the use of such knowledge could cause significant harm to the employer.
Art. 66
2. Restrictions
1) The prohibition must be reasonably limited in terms of place, time, and subject matter so as to preclude any unreasonable hindrance to the employee's economic advancement; it may not exceed three years except under special circumstances.
2) The court may, at its discretion and after weighing all circumstances, limit an excessive non-competition clause; in doing so, it must give appropriate consideration to any consideration provided by the employer.
Art. 67
3. Consequences of a Breach
1) If the employee breaches the non-competition clause, he must compensate the employer for any resulting damage.
2) If a contractual penalty is due for a breach of the non-competition clause and nothing else has been agreed, the employee may be released from the clause by paying the penalty; however, he remains liable for further damages.
3) If specifically agreed in writing, the employer may, in addition to the contractual penalty and compensation for further damages, demand that the breach of contract be remedied, provided that the employer's interests—whether already infringed or at risk—and the employee's conduct justify such a demand.
Art. 68
4. Termination
1) The non-competition clause shall lapse if the employer can demonstrate that it no longer has a significant interest in maintaining it.

2) The prohibition shall also lapse if the employer terminates the employment relationship without the employee having given the employer just cause to do so, or if the employee terminates it for a justifiable reason attributable to the employer.

Art. 69

H. Non-waivability and Statute of Limitations

1) During the term 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 collective bargaining agreement.

2) Claims arising from the employment relationship are subject to a five-year statute of limitations. In all other respects, the general provisions of the ABGB apply.

Art. 70

I. Reservation and Civil Law Effects of Public Law

1) The following are reserved:

a) provisions governing public-law employment relationships,

b) provisions under public law regarding work, vocational training, and apprenticeships.

2) If regulations governing employment, vocational training, and apprenticeships impose a public-law obligation on the employer or the employee, the other party to the contract is entitled to a civil-law claim for performance if the obligation could form part of the individual employment contract. Art. 71

K. Jurisdiction

1) Disputes arising from the employment relationship shall be settled before the ordinary courts.

2) Associations based in the country whose statutes provide for the representation of employees' interests may, with the consent of the aggrieved party, represent that party in proceedings initiated by the association or participate as a third party in the legal dispute pursuant to §§ 17 et seq. of the Code of Civil Procedure.

3) Repealed

4) The provisions on conciliation in collective disputes arising from collective labor agreements remain reserved.

2. Section

Special Individual Employment Contracts

A. The Apprenticeship Contract Art. 72–77

Repealed

B. The Traveling Salesperson Contract

I. Definition and Formation

Art. 78

1. Definition

1) Under a traveling sales representative contract, the traveling sales representative undertakes, on behalf of the owner of a commercial, manufacturing, or other business conducted in a commercial manner, to broker or conclude transactions of any kind outside the employer's business premises in exchange for a salary.

2) An employee who does not primarily engage in travel-related activities or who works for the employer only occasionally or temporarily, as well as a traveler who concludes transactions on his or her own account, is not considered a traveling salesperson.

Art. 79

2. Establishment and Content

1) The employment relationship shall be governed by a written contract, which shall include provisions regarding

a) the duration and termination of the employment relationship,

b) the powers of the traveling salesperson,

c) remuneration and reimbursement of expenses,

d) the applicable law and the venue, provided that one of the contracting parties is domiciled abroad.

2) To the extent that the employment relationship is not governed by a written contract, the matters described in the preceding paragraph shall be determined by statutory provisions and customary terms of employment.

3) The oral agreement applies only to the determination of the start of work, the nature and scope of travel activities, and other provisions that do not conflict with statutory provisions or the written contract.

II. Duties and Powers of the Sales Representative

Art. 80

1. Special Duties

1) The traveling sales representative shall visit customers in the manner prescribed to him, unless a justified reason necessitates a change; without the written consent of the employer, he may not broker or conclude transactions either for his own account or for the account of a third party.

2) If the traveling salesperson is authorized to conclude transactions, he must adhere to the prices and other terms and conditions prescribed to him and must obtain the employer's consent for any changes.

3) The traveling sales representative must report regularly on his or her travel activities, immediately forward received orders to the employer, and inform the employer of any significant facts concerning his or her clientele. Art. 81

2. Del credere

1) Any agreement that the traveling sales representative is liable for the payment or other fulfillment of the customers' obligations, or that he must bear all or part of the costs of collecting claims, is void.

2) If the traveling sales representative is to conclude transactions with private customers, he may undertake in writing to be liable, for each individual transaction, for no more than one-quarter of the loss incurred by the employer due to the customers' failure to fulfill their obligations, provided that a reasonable del credere commission is agreed upon.

3) In the case of insurance contracts, traveling insurance intermediaries, reinsurance intermediaries, and insurance intermediaries acting in a secondary capacity may undertake in writing to bear no more than half of the costs of collecting claims if a premium or parts thereof are not paid and they seek to collect them through legal action or enforcement proceedings.

Art. 82

3. Powers of Attorney

1) Unless otherwise agreed in writing, the commercial traveler is authorized only to broker transactions.

2) If the commercial traveler is authorized to conclude transactions, his authority extends to all legal acts that the execution of such transactions usually entails; however, he may not accept payments from customers or grant payment terms without specific authorization.

3) Repealed

III. Special Obligations of the Employer

Art. 83

1. Scope of Activities

1) If the sales representative is assigned a specific sales territory or a specific customer base and nothing else has been agreed in writing, he is deemed to have been appointed to the exclusion of other persons; however, the employer remains authorized to personally conclude business transactions with customers within the sales representative's territory or customer base.

2) The employer may unilaterally amend the contractual provision regarding the sales territory or client base if a justified reason necessitates a change before the expiration of the notice period; however, in such cases, claims for compensation and the sales representative's right to terminate the employment relationship for cause remain reserved.

2. Wages

Art. 84

a) General

1) The employer shall pay the sales representative a salary consisting of a fixed salary with or without commission.

2) A written agreement stipulating that the salary shall consist exclusively or predominantly of a commission is valid if the commission constitutes reasonable compensation for the sales representative's work.

3) For a probationary period of no more than two months, the remuneration may be freely determined by written agreement.

Art. 85

b) Commission

1) If the traveling salesperson is exclusively assigned a specific sales territory or a specific customer base, the agreed-upon or customary commission shall be paid to him or her on all transactions concluded by him or her or his or her employer with customers in his or her territory or customer base.

2) If the traveling sales representative is not exclusively assigned a specific sales territory or a specific customer base, the commission shall be paid to him only on transactions brokered or concluded by him.

3) If, at the time the commission is due, the value of a transaction cannot yet be precisely determined, the commission shall initially be paid on the minimum value estimated by the employer, and the remainder shall be paid no later than upon execution of the transaction.

Art. 86

c) In the Event of Prevention from Traveling

1) If the sales representative is prevented from performing travel duties through no fault of his own and is nevertheless entitled to receive his wages under the law or the contract, such wages shall be determined based on the fixed salary and reasonable compensation for the loss of commission.

2) If the commission amounts to less than one-fifth of the wages, it may be agreed in writing that, in the event of the sales representative's inability to perform travel duties through no fault of his own, no compensation for the lost commission shall be payable.

3) If the sales representative nevertheless receives full wages in the event of an impediment to travel through no fault of his own, he shall, at the employer's request, perform work at the employer's premises, provided that he is able to do so and that such work can reasonably be expected of him.

Art. 87

3. Expenses

1) If the traveling salesperson works for several employers at the same time and the allocation of expense reimbursements is not regulated by a written agreement, each employer must reimburse an equal share of the costs.

2) Agreements stipulating that reimbursement of expenses is to be included in whole or in part in the fixed salary or commission are void.

Art. 88

4. Right of retention

1) To secure claims arising from the employment relationship that are due, and in the event of the employer's insolvency, also claims that are not yet due, the sales representative is entitled to a right of retention with respect to movable property and securities, as well as payments from customers that he has received pursuant to a power of attorney for collection.

2) The right of retention may not be exercised with respect to travel documents, price lists, customer directories, and other documents.

IV. Termination

Art. 89

1. Special Termination

1) If the commission amounts to at least one-fifth of the wages and is subject to significant seasonal fluctuations, the employer may terminate the employment of a commercial traveler who has been working for him since the end of the last season only during the season with effect from the end of the second month following the notice.

2) Under the same conditions, a traveling salesperson who has been employed by an employer until the end of the season may, until the start of the next season, terminate the employment contract only effective at the end of the second month following the notice.

Art. 90

2. Special Consequences

1) Upon termination of the employment relationship, the traveling salesperson is entitled to commission on all transactions that he has concluded or brokered, as well as on all orders received by the employer up to the time of termination, regardless of the date of their acceptance and execution.

2) Upon termination of the employment relationship, the commercial traveler must return the samples and models, price lists, customer directories, and other documents provided to him for his travel activities; the right of retention is reserved.

C. The Home-Based Work Contract

I. Definition and Formation

Art. 91

1. Definition

Under the home-based work contract, the home-based worker undertakes to perform work for the employer in his or her home or in another workspace designated by him or her, either alone or with family members, in exchange for wages.

Art. 92

2. Notification of Working Conditions

1) Before assigning any work, the employer must inform the home worker of the conditions relevant to its performance, namely the details of the work, insofar as they are not governed by generally applicable working conditions; the employer must specify the materials to be procured by the home worker and, in writing, the compensation to be paid for them as well as the wages.

2) If the details regarding wages and compensation for materials to be procured by the home worker are not provided in writing before the work is assigned, the standard terms and conditions of employment shall apply.

Art. 92a

3. Time Restrictions on Assigning Home Work

The employer may neither assign nor accept home work on Sundays and public holidays, nor before 6 a.m. or after 11 p.m. The deadline for the delivery of home work shall be set, taking into account the home worker's capacity, in such a way that the worker is not required to work more than eight hours per day or on Sundays.

II. Special obligations of the employee

Art. 93

1. Performance of the Work

1) The home worker must begin the work accepted in a timely manner, complete it by the agreed-upon deadline, and deliver the work product to the employer.

2) If the work is performed defectively through the fault of the home worker, he is obligated to improve the work product free of charge, to the extent that its defects can thereby be remedied.

Art. 94

2. Materials and Tools

1) The home worker is obligated to treat the materials and tools provided by the employer with due care, to account for their use, and to return any remaining materials not used for the work as well as the tools received.

2) If, while performing the work, the home worker discovers defects in the materials provided or in the tools received, he must immediately notify the employer and await the employer's instructions before continuing with the work.

3) If a home worker has negligently damaged materials or equipment entrusted to him, he is liable to the employer only for reimbursement of the cost price.

III. Special Obligations of the Employer

Art. 95

1. Acceptance of the Work Product

1) The employer must inspect the work product upon delivery and notify the home worker of any defects within one week at the latest.
2) If the employer fails to notify the home worker of the defects in a timely manner, the work shall be deemed accepted.

2. Wages

Art. 96

a) Payment of Wages

1) If the home worker is continuously employed by the employer, wages for the work performed shall be paid every two weeks or, with the home worker's consent, at the end of each month; in other cases, wages shall be paid upon delivery of the work product.
2) With each wage payment, the home worker must be provided with a written statement of account in which the reason for any wage deductions must be stated.

Art. 97

b) Wages in the Event of Inability to Work

1) If the home worker is continuously employed by the employer, the employer is obligated to pay wages in accordance with Articles 17 and 18 if the employer is in default of accepting the work or if the home worker is prevented from performing work for reasons attributable to the worker himself, through no fault of his own.
2) In other cases, the employer is not obligated to pay wages in accordance with Articles 17 and 18.

Art. 98

3. Vacation

1) If the home worker has been continuously employed by the employer, the employer must grant him vacation in accordance with Articles 30, 31, 32, and 33 and pay wages based on the average wage for the year of service.
2) In other cases, the employer must pay the home worker, as vacation pay in July of each year, at least six percent of the wages earned over the past twelve months.

Art. 99

IV. Termination

1) If a home worker is given a trial assignment, the employment relationship is deemed to have been entered into for a fixed term on a trial basis, unless otherwise agreed.

2) If the home worker is continuously employed by the employer, the employment relationship is deemed to have been entered into for an indefinite period; in all other cases, it is deemed to have been entered into for a fixed term, unless otherwise agreed.

Art. 100

D. Applicability of General Provisions

The general provisions regarding individual employment contracts apply supplementarily to the commercial traveler contract and the home-based work contract.

3. Section

Collective Bargaining Agreements and Standard Employment Contracts

A. Collective Bargaining Agreement

I. Definition, Content, Form, and Duration

Art. 101

1. Definition and Content

1) Through a collective bargaining agreement, employers or their associations and employee associations jointly establish provisions regarding the conclusion, content, and termination of the individual employment relationships of the participating employers and employees.

2) The collective bargaining agreement may also contain other provisions, provided they concern the relationship between employers and employees or are limited to the establishment of such provisions.

3) The collective bargaining agreement may further regulate the rights and obligations of the contracting parties among themselves, as well as the monitoring and enforcement of the conditions referred to in the preceding paragraphs.

4) If several associations are parties to a collective bargaining agreement on the employer's or employee's side—either from the outset or as a result of an association joining the agreement subsequently with the consent of the contracting parties—they shall have equal rights and obligations toward one another; any agreements to the contrary are null and void.

Art. 102

2. Freedom of Professional Organization

1) Provisions of a collective bargaining agreement and agreements between the contracting parties intended to compel employers or employees to join a contracting association are void.

2) Provisions of a collective bargaining agreement and agreements between the contracting parties that exclude or restrict employees from a specific profession, a specific activity, or the training required for such a profession or activity are void.

3) Provisions and agreements within the meaning of the preceding paragraph are valid in exceptional cases if they are justified by overriding interests worthy of protection, namely the protection of the safety and health of persons or the quality of work; however, the interest in excluding new members of the profession is not considered worthy of protection.

Art. 103

3. Membership

1) Individual employers and individual employees working for participating employers may, with the consent of the contracting parties, join the collective bargaining agreement and shall be deemed participating employers and employees.

2) The collective bargaining agreement may specify the terms of affiliation in greater detail. Unreasonable conditions for affiliation, in particular provisions regarding unreasonable contributions, may be declared null and void by a court or limited to a permissible extent; however, provisions or agreements regarding contributions that favor a single contracting party are null and void.

3) Provisions of a collective bargaining agreement and agreements between the contracting parties intended to compel members of associations to join are void if participation in the collective bargaining agreement or the conclusion of a contract with substantially the same terms is not open to such 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 contracting party, and its termination require the written form to be valid; the same applies to the declaration of accession by individual employers and employees, the consent of the contracting parties pursuant to Art. 103 para. 1, and the termination of accession.

2) If the collective bargaining agreement is not concluded for a fixed term and does not provide otherwise, either party may terminate it with effect for all other

parties at any time with six months' notice following the expiration of one year. This provision applies mutatis mutandis to affiliation as well.

II. Effects

Art. 105

1. on the participating employers and their employees

1) The provisions of the collective bargaining agreement regarding the conclusion, content, and termination of individual employment relationships apply directly to the participating employers and employees for the duration of the agreement and cannot be waived, unless the collective bargaining agreement provides otherwise. These provisions also apply directly to non-participating employees who are employed by a participating employer, provided that the collective bargaining agreement so provides.

2) Agreements between participating employers and their employees that violate the mandatory provisions are void and are replaced by the provisions of the collective bargaining agreement; however, deviating agreements may be made in favor of the employees.

Art. 106

2. between the contracting parties

1) The contracting parties are obligated to ensure compliance with the collective bargaining agreement; to this end, associations must urge their members to comply and, if necessary, employ the statutory and legal means at their disposal.

2) Each contracting party is obligated to maintain industrial peace and, in particular, to refrain from any industrial action with respect to matters governed by the collective bargaining agreement; the duty of peace applies without restriction only if this is expressly stipulated.

Art. 107

3. Joint Implementation

1) In a collective bargaining agreement concluded between associations, the contracting parties may agree that they are jointly entitled to enforce compliance with the agreement against the participating employers and employees, insofar as the following matters are concerned:

a) the conclusion, content, and termination of the employment relationship, whereby the right is limited to a declaratory judgment;

b) Contributions to compensation funds and other institutions relating to the employment relationship, representation of employees in the workplace, and maintenance of industrial peace;
c) Monitoring, security deposits, and contractual penalties relating to the provisions under subparagraphs (a) and (b).
2) Agreements within the meaning of the preceding paragraph may be entered into if the contracting parties are expressly authorized to do so by the bylaws or a resolution of the supreme governing body of the association.
3) The provisions governing simple partnerships apply mutatis mutandis to the relationship between the contracting parties, unless the collective bargaining agreement provides otherwise.
Art. 108
III. Relationship to Mandatory Law
Mandatory law takes precedence over the provisions of the collective bargaining agreement; however, deviating provisions may be established in favor of the employees unless mandatory law provides otherwise.
B. Standard Employment Contract
Art. 109
I. Definition and Content
1) The standard employment contract establishes provisions regarding the conclusion, content, and termination of specific types of employment relationships.
2) For the employment relationships of agricultural workers and domestic workers, the government shall issue standard employment contracts that specifically regulate working hours and rest periods and govern the working conditions of female and juvenile workers.
3) Art. 108 applies mutatis mutandis to the standard employment
contract. Art. 110
II. Jurisdiction and Procedures
1) The government is responsible for enacting the standard employment contract.
2) Prior to its adoption, the standard employment contract must be published in an appropriate manner, and a period must be set during which any person who can demonstrate an interest may submit written comments; in addition, professional associations or non-profit organizations with an interest must be consulted.

3) The standard employment contract enters into force once it has been published in accordance with the regulations governing official publications.

4) The same procedure applies to the repeal 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 deviating from any of its provisions must be in writing to be valid.

IV. Minimum Wages

Art. 111a

1. Requirements

1) If, within an industry or a profession, wages customary for the locality, profession, or industry are repeatedly undercut in an abusive manner and there is no collective bargaining agreement containing 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 employment contract providing for minimum wages in order to combat or prevent abuses.

2) The minimum wages must neither run counter to the public interest nor prejudice the legitimate interests of other sectors or segments of the population. They must take appropriate account of the minority interests of the affected sectors or professions based on operational differences.

Art. 111b

2. Tripartite Commission

1) The government shall establish a tripartite commission composed of an equal number of employer and employee representatives, as well as representatives of the state.

2) Employers' and employees' associations have the right to nominate candidates for the selection of their representatives under paragraph 1.

3) The commission monitors the labor market. If it identifies abuses within the meaning of Art. 111a(1), it generally seeks direct agreement with the employers concerned. If this is not achieved within two months,

it shall request the government to issue a standard employment contract that provides for minimum wages for the affected sectors or occupations.

4) If the labor market situation in the affected sectors changes, the tripartite commission requests that the government amend or repeal the standard employment contract.

5) In order to perform the tasks assigned to it, the tripartite commission has the right to obtain information from businesses and to inspect all documents necessary for conducting the investigation. In the event of a dispute, the Office of Economic Affairs shall decide.

Art. 111c

3. Official Secrecy

1) The members of the tripartite commission are bound by official secrecy; in particular, they are obligated to maintain confidentiality toward third parties regarding business and private matters that come to their attention in this capacity.

2) The duty of confidentiality remains in effect even after leaving the three-member commission.

Art. 111d

4. Effects

1) The standard employment contract under Art. 111a also applies to employees who are working only temporarily within its geographical scope, as well as to temporary agency workers.

2) The standard employment contract under Art. 111a may not be deviated from by agreement to the detriment of the employee.

Art. 111e

5. Right of Associations to Sue

Employers' and employees' associations have the right to seek a court ruling on whether an employer is complying with the standard employment contract under Art. 111a.

4. Section

Mandatory Provisions

Art. 112

A. Non-modifiability to the Detriment of the Employer and the Employee

1) The following provisions may not be deviated from by agreement, standard employment contract, or collective bargaining agreement to the detriment of either the employer or the employee:
Art. 6, para. 1 (Overtime)
Art. 14, para. 4 (Advance payment)
Art. 16, para. 2 (Set-off against counterclaims)
Art. 20 (Assignment and Pledging of Wage Claims) Art. 21(2)
(Assignment of Work)
Art. 33, paras. 2 and 3 (Vacation pay)
Art. 37, paras. 1 and 2 (Contributions to the employee welfare fund)
Art. 40 (Fulfilment of the Obligation by the Employee Welfare Institution)
Art. 44(3) (Termination of Long-Term Employment Relationships)
Art. 45 (Termination of the employment
relationship) Art. 46(1) (Unfair dismissal)
Art. 47 (Compensation for wrongful termination) Art. 48
(Claiming compensation)
Art. 53, paras. 1 and 2 (Termination without notice for good cause)
Art. 55, para. 1 (Consequences of justified termination)
Art. 57 (Consequences of unjustified failure to report for work or leaving the workplace)
Art. 59a (Mass layoffs)
Art. 59c, para. 1 (Duty to Report)
Art. 60, para. 1 (Maturity or Claims) Art. 61
(Obligations to Return)
Art. 67, paras. 1 and 2 (Consequences of a breach of the non-competition
clause) Art. 70, para. 2 (Civil law effects of public law)
Art. 76 (Early Termination of the Apprenticeship
Contract) Art. 86(3) (Prevention of Travel) Art. 89
(Special Termination)
Art. 90, para. 2 (Obligations to Return Property)

2) Any agreements or provisions in standard employment contracts and collective bargaining agreements that deviate from the above-mentioned provisions to the detriment of the employer or the employee are void.

Art. 113

B. Non-modifiability to the detriment of the employee

1) No deviation from the following provisions to the detriment of the employee is permitted by agreement, standard employment contract, or collective bargaining agreement:

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 employees with fixed-term and indefinite-term contracts)
Art. 8c (Equal treatment of employees on leave or under flexible working arrangements for family reasons)
Art. 9, para. 3 (Equal pay for men and women for the same or equivalent work)
Art. 10, paras. 2 and 3 (Share in Operating Results)
Art. 11, paras. 1 and 2 (Accrual of the commission claim)
Art. 12 (Commission Settlement)
Art. 16, para. 1, sentence 2 (Payroll)
Art. 17 (Wages in the Event of the Employer's Default of Acceptance)
Art. 18, paras. 1 and 3 (Wages in the event of the employee's incapacity to work) Art. 19 (Wages in the event of the employee's mandatory insurance) Art. 21, paras. 1, 3, and 4 (Piecework)
Art. 22 (Piecework Wages)
Art. 24, para. 1 (Reimbursement of Expenses in General) Art. 25, para. 1 (Reimbursement of Expenses for Motor Vehicles) Art. 26, para. 2 (Advance for Expenses)
Art. 27 (Protection of the employee's privacy in general) Art. 28 (Protection of privacy in the household)
Art. 28a (Protection of personal rights in the processing of personal data) Art. 29, paras. 1, 2, and 3 (Leisure time)
Art. 30 (Duration of Vacations)
Art. 31, paras. 2 and 3 (Reduction of vacation time)
Art. 32 (Consecutive nature and timing of vacation)
Art. 33, para. 1 (Vacation pay)
Art. 34a (Maternity leave)
Art. 34b (Paternity leave)
Art. 34c (Parental leave)

Art. 34d (Caregiving leave)
Art. 34e (Leave of absence due to force majeure) Art.
34f (Information and consultation)
Art. 34g (Implementation)
Art. 34h (Return to Work) Art. 35, paras. 1, 3,
and 4 (Security Deposit)
Art. 36 (Employment Certificate)
Art. 36a (Support and Information for Part-Time and Fixed-Term Employment Relationships)
Art. 36b (Flexible working arrangements)
Art. 37, paras. 3 and 4 (Contributions and Duty to Provide Information Regarding Employee Welfare) Art. 38 (Employee Claims Regarding Savings Schemes)
Art. 39 (Employee Claims with Insurance Institutions) Art. 41, para. 4
(Remuneration for Inventions)
Art. 43 (Effect)
Art. 43(8) (Liability in the event of a transfer of the employment
relationship) Art. 43a (Information and consultation)
Art. 43b (Insolvency proceedings concerning the seller's assets) Art. 44a
(Successive fixed-term employment relationships)
Art. 46(2) (Unfair termination by the employer) Art. 49 (Termination at
an inopportune time by the employer)
Art. 54 (Termination without notice due to threat to wages)
Art. 56(1) (Consequences of unjustified dismissal) Art. 58
(Death of the employee)
Art. 59 (Death of the employer)
Art. 59d (Effectiveness of termination; waiting period)
Art. 62 (Conditions for severance pay) Art. 64
(Compensation)
Art. 65(1) (Conditions for a non-compete clause) Art. 66(1)
(Limitation of the non-compete clause) Art. 68 (Termination
of the non-compete clause)
Art. 69(1) (Non-waiver) Art. 75
(Duties of the Master)
Art. 84(1) (Wages of the commercial traveler)
Art. 85(3) (Payment of commission)

Art. 86(1) (Wages in the event of inability to perform travel
duties) Art. 88(1) (Right of retention of the traveling salesperson)
Art. 90, para. 1 (Commission upon termination of the employment
relationship) Art. 92a (Time limit on the assignment of piecework)
Art. 94, para. 3 (Liability of the home worker)
Art. 95 (Issuance of a work certificate) Art. 96
(Payment of wages)
Art. 97(1) (Wages in the event of inability to work) Art. 98
(Vacation)

2) Any agreements or provisions in standard employment contracts or collective bargaining agreements that deviate from the above-mentioned provisions to the detriment of the employee are null and void.

4. Performance for Unlawful Purposes

§ 1174

1) A person may not reclaim anything knowingly given to bring about an impossible or unlawful act. The extent to which the tax authorities are entitled to collect such amounts is determined by law. However, if something was given to the person intending to commit an unlawful act for the purpose of preventing that act, the amount may be reclaimed.

2) A loan given for the purpose of a prohibited game cannot be reclaimed.

27. Main Section

On the Contract for Community of Property

Sections 1175
through 1216
Repealed

28. Main Section

On Marriage Contracts and the Right to a Dowry

§ 1217

1) Marriage contracts are those agreements concluded with a view to the marital union concerning property, and primarily concerning the community of property, the administration and usufruct of one’s own property, and the widow’s maintenance.

2) Unless further requirements are specified or exceptions are provided for in this section, marriage contracts must be in writing and the signatures must be notarized to be valid.

§§ 1218 and 1219

Repealed *Dowry*

§ 1220

If a child does not possess assets of its own sufficient for an appropriate dowry, the parents and grandparents are obligated, in the order and according to the principles by which they are required to provide for the maintenance of the children, to provide the children or grandchildren with a dowry upon their marriage or to contribute proportionately thereto.

§ 1221

If parents or grandparents claim that they are unable to provide an appropriate dowry, the court shall decide on the matter upon application by the person entitled to the dowry, but without conducting a strict examination of their financial circumstances.

§ 1222

If a child has married without the knowledge or against the will of his or her parents, and the court finds the grounds for the parents' disapproval to be valid, the parents are not obligated to provide the child with a dowry, even if they subsequently approve of the marriage.

§ 1223

If the child has already received a dowry and has lost it, even through no fault of their own, they are no longer entitled to demand a new one—even if they enter into another marriage.

§§ 1224 to 1229

Repealed

2. Rebuttal

§ 1230

Repealed

§ 1231

Repealed

§ 1232

3. Dowry

Repealed

4. Community of property

§ 1233

The marital union alone does not establish a community of property between the spouses. A special agreement is required for this purpose; for such an agreement to be valid, in addition to the other statutory requirements, the scope of the community of property must be precisely defined.

§ 1234

Community of property between spouses is generally understood to apply only in the event of death. It gives a spouse the right to half of whatever remains of the property subject to the community after the death of the other spouse.

§ 1235

In the case of a community of property covering the entire estate, all debts without exception must be deducted prior to division; however, in the case of a community of property covering only the present or only the future estate, only those debts that have been used for the benefit of the community's assets must be deducted.

§ 1236

If one spouse owns real property and the other spouse's right to joint ownership is entered in the public registry, the latter acquires, by virtue of such entry, a real right to half the substance of the property, by which the other spouse may not dispose of that half; however, the incorporation does not confer any claim to the fruits of the property during the marriage. Upon the death of the spouse, the surviving spouse shall immediately acquire full ownership of his or her share. However, such incorporation shall not prejudice creditors who were previously registered with respect to the property.

5. Administration and Usufruct of Original or Acquired Assets

§ 1237

1) If the spouses have not entered into a special agreement regarding the use of their property, each spouse retains his or her prior right of ownership, and the other spouse has no claim to what either party acquires during the marriage or receives in any form whatsoever.

2) The special claims that the law grants to a spouse during the subsisting marriage in the event of participation in the other spouse's profession or trade, or in the event of the other spouse's death, as well as in the event of the annulment, legal separation, or divorce of the marriage, are not affected by the provisions of paragraph 1.

Sections 1238
through 1241
Repealed

6. Widow's Pension

§ 1242

The amount allocated to a wife for her maintenance in the event of widowhood is called a widow's pension. This is due to the widow immediately upon the death of her husband and shall always be paid three months in advance.

§ 1243

Only a provision regarding a widow's pension made by contract between living persons is subject to the provisions governing marriage contracts. The validity of a unilateral provision regarding a widow's pension made by the husband is subject to the formalities established by law for testamentary dispositions.

§ 1244

If the widow remarries, she loses the right to the widow's pension.

§ 1245

Repealed

Gifts Between Spouses and Fiancés

§ 1246

The validity or invalidity of gifts between spouses is determined in accordance with the laws governing gifts in general.

§ 1247

Any jewelry, precious stones, or other valuables that a husband has given to his wife for her personal adornment shall, in case of doubt, be regarded not as a loan but as a gift. However, if one fiancé promises or gives something to the other, or if a third party gives something to one or the other fiancé in anticipation of the future marriage, the gift may be revoked if the marriage does not take place through no fault of the giver.

§§ 1248 to 1254

Repealed

Usufruct upon death (right of usufruct)

§§ 1255 to 1258

Repealed

§ 1259

Repealed

Separation of Assets in the Event

1. of bankruptcy

§ 1260

If bankruptcy proceedings are initiated against the husband's estate during his lifetime, the wife may not yet demand the reservation of the marital property or the surrender of the dowry, but only the securing of the marital property against creditors in the event of the dissolution of the marriage. She is also entitled, from the time of the opening of bankruptcy proceedings, to claim the enjoyment of spousal support, and if none has been stipulated, the enjoyment of the marital property. However, this claim to one or the other enjoyment does not apply if it is proven that the wife was the cause of the deterioration of the husband's financial circumstances.

§ 1261

If the wife's assets are included in the bankruptcy, the marital agreements remain unchanged.

§ 1262

If a community of property has been agreed upon between the spouses, it ceases upon the bankruptcy of either spouse, and the property held in common between them is divided as in the event of death.

§ 1263

2. In the event of a divorce or separation

1) In the event of a divorce or separation, it depends on the agreement of the spouses whether any marital agreements they may have entered into will remain in effect or how they wish to amend them.

2) If the spouses cannot agree, the court shall attempt to bring about a settlement. If this is also not possible, the court shall decide on the question of the continuation of the marital agreements after hearing the parties.

§ 1264

Repealed

§ 1265

4. Annulment

1) If a marriage is annulled, the marriage contract is also dissolved, and the property, to the extent that it exists, reverts to its previous status.

2) If one party was previously aware of the existence of an impediment to marriage and intentionally concealed it, that party at fault must compensate the party without fault (or with lesser fault).

§ 1266

Repealed

29. Main Section

On Contracts of Chance

Contracts of Chance

§ 1267

A contract in which the hope of a benefit that is still uncertain is promised and accepted is a contract of chance. Depending on whether or not something is promised in return, it is classified as either a contract for consideration or a gratuitous contract.

§ 1268

In contracts of chance, a claim for reduction based on a value of less than half does not apply.

Types of contracts of chance

§ 1269

Contracts of chance include: wagers; games of chance and lotteries; all purchase and other contracts established regarding hoped-for rights or future, as yet undetermined matters; furthermore, life annuities; social welfare institutions; and finally, insurance and Bodmer contracts.

1. Bets

§ 1270

If a specific prize is agreed upon between two parties regarding an event unknown to both, to be awarded to the party whose prediction proves correct, a wager is formed. If the winning party was certain of the outcome and concealed this from the other party, they are guilty of fraud and the wager is void. The losing party, however, who knew the outcome beforehand, is to be regarded as a donor.

§ 1271

Honest and otherwise permissible bets are binding to the extent that the agreed-upon prize has not merely been promised but has actually been paid or deposited. The prize cannot be claimed in court.

§ 1272

2. Gambling

Every game is a form of gambling. The laws governing gambling also apply to games. Statutory laws determine which games are prohibited in general or for specific groups, as well as how to punish those who engage in prohibited games and those who facilitate such activities.

3. Section

§ 1273

A lottery between private individuals intended for a wager or a game is governed by the provisions established for wagers and games. However, if a division, a choice, or a dispute is to be decided by lot, the provisions of other contracts apply.

§ 1274

State lotteries are not to be judged according to the nature of a wager or a game, but according to the plans announced for each instance.

4. Speculative Purchase

§ 1275

Anyone who promises a proportionate price for a specific share of future proceeds enters into a standard sales contract.

§ 1276

Anyone who purchases the future benefits of a thing in their entirety, or who purchases the hope of such benefits for a specific price, enters into a contract of chance; they bear the risk of the expectation being entirely thwarted; however, they are also entitled to all benefits actually realized.

§ 1277

in particular of a Kux

Repealed

or an inheritance

§ 1278

1) The purchaser of an inheritance that the seller has renounced or that has at least devolved upon him succeeds not only to the seller's rights but also to his obligations as heir, insofar as these are not merely personal. Thus, if no inventory is used as a basis for the purchase, the purchase of an inheritance is also a transaction involving risk.

2) To be valid, the purchase of an inheritance must be recorded in a court record.

§ 1279

With respect to property to which the seller is entitled not as an heir but for some other reason,
e.g., as an advance bequest, an entail, a substitution, or a claim against the estate, and to which he would have been entitled even without a right of inheritance, the purchaser of the inheritance has no claim. On the other hand, he receives everything that accrues to the estate itself, whether through the death of a legatee or a co-heir or in any other manner, to the extent that the seller would have been entitled to it.

§ 1280

Everything that the heir receives from the estate, such as the fruits and claims received, is included in the estate; conversely, everything that he has expended from his own funds upon accepting the inheritance or for the estate is deducted from the estate. This includes debts paid, legacies already distributed, taxes, and court fees, and, unless expressly agreed otherwise, funeral expenses as well.

§ 1281

To the extent that the seller administered the estate prior to the transfer, he is liable to the buyer for it as a business agent.

§ 1282

However, creditors of the estate and legatees may seek satisfaction of their claims from either the purchaser of the estate or the heir himself. Their rights, as well as those of the estate's debtors, are not affected by the sale of the estate, and the acceptance of the estate by one party is deemed to apply to the other as well.

§ 1283

If an inventory was used as the basis for the sale of the estate, the seller is liable for it. If the sale took place without such an inventory, the seller is liable for the accuracy of his claim to the estate as stated, and for all damage caused to the buyer through his fault.

5. Life Annuity

§ 1284

If a certain annual payment is promised to someone for money or in exchange for an item valued in money for the duration of a specific person's life, this constitutes a life annuity contract.

§ 1285

The duration of the life annuity may depend on the life of one or the other party or even of a third party. In case of doubt, it is paid quarterly in advance and in all cases ends with the death of the person on whose life it is based.

§ 1286

Neither the creditors nor the children of the person who has agreed to a life annuity are entitled to set aside the contract. However, the former are free to seek satisfaction from the annuity payments; the latter, however, may demand that a dispensable portion of the annuity be set aside to ensure that they receive the maintenance to which they are entitled by law.

§ 1287

6. Social Welfare Institutions

A contract establishing, by means of a contribution, a mutual pension fund for the members, their spouses, or orphans shall be assessed based on the nature and purpose of such an institution and the terms and conditions set forth therein.

7. Insurance Contract

§ 1288

If a person assumes the risk of loss that might befall another through no fault of the latter and promises to pay the agreed compensation to the latter in return for a certain premium, an insurance contract is formed. The insurer is liable for the accidental loss, and the insured is liable for the promised premium.

§ 1289

The usual subject matter of this contract is goods transported by water or land. However, other items, such as houses and real estate, may also be insured against fire, water, and other perils.

§ 1290

If the accidental damage for which compensation has been insured occurs, the insured must, unless an insurmountable obstacle prevents it, unless otherwise agreed, the insured must notify the insurer within three days if they are in the same location, or within the period specified for the notification of acceptance of a promise made by an absent party (§ 862). If the insured fails to provide such notice, cannot prove the accident, or if the insurer can prove that the damage resulted from the insured's fault, the insured shall have no claim to the insured sum.

§ 1291

If the insured party was already aware of the loss of the item or the insurer was already aware of the item's risk-free condition at the time the contract was concluded, the contract is void.

§ 1292

Inland Waterway and Marine Insurance

The provisions regarding marine insurance and the regulations governing the Lake Constance contract are subject to maritime law.

30. Main Section

On the Right to Damages and Compensation for Pain and Suffering

§ 1293

Damage

Damage means any detriment inflicted upon a person's property, rights, or person. This is distinct from the loss of profit that a person might reasonably expect under normal circumstances.

§ 1294

Sources of Damage

Damage arises either from an unlawful act or omission by another or from an accident. Unlawful damage is inflicted either intentionally or unintentionally. Intentional damage, however, is based partly on malicious intent, when the damage is caused knowingly and willfully, and partly on negligence, when it is caused by culpable ignorance or a lack of due care or diligence. Both are referred to as fault.

Liability for Damages

1. Damages arising from fault

§ 1295

1) Any person is entitled to claim compensation from the party responsible for the damage that the latter has caused through fault; the damage may have been caused by a breach of a contractual obligation or without any contractual basis.
2) A person who intentionally causes damage in a manner contrary to public policy is also liable for such damage; however, if this occurred in the exercise of a right, liability arises only if the exercise of the right was clearly intended to harm the other party.
3) If a contractual obligation of the debtor to refrain from certain conduct has been breached and the debtor continues the conduct in breach of the contract despite an agreement to the contrary, the creditor may sue for the cessation of the unlawful conduct (cease and desist) and for an injunction against future unlawful conduct, and, in the event of fault, for damages.

§ 1296

In case of doubt, it is presumed that damage arose without fault on the part of another.

§ 1297

It is also presumed, however, that anyone who possesses the use of reason is capable of a degree of diligence and care that can be expected of a person of ordinary ability. Anyone who, in acts resulting in a curtailment of another's rights, fails to exercise this degree of diligence or care is guilty of negligence.

§ 1298

The burden of proof lies with the party claiming that he was prevented, through no fault of his own, from fulfilling his contractual or legal obligation.

in particular a) the expert

§ 1299

Anyone who publicly professes to hold an office, practice an art, engage in a trade, or perform a craft; or anyone who voluntarily undertakes, without necessity, a business whose execution requires specialized knowledge or extraordinary diligence, thereby indicates that they are confident in their ability to apply the necessary diligence and possess the required, non-ordinary knowledge; they must therefore bear responsibility for any lack thereof

. However, if the person who entrusted the business to him knew of the latter's inexperience or could have known of it with ordinary care, the latter is also liable for negligence.

§ 1300

An expert is also liable if, in exchange for remuneration, he inadvertently gives detrimental advice in matters pertaining to his art or science. Except in this case, an advisor is liable only for the damage he knowingly caused to another by giving the advice.

or b) multiple participants

§ 1301

Several persons may be held liable for unlawfully caused damage if they have contributed to it jointly, either directly or indirectly, by incitement, threats, orders, assistance, concealment, and the like, or even merely by failing to fulfill a specific duty to prevent the harm.

§ 1302

In such a case, if the damage is based on negligence and the respective shares can be determined, each person is liable only for the damage caused by his or her own negligence. However, if the damage was caused intentionally or if the individual shares in the damage cannot be determined, all are liable for one and one for all; nevertheless, the person who has compensated for the damage retains the right to seek reimbursement from the others.

§ 1303

The extent to which several co-debtors are liable solely for failure to perform their obligation shall be determined by the nature of the contract.

§ 1304

If, in the event of damage, the injured party is also at fault, he or she shall bear the damage proportionately with the party causing the damage and, if the proportion cannot be determined, in equal shares.

§ 1305

2. Exercise of a right

A person who exercises his or her right within the legal limits (§ 1295 (2)) is not liable for any resulting detriment to another.

3. from a blameless or involuntary act

§ 1306

A person is generally not liable to compensate for damage caused without fault or through an involuntary act.

§ 1306a

If a person causes damage in a state of necessity to avert an imminent danger to themselves or others, the judge must determine, after considering whether the injured party refrained from defending themselves out of consideration for the danger threatening the other party, as well as the relationship between the extent of the damage and this danger, and finally the financial circumstances of the person who caused the damage and the injured party,-determine whether and to what extent the damage is to be compensated.

§ 1307

If a person has, through his own fault, placed himself in a state of mental confusion or in a state of necessity, the damage caused thereby shall also be attributed to his fault. The same applies to a third party who, through his own fault, has caused the injured party to be in such a situation.

§ 1308

If a person suffering from insanity or mental deficiency, or a minor, causes damage to someone who has himself given cause for this through any fault of his own, he may not claim compensation.

§ 1309

Except in this case, the injured party is entitled to compensation from those persons to whom the damage may be attributed due to their neglect of the care entrusted to them regarding such persons.

§ 1310

If the injured party cannot obtain compensation in this manner, the judge shall, after considering whether the wrongdoer—notwithstanding that he is not in full possession of his faculties—is nevertheless at fault in the specific case; or whether the injured party refrained from defending himself out of consideration for the wrongdoer; or, finally, taking into account the financial circumstances of both the tortfeasor and the injured party; award full compensation or at least a reasonable portion thereof.

4. by accident

§ 1311

Mere accident affects the person or property in which it occurs. However, if someone has caused the accident through fault, has violated a law intended to prevent accidental damage, or has unnecessarily interfered in another's affairs, they are liable for all harm that would not otherwise have occurred.

§ 1312

Whoever has rendered a service to another in an emergency shall not be held liable for the damage he failed to prevent, unless he, through his own fault, prevented another who would have rendered an even greater service from doing so. But even in this case, he may set off the benefit he has assuredly provided against the damage caused.

5. Through the Acts of Others

§ 1313

As a rule, a person is not liable for unlawful acts committed by others in which he did not participate. Even in cases where the law provides otherwise, he retains the right to seek reimbursement from the person at fault.

§ 1314

Anyone who takes in a servant without a reference, or knowingly retains in service or provides lodging to a person who is dangerous due to their physical or mental condition, is liable to the householder and the members of the household for compensation for the damage caused by the dangerous nature of such persons.

§ 1315

In general, anyone who employs an incompetent person or knowingly employs a dangerous person to manage their affairs is liable for the damage that such a person causes to a third party in that capacity.

§ 1316

Innkeepers who provide lodging to strangers, as well as the other persons specified in § 970, and carriers, are liable for damage caused by their own employees or those assigned by them to items brought in or entrusted to them by a guest or traveler in their establishment, facility, or vehicle.

§ 1317

The extent to which public shipping agencies assume liability for damage is determined by special provisions.

§ 1318

If a person is injured by the falling of an object that has been hung or placed in a dangerous manner, or by an object being thrown or poured out of a dwelling, the person from whose dwelling the object was thrown or poured, or from which the object fell, shall be liable for the damage.

§ 1319

6. By a Structure

If a person is injured or any other damage is caused by the collapse or detachment of parts of a building or any other structure erected on a property, the owner of the building or structure is obligated to pay compensation if the event is the result of a defect in the structure and the owner fails to prove that he exercised all due care necessary to avert the danger.

§ 1320

7. by an animal

1) If a person is injured by an animal, the person who incited, provoked, or failed to properly restrain the animal is liable. The person keeping the animal is liable unless they can prove that they had taken the necessary measures to restrain or supervise it.

2) In alpine and pasture farming, the keeper may rely on recognized standards of animal husbandry when assessing what level of care is required. Otherwise, the keeper must take the measures necessary in light of the known dangerousness of the animals, the reasonable means available to the keeper to avoid such dangers, and the personal responsibility that can be expected of other persons. The personal responsibility expected of visitors to alpine pastures and grazing lands depends on the dangers posed by alpine and grazing land management, traffic patterns, and applicable rules of conduct.

§ 1321

Repealed

§ 1322

Repealed

Types of Damages

§ 1323

1) To compensate for damage caused, the property must be restored to its previous condition; if this is not feasible, the estimated value must be reimbursed. If the compensation covers only the actual damage suffered, it is strictly speaking indemnification; however, if it also extends to lost profits and redress for the offense caused, it is referred to as full satisfaction.

2) The provision of § 35 of the Final Section of the PGR remains reserved.

§ 1324

1) In the case of damage caused by malicious intent or gross negligence, the injured party is entitled to claim full satisfaction; in all other cases, however, only actual compensation may be claimed. Accordingly, in cases where the general term "compensation" appears in the law, the nature of the compensation to be provided must be determined.

2) Where the severity of the injury and the degree of fault so require, or where the damage was caused by a tort, a claim may be made for the payment of an appropriate sum of money as compensation.

3) In addition to or in lieu of the payment of a sum of money, the judge may also order an appropriate form of satisfaction.

In particular,

1. in cases of bodily injury

§ 1325

Whoever causes bodily injury to another shall bear the injured party's medical expenses, compensate him or her for lost earnings, or, if the injured party becomes unable to earn a living, also for future lost earnings, and, upon request, pay him or her compensation for pain and suffering appropriate to the circumstances.

§ 1326

If the injured person has been disfigured as a result of the abuse, particular consideration must be given to this circumstance—especially if the person is female—insofar as it may hinder her ability to advance in life.

§ 1327

If a physical injury results in death, not only must all costs be covered, but anyone who has lost their provider as a result of the killing must also be compensated for everything they would have lost as a result.

§ 1328

1a. regarding sexual self-determination

Anyone who, through a criminal act or otherwise through deceit, threats, or the exploitation of a relationship of dependency or authority, abuses another person for sexual intercourse or other sexual acts must compensate the victim for the damage suffered and provide full satisfaction.

§ 1328a

1b. to the right to privacy

1) Anyone who unlawfully and culpably infringes upon a person's privacy or discloses or exploits circumstances pertaining to a person's privacy shall compensate that person for the resulting damage. In cases of significant violations of privacy, such as when details are exploited in a manner likely to expose the person to public ridicule, the claim for compensation shall also include compensation for the personal harm suffered.

2) Paragraph 1 shall not apply if an invasion of privacy is to be assessed under special provisions. Liability for invasions of privacy by the media is governed solely by the provisions of the Media Act.

§ 1329

2. of personal liberty

Anyone who deprives another person of their liberty through violent abduction, private detention, or intentional unlawful arrest is obligated to restore the victim's liberty and provide full compensation. If they can no longer restore the victim's liberty, they must provide compensation to the surviving relatives, as in the case of homicide.

§ 1330

3. Regarding Animals

1) In the case of animals kept in the domestic sphere and not for financial or commercial purposes, medical expenses may be claimed as damages even if they exceed the value of the animal.

2) In the event of injury or death of an animal kept in a domestic setting and not for financial or commercial purposes, the value of the special affection that this animal had for its owner or the owner's relatives may be claimed.

4. to property

§ 1331

If a person suffers damage to his or her property through the intentional act or gross negligence of another, he or she is entitled to claim lost profits; and if the damage was caused by an act prohibited by criminal law or by malice or schadenfreude, he or she is entitled to claim the value of the special attachment to the property.

§ 1332

Damage caused by a minor degree of negligence or carelessness shall be compensated based on the fair market value of the item at the time of the damage.

In particular due to delay in payment. Statutory interest and further damages

§ 1333

1) Damages caused by the debtor to the creditor through a delay in payment of a monetary claim shall be compensated by statutory interest (§ 1000(1)).

2) Repealed

3) In addition to statutory interest, the creditor may also claim compensation for other damages caused by the debtor and incurred by the creditor, in particular the necessary costs of appropriate extrajudicial collection or recovery measures, provided that these are in reasonable proportion to the claim being pursued.

§ 1334

A debtor is deemed to be in default if he fails to meet the payment date specified by law or contract. Unless the parties agree otherwise and unless otherwise provided by law, the debtor must perform his obligation without undue delaydelay, following the creditor’s performance or, if the parties have agreed to such a procedure, following the acceptance or verification of the creditor’s performance, or, if the amount of the claim has not yet been determined, following receipt of the invoice or an equivalent request for payment. If the payment period is not otherwise specified, the debtor bears the consequences of the delay in payment if he has not settled with the creditor after the date of the judicial or extrajudicial demand for payment.

§ 1335

If the creditor has allowed interest to accrue up to the amount of the principal debt without a formal demand, the right to claim further interest on the principal ceases, unless the claim is a monetary claim against a businessperson arising from business transactions. However, interest may be claimed from the date the dispute is pending.

§ 1336

Condition Regarding the Amount of Compensation (Contractual Penalty)

1) The contracting parties may enter into a special agreement stipulating that, in the event of a promise not being fulfilled at all, or not being fulfilled properly or on time, a specific sum of money or other amount shall be paid in lieu of the loss to be compensated (§ 912). In the absence of a special agreement, the debtor does not acquire the right to be released from performance by paying the amount of compensation. If the contractual penalty was agreed upon for failure to comply 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 by the debtor to be excessive, it must be moderated by the judge, if necessary after consulting experts.

§ 1337

Liability of the Heirs of the Person Causing the Damage

The obligation to compensate for damages and lost profits or to pay the agreed compensation amount is enforceable against the estate and passes to the heirs.

Remedies for Compensation

§ 1338

As a general rule, claims for damages, like any other civil matter, must be brought before a civil court. If the party causing the damage has also violated a criminal law, the penalty imposed shall also apply to that party. However, even in such cases, proceedings regarding damages belong to the civil courts, unless criminal law assigns them to a criminal court or a public authority.

§ 1339

Bodily injury, unlawful infringements of liberty, and defamation are investigated and punished as crimes, misdemeanors, or infractions, depending on the nature of the circumstances. The provisions governing these matters are contained in the criminal laws and in the laws regulating personal and corporate law.

§ 1340

In cases where the amount of compensation can be determined immediately, these authorities shall rule on the matter without delay in accordance with the provisions set forth in this section. However, if the amount of compensation cannot be determined immediately, the decision must state that the injured party retains the right to seek compensation through legal proceedings. This right is also reserved for the injured party in criminal cases, and for both parties in other cases, if they are not satisfied with the determination of compensation made by the criminal authority.

§ 1341

Complaints regarding the misconduct of a judge shall be lodged with the higher authority. The latter shall investigate and adjudicate the complaint ex officio.

3. Part

On the Common Provisions of Rights in Person and in Rem

1. Main Section

On the Establishment of Rights and Obligations

§ 1342

General Provisions on Rights

Both rights in personam and rights in rem, and the obligations arising therefrom, may be established, modified, and extinguished in the same manner.

Modes of Establishing a Right

§ 1343

The legal methods of securing an obligation and establishing a right, through which a new right is granted to the entitled party, are: the obligation of a third party on behalf of the debtor and the pledge.

I. by engaging a third party

§ 1344

A third party may assume liability to the creditor on behalf of the debtor in three ways: first, if, with the creditor’s consent, he assumes the debt as the sole payer

; second, if he joins the obligation as a co-debtor; and finally, if he undertakes to satisfy the creditor in the event that the primary debtor fails to fulfill the obligation.

§ 1345

If a person, with the creditor's consent, assumes the entire debt of another, this does not constitute a confirmation but rather a modification of the obligation, which is discussed in the following section.

§ 1346

a) As a Surety

1) Anyone who undertakes to satisfy the creditor in the event that the primary debtor fails to fulfill the obligation becomes a surety, and the agreement entered into between him and the creditor is called a surety agreement. Here, the primary debtor remains the principal debtor, and the surety is added only as a secondary debtor.

2) For a surety agreement to be valid, the surety's undertaking must be provided in writing.

§ 1347

b) As a Joint Debtor

If a person, without the condition applicable to a guarantor, joins an obligation as a co-debtor, a community of co-debtors is formed, the legal consequences of which are to be assessed in accordance with the provisions generally applicable to the principal obligations of contracts (§§ 888 to 896).

§ 1348

Indemnity Surety

A person who promises to compensate the surety in the event that the surety suffers loss as a result of his suretyship is called a surety for indemnity.

§ 1349

Who May Act as a Surety

Any person who has the right to freely administer their own assets may assume the liabilities of others, regardless of gender.

For which obligations

§ 1350

A guarantee may be provided not only for sums of money and property, but also for permitted acts and omissions in relation to the benefit or detriment that may arise therefrom for the guaranteed party.

§ 1351

Obligations that never legally existed or have already been extinguished may neither be assumed nor confirmed.

§ 1352

Anyone who guarantees for a person who, by virtue of their personal capacity, cannot enter into an obligation is, even if they were unaware of this capacity, liable as a joint and several co-debtor (§ 896).

Scope of the Guarantee

§ 1353

The guarantee may not be extended beyond the scope expressly agreed to by the guarantor. A person who guarantees interest-bearing capital is liable only for those arrears of interest which the creditor was not yet entitled to collect.

§ 1354

The guarantor may not invoke the defense whereby a debtor is entitled, under the provisions of the law, to demand the retention of a portion of his assets for his maintenance.

Effect

§ 1355

As a general rule, the guarantor may be held liable only after the principal debtor has failed to fulfill his obligation in response to the creditor's judicial or extrajudicial demand.

§ 1356

However, even if the surety has expressly guaranteed payment only in the event that the principal debtor is unable to pay, the surety may be held liable first if insolvency proceedings have been opened against the principal debtor's assets or if, at the time payment was due, the principal debtor's whereabouts were unknown, and the creditor is not at fault for any negligence.

§ 1357

A person who has undertaken to act as a surety and payer is liable as a joint and several debtor for the entire debt; it is at the creditor's discretion whether to seek payment first from the principal debtor, the surety, or both at the same time (§ 891).

§ 1358

Anyone who pays a debt owed by another person, for which he is personally liable or liable with specific assets, steps into the rights of the creditor and is entitled to demand reimbursement of the paid debt from the debtor. To this end, the satisfied creditor is obligated to hand over to the payer all available legal remedies and security measures.

§ 1359

If several persons have provided a guarantee for the same total amount, each is liable for the entire amount. However, if one of them has paid off the entire debt, that person is entitled, like a co-debtor (§ 896), to a right of reimbursement against the others.

§ 1360

If, prior to or at the time of the provision of the guarantee, the creditor is given a pledge by the principal debtor or a third party in addition to the guarantee, the creditor remains free to pursue the guarantor in accordance with the provisions (§ 1355), but is not authorized to dispose of the pledge to the detriment of the guarantor.

§ 1361

If the surety or payer has satisfied the creditor without reaching an agreement with the principal debtor, the latter may raise against the former any defense that he could have raised against the creditor.

§ 1362

The guarantor may claim compensation from the indemnifying guarantor only if the loss was not caused by the guarantor's own fault. *Ways in which a guarantee may be extinguished*

§ 1363

The guarantor's liability ceases in proportion to the debtor's liability. If the guarantor has undertaken an obligation for a specific period, he is liable only for that period. The release of a co-guarantor benefits him vis-à-vis the creditor, but not vis-à-vis the other co-guarantors (§ 896).

§ 1364

The passage of time during which the debtor should have paid does not release the surety from his obligation, even if the creditor has not pressed for payment; however, if the surety provided the guarantee with the debtor's consent, he is entitled to demand that the debtor provide him with security. The creditor is also liable to the guarantor to the extent that the latter suffers loss in recovering compensation due to the creditor's delay in collecting the debt.

§ 1365

If there is reasonable concern that the debtor is insolvent or has been removed from the territories to which this Code applies, the guarantor shall be entitled to demand that the debtor provide security for the guaranteed debt.

§ 1366

If the transaction secured by the guarantee has been completed, the guarantor may demand settlement and the termination of the guarantee.

§ 1367

If the surety agreement is secured neither by a mortgage nor by a pledge, it shall expire within three years of the surety's death if the creditor has failed in the meantime to demand payment of the outstanding debt from the heir, either judicially or extrajudicially.

II. By Pledge Agreement

§§ 1368 to 1372

Repealed

The general manner in which security is to be provided

§ 1373

Anyone obligated to provide security must fulfill this obligation by means of a pledge or a mortgage. Only if the obligor is unable to provide a pledge will suitable sureties be accepted.

§ 1374

No one is obligated to accept as collateral an item intended to serve as security at a value exceeding half of the appraised value for houses, one-third for land, and two-thirds for movable property. Anyone who possesses sufficient assets and can be sued in the province is a suitable surety.

2. Main Section

On the Modification of Rights and Obligations

§ 1375

Modification of Rights and Obligations

It depends on the will of the creditor and the debtor to modify their mutual contractual rights and obligations. The modification may occur with or without the involvement of a third party, namely either a new creditor or a new debtor.

1. by novation

§ 1376

Modification without the involvement of a third party occurs when the legal basis or the principal subject matter of a claim is altered, thereby converting the old obligation into a new one.

§ 1377

Such a modification is called a novation agreement. Under this agreement, the previous principal obligation ceases to exist, and the new one comes into effect at the same time.

§ 1378

The surety, pledge, and other rights associated with the previous principal obligation are extinguished by the novation agreement, unless the parties have agreed otherwise by special agreement.

§ 1379

The specific provisions regarding where, when, and how an existing obligation is to be fulfilled, and other ancillary provisions that do not alter the principal subject matter or legal basis, are to be regarded as a novation no more than the mere issuance of a new promissory note or other relevant document. Nor may such a modification of the ancillary provisions impose a new burden on a third party who has not been made a party to them. In case of doubt, the old obligation shall not be deemed to have been extinguished as long as it can still coexist with the new one.

2. Settlement

§ 1380

A contract of novation, by which disputed or doubtful rights are determined in such a way that each party mutually undertakes to give, do, or refrain from doing something, is called a settlement. A settlement is a mutually binding contract and is assessed according to the same principles.

§ 1381

Anyone who, with the obligor's consent, waives an undisputed or doubtful right without compensation is making a gift (Section 939).

Invalidity of a Settlement with Respect to the Subject Matter

§ 1382

There are doubtful cases that may not be settled by a settlement. This includes a dispute between spouses regarding the validity of their marriage. Such a dispute may be decided only by the court having jurisdiction as determined by law.

§ 1383

No settlement may be entered into regarding the content of a last will and testament prior to its publication. Any wager arising therefrom shall be assessed in accordance with the principles governing contracts of chance.

§ 1384

Settlements regarding violations of the law are valid only with respect to private satisfaction; lawful investigation and punishment may be averted thereby only if the violations are of such a nature that the authorities are required to act only at the request of the parties.

or other defects

§ 1385

An error can render the settlement invalid only to the extent that it concerns the identity of the person or the subject matter.

§ 1386

A settlement entered into in good faith cannot be contested on the grounds of a breach exceeding half.

§ 1387

Nor can newly discovered documents invalidate a settlement entered into in good faith, even if they reveal the complete lack of a right on the part of one of the parties.

§ 1388

An obvious calculation error or a mistake made in the addition or subtraction when concluding a settlement shall not prejudice either of the contracting parties.

§ 1389

Scope of the Settlement

A settlement concluded regarding a specific dispute does not extend to other cases. Even general settlements covering all disputes in general do not apply to rights that were intentionally concealed or that the settling parties could not have foreseen.

Effect with Respect to Accessory Obligations

§ 1390

Guarantors and pledgers who have provided security for the entire right still in dispute are also liable for the portion determined by the settlement. However, the guarantor and any third-party pledger who did not consent to the settlement retain all defenses against the creditor that could have been raised against the claim had no settlement been concluded.

§ 1391

The agreement by which the parties appoint an arbitrator to decide disputed rights is governed by the Rules of Court.

3. Assignment

§ 1392

If a claim is transferred from one person to another and accepted by the latter, the right is transferred to the new creditor. Such a transaction is called an assignment (cession) and may be concluded with or without consideration.

§ 1393

Subject Matter of Assignment

All external rights are subject to assignment. Rights that are inseparable from the person and therefore expire with the person cannot be assigned. Promissory notes payable to the bearer are assigned merely by delivery and require no proof of assignment other than possession.

Effect

§ 1394

The rights of the assignee are identical to those of the assignor with respect to the assigned claim.

§ 1395

The assignment agreement creates a new obligation only between the assignor and the assignee of the claim, but not between the latter and the debtor (assignee). Therefore, as long as the debtor is not made aware of the assignee, the debtor is entitled to pay the original creditor or otherwise settle with him.

§ 1396

The debtor may no longer do so once the assignee has been notified to him; however, he retains the right to raise objections to the claim. If he has acknowledged the validity of the claim against the bona fide assignee, he is obligated to satisfy the assignee as his creditor. *Liability of the assignor*

§ 1397

Whoever assigns a claim without consideration, that is, gives it away, is no longer liable for it. However, if the assignment is made for consideration, the assignor is liable to the assignee both for the validity and for the collectability of the claim, but never for more than he has received from the assignee.

§ 1398

To the extent that the assignee could have ascertained the collectability of the claim from the public registers of liens, the assignor is not liable for any compensation in the event of non-collectability. Nor is the assignor liable for a claim that was collectible at the time of the assignment but became uncollectible merely by chance or through the assignee's negligence.

§ 1399

The assignee commits an oversight of this kind if he fails to terminate the claim at the time it can be terminated or fails to collect it after the payment deadline has expired, if he forgives the debtor, if he fails to obtain the still-possible security in due time, or if he fails to pursue judicial enforcement.

4. Assignment

§ 1400

By means of a payment order directed at a third party, the payee (assignee) is authorized to collect the payment from the payee (assignee), and the latter is authorized to make the payment to the former on behalf of the payer (assignor) . The payee (assignee) acquires a direct claim payee against the drawee only when the drawee's declaration of acceptance of the order has been received by the payee.

§ 1401

1) To the extent that the drawee already owes the payment to the drawer, the drawee is obligated to the drawer to comply with the order. If the order is intended to discharge a debt of the drawer to the payee who has accepted the order, the payee is obligated to demand performance from the drawee.

2) If the payee does not wish to make use of the order, or if the drawee refuses to accept or to perform, the payee must notify the payer of this without delay.

3) Unless otherwise agreed, the debt is extinguished only upon performance.

§ 1402

If the drawee has accepted the order vis-à-vis the payee, the drawee may raise against the payee only such objections as concern the validity of the acceptance or arise from the content of the order or from the drawee's personal relationship with the payee.

§ 1403

1) As long as the agent has not yet accepted the instruction vis-à-vis the beneficiary, the principal may revoke it. If there is no other legal basis between the principal and the agent, the provisions governing the agency agreement shall apply to the legal relationship between them; however, the instruction shall not lapse upon the death of the principal or the agent. The extent to which the revocation of the instruction is legally effective vis-à-vis the payee is determined by the legal relationship existing between the payee and the payer.

2) The recipient's claim against the payee is subject to a three-year statute of limitations.

5. Assumption of Debt

§ 1404

Anyone who promises a debtor to perform the obligation to the debtor's creditor (assumption of performance) is liable to the debtor for ensuring that the creditor does not assert a claim against the debtor. This does not directly confer any right on the creditor.

§ 1405

Anyone who declares to a debtor that they will assume the debt (assumption of debt) takes the debtor's place as the debtor if the creditor consents. Until such consent is given or if it is refused, they are liable as in the case of assumption of performance (§ 1404). The creditor's consent may be declared either to the debtor or to the assignee.

§ 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 is to be understood as liability alongside the previous debtor, not in his place.

§ 1407

1) The obligations of the assignee are identical to those of the previous debtor with respect to the assumed debt. The assignee may raise against the creditor any defenses arising from the legal relationship between the creditor and the previous debtor.

2) The ancillary rights attached to the claim are not affected by the change of debtor. However, guarantors and pledges established by third parties remain liable only if the guarantor or pledgor has consented to the change of debtor.

§ 1408

If, upon the sale of a property, the purchaser assumes a lien attached to the property, this shall, in case of doubt, be construed as an assumption of debt. After the transfer of ownership has been completed, the seller may request the creditor in writing to accept the new debtor in his place, with the effect that consent is deemed to have been granted if it is not refused within six months. This effect must be expressly stated in the request.

§ 1409

If the assignee, in connection with such an assignment that simultaneously constitutes a transfer of claim, refuses payment without cause, or if an assignee, after having promised payment to the assignee, delays payment, he shall be liable for the consequences. If, on the other hand, he has made the payment he undertook in a proper manner and in an amount greater than he owed the assignor, he is entitled to reimbursement from the assignor (§ 1014).

§ 1410

If the new debtor's substitution for the previous debtor is agreed upon in such a way that the terminated obligation is replaced by an obligation of the new debtor based on an independent legal ground or involving a change in the principal subject matter of the claim, the effects of a novation agreement (Sections 1377, 1378) apply.
3. Main Section
Extinction of Rights and Obligations
Extinction of Rights and Obligations
§ 1411
Rights and obligations are so interrelated that the extinction of the right entails the extinction of the obligation, and the extinction of the latter entails the extinction of the right.
1. By payment
§ 1412
An obligation is extinguished primarily by payment, that is, by the performance of what one is obligated to perform (§ 469).
How payment is to be made
§ 1413
Neither the creditor may be compelled, against his will, to accept anything other than what he is entitled to claim, nor may the debtor be compelled to perform anything other than what he is obligated to perform. This also applies to the time, place, and manner of fulfilling the obligation.
§ 1414
If, because the creditor and the debtor agree or because payment itself is impossible, something else is given in lieu of payment, the transaction is to be regarded as a transaction for consideration.
§ 1415
The creditor is not obligated to accept partial payment or payment in installments of a debt. However, if various items of the debt are due, the item shall be deemed to have been discharged if the debtor has expressly declared, with the creditor's consent, that he intends to pay it.
§ 1416

If the debtor's intention is in doubt or is contested by the creditor, interest shall be deducted first, then the principal; if there are multiple principal amounts, the one that has already been demanded or is at least due shall be deducted first, and after that, the one that is most burdensome for the debtor to remain in debt.

when

§ 1417

If the payment deadline is not specified in any way, the obligation to pay the debt arises only on the day on which the demand for payment was made (§ 904). For the payment deadline in the case of fulfillment of a monetary debt by bank transfer, § 907a(2) applies.

§ 1418

In certain cases, the payment period is determined by the nature of the matter. Alimony is paid at least one month in advance. If the recipient dies during this period, their heirs are not obligated to return any portion of the advance payment.

§ 1419

If the creditor has delayed accepting payment, the adverse consequences shall fall upon him.

§ 1420

If the place and manner of performance are not specified, the provisions set forth above (§ 905, § 907a(1)) shall apply.

by whom

§ 1421

Even a person who is otherwise incapable of managing their assets may lawfully discharge a valid and due debt and thereby discharge their obligation. However, if they have discharged a debt that is still uncertain or not yet due, the persons entrusted with their care, their guardian, or their curator are entitled to reclaim what was paid.

§ 1422

A person who pays another's debt for which he is not liable (§ 1358) may, before or at the time of payment, demand that the creditor assign his rights; if he has done so, the payment shall be deemed to have discharged the claim.

§ 1423

If payment is offered with the debtor's consent, the creditor must accept it; however, except in cases of fraud, the creditor is not liable for the collectability or validity of the claim. Without the debtor's consent, a third party generally cannot compel the creditor to accept payment (Art. 377 Swiss Civil Code).

§ 1424

To Whom

The amount owed must be paid to the creditor, to a person authorized by the creditor to receive it, or to the person whom the court has recognized as the owner of the claim. A person who has paid money to an individual who is not permitted to manage their own assets is obligated to repay that amount to the extent that the money paid does not actually exist 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 is offered, or for other important reasons, the debtor may deposit the item to be paid with the court or, if it is not suitable for such deposit, request the court to take it into custody. Any of these actions, if performed lawfully and notified to the creditor, releases the debtor from his obligation and transfers the risk of the item delivered to the creditor.

Receipts

§ 1426

1) In all cases, the payer is entitled to demand a receipt—that is, a written acknowledgment of the fulfilled obligation—from the payee. The receipt must state the names of the debtor and the creditor, as well as the place, time, and nature of the debt that has been discharged, and it must be signed by the creditor or the creditor's representative.

2) Unless otherwise agreed, the costs of the receipt shall be borne by the creditor.

§ 1427

A receipt for the principal amount paid gives rise to the presumption that the interest thereon has also been paid.

§ 1428

If the creditor holds a promissory note from the debtor, the creditor is obligated, in addition to issuing a receipt, to return the note or to have any partial payment made noted on the promissory note itself. The promissory note returned without a receipt gives rise to a legal presumption of payment having been made on the part of the debtor; but it does not preclude the presentation of evidence to the contrary. If the promissory note to be returned has been lost, the payer is entitled to demand security or to deposit the amount with the court, and to require that the creditor have the promissory note voided in accordance with court regulations.

§ 1429

A receipt issued by the creditor to the debtor for a recently settled debt does not, in itself, prove that other older debts have also been settled: but if it concerns certain annuities, pensions, or payments—such as interest on money, land, houses, or capital—which are to be made under the same title and at a specific time, it is presumed that the party presenting the receipt for the most recent due date has also settled the earlier due dates.

§ 1430

Likewise, it is presumed that merchants and tradespeople who are in the habit of settling accounts with their customers at specific intervals have also received payment for earlier invoices if they have provided a receipt for an invoice from a later interval.

Payment of a Non-Debt

§ 1431

If, as a result of a mistake—including a mistake of law—a person has received a thing or a service to which they are not entitled vis-à-vis the provider, the thing may generally be reclaimed in the first case, while in the second case, compensation commensurate with the benefit derived may be demanded.

§ 1432

However, payments made in respect of a debt that is time-barred or one that is invalid merely due to a lack of formalities, or for which the law merely

denies the right to sue, cannot be reclaimed any more than if someone makes a payment knowing that he is not liable for it.
§ 1433
However, this provision (§ 1432) cannot be applied to a case in which a ward or another person who cannot freely dispose of their property has made the payment.
§ 1434
The return of the payment may also be sought if the claim is still uncertain in any respect or if it still depends on the fulfillment of a condition attached thereto. However, payment of a valid and unconditional debt cannot be reclaimed merely because the payment period has not yet expired.
§ 1435
Even items given as a true obligation may be reclaimed by the giver from the recipient if the legal basis for retaining them has ceased to exist.
§ 1436
If a person was obligated to give only one of two items at his discretion, and 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 mala fide possessor, depending on whether he knew of the giver’s error or should have inferred it from the circumstances.
2. Compensation
§ 1438
Where claims are reciprocal, valid, of the same nature, and such that a thing to which one party is entitled as a creditor may also be paid by that party to the other as a debtor, the obligations are mutually set off (compensation) to the extent that the claims offset one another, which in itself gives rise to mutual payment.
§ 1439

Compensation does not occur between a valid and an invalid claim, nor between a claim that is due and one that is not yet due. The extent to which compensation applies to an insolvency estate is determined by the Insolvency Code.

§ 1440

Likewise, claims that have dissimilar or specific and unspecified items as their subject matter cannot be set off against one another. Items that have been arbitrarily or fraudulently removed, borrowed, taken into custody, or taken into possession are not subject to retention or set-off at all.

§ 1441

A debtor may not set off against his creditor what the creditor owes to a third party and what the third party owes to the debtor. Even a sum that a person is entitled to claim from one public treasury may not be set off against a payment that he must make to another public treasury.

§ 1442

If a claim is successively assigned to several parties, the debtor may set off the claim he had against the first assignee at the time of the assignment, as well as the claim he has against the last assignee, but not the claim he had against any of the intermediate assignees.

§ 1443

With respect to a claim entered in the public registers, the defense of set-off may be raised against an assignee only if the counterclaim has likewise been entered in the register alongside the claim itself or has been made known to the assignee upon the latter's assumption of the claim.

§ 1444

3. Waiver

In all cases where the creditor is entitled to waive his right, he may also waive it for the benefit of his debtor, thereby extinguishing the debtor's obligation.

4. Consolidation

§ 1445

Whenever a right is combined with an obligation in a single person, both cease to exist, unless the creditor is still free to demand separation of his rights (§§ 802 and 812) or if circumstances of a completely different nature arise. Therefore, the debtor's succession to his creditor's estate does not alter the rights of the estate creditors, co-heirs, or legatees, nor does the debtor's or guarantor's inheritance of the creditor's rights.

§ 1446

Rights and obligations that are registered in public records are not extinguished by the merger until they have been removed from the public records (Art. 202 and 273 SR).

§ 1447

5. Destruction of the Thing

The accidental total destruction of a specific item extinguishes all obligations, including the obligation to compensate for its value. This principle also applies to cases in which the performance of the obligation or the payment of a debt becomes impossible due to another accident. In any case, however, the debtor must return or reimburse what he has received in order to fulfill the obligation—though as a bona fide possessor—in such a manner that he derives no profit from the other party's loss.

§ 1448

6. Death

Death extinguishes only those rights and obligations that are personal in nature or that relate solely to the personal acts of the deceased.

7. Passage of Time

§ 1449

Rights and obligations also expire with the passage of time, provided they are subject to a last will, contract, judicial decision, or the law. The manner in which they are extinguished by the statute of limitations prescribed by law is set forth in the following section.

§ 1450

Restoration to the Previous State

The civil laws, under which unlawful acts and transactions may be directly challenged if the statute of limitations does not apply, do not permit restitution to the previous state. Those pertaining to judicial

The procedures for cases involving reinstatement are set forth in the Rules of Court.

4. Main Section

On the Statute of Limitations and Adverse Possession

§ 1451

Statute of Limitations

The statute of limitations is the loss of a right that has not been exercised within the period prescribed by law.

§ 1452

Acquisition by Adverse Possession

If the right subject to the statute of limitations is simultaneously transferred to another person by virtue of legal possession, it is called an acquired right, and the mode of acquisition is called acquisitive prescription.

§ 1453

Who May Acquire Rights by Limitation or Adverse Possession

Anyone who is otherwise capable of acquiring property may also acquire ownership or other rights by adverse possession.

§ 1454

Against whom

The statute of limitations and acquisitive prescription may apply to all private individuals who are capable of exercising their rights on their own behalf. Against wards and persons under guardianship; against churches, municipalities, and other legal entities; against administrators of public property; and against those who are absent through no fault of their own, they are permitted only subject to the restrictions set forth in §§ 1494, 1472, and 1475.

Which objects

§ 1455

Anything that can be acquired may also be acquired by adverse possession. However, items that cannot be possessed by virtue of their essential nature or by virtue of the law, as well as items and rights that are absolutely inalienable, are not subject to adverse possession.

§ 1456

For this reason, neither the rights belonging exclusively to the head of state as such, e.g., the right to impose customs duties, to mint coins, to levy taxes

acquired through prescription, nor do the obligations corresponding to these rights become time-barred.
§ 1457
Other rights accruing to the head of state but not exclusively reserved to him, e.g., rights to forests, hunting grounds, fisheries, and the like, may indeed be acquired by other citizens through adverse possession, but only within a period longer than the usual one (§ 1472).
§ 1458
The rights of a spouse, a registered partner, a father, a child, and other personal rights are not subject to acquisitive prescription. However, those who exercise such rights in good faith are entitled to rely on their innocent ignorance to provisionally assert and exercise their presumed rights.
§ 1459
A person's rights regarding their actions and property—such as the right to purchase goods here or there, or to use their meadows or water—are not subject to any statute of limitations, except in cases where the law expressly links the loss of such rights to their failure to exercise them within a specified period. However, if one person has prohibited another from exercising such a right or has prevented them from doing so, the possession of the right of prohibition on the part of one party against the freedom of the other begins from the moment the latter has complied with the prohibition or prevention, and this, provided all other requirements are met, gives rise to the statute of limitations or acquisitive prescription (Sections 313 and 351).
Requirements for acquisitive prescription
1. Ownership
§ 1460
In addition to the capacity of the person and the object, acquisitive prescription requires: that a person actually possess the thing or right to be acquired in this manner, that such possession be lawful, bona fide, and genuine, and that it be continued throughout the entire period prescribed by law (§§ 309, 316, 326, and 345). *Specifically: a) lawful*
§ 1461

Any possession based on a title that would have been sufficient to transfer ownership, had such ownership been due to the transferor, is lawful and sufficient for acquisitive prescription. Such titles include, for example, a bequest, a gift, a loan, a sale, an exchange, a payment, etc.

§ 1462

Pledged, borrowed, or items placed in custody or under usufruct may never be acquired by prescription by creditors, borrowers, custodians, or usufructuaries due to the lack of a lawful title. Their heirs stand in the place of the decedents and have no greater title than the latter. Only the third lawful possessor may benefit from the period of prescription.

§ 1463

b) Good-faith

Possession must be in good faith. However, the bad faith of the previous possessor does not prevent a successor or heir in good faith from commencing the period of adverse possession from the day of his possession (§ 1493).

§ 1464

c) genuine

Possession must also be genuine. If someone takes possession of an item by force or deceit, or secretly enters the premises to take possession, or possesses an item only intermittently, neither that person nor their heirs can acquire title to it through the statute of limitations.

2. Lapse of Time

§ 1465

For acquisitive prescription and the statute of limitations, the passage of time prescribed by law is also necessary. In addition to the periods established by law for certain specific cases, this section generally determines the duration of time required for acquisitive prescription or the statute of limitations in all other cases. This depends on the nature of the rights and the items involved, as well as on the persons concerned.

Prescription Period

Ordinary

§ 1466

A person acquires ownership of another’s movable property by adverse possession if they have held it in good faith, uninterrupted and uncontested, for five years (Art. 196 SR).

§ 1467

With respect to immovable property, the person in whose name it is registered in the public records acquires full title against all objections upon the expiration of ten years. The boundaries of such acquisition by prescription are determined according to the extent of the registered ownership.

§ 1468

Where no proper public registry has yet been established and the acquisition of immovable property must be proven from court records and other documents, or if the property is not registered in the name of the person exercising rights of possession over it, acquisitive prescription is not completed until after 30 years.

§ 1469

Easements and other special rights exercised on another's land are, like the right of ownership, acquired by adverse possession within ten years by the person in whose name they are recorded in the public registers.

§ 1470

Where no proper public records exist or such a right is not registered therein, the bona fide holder may acquire it by adverse possession only after 30 years.

§ 1471

In the case of rights that can rarely be exercised—such as the right to grant a benefice or to require someone to contribute to the construction of a bridge—the person claiming acquisitive prescription must, in addition to demonstrating a period of 30 years, also prove that the opportunity to exercise the right arose at least three times during that period and that he exercised the right on each occasion. *Extraordinary*

§ 1472

Repealed

§ 1473

Anyone who is in a joint tenancy with a person favored by law with regard to the statute of limitations shall be entitled to the same benefit. Benefits of a longer statute of limitations also apply to other persons who are similarly favored.

§ 1474

Obsolete

§ 1475

The owner's absence from the province in which the property is located precludes ordinary acquisitive prescription and the statute of limitations to the extent that the period of an involuntary and blameless absence is counted only as half, meaning that one year counts as only six months. However, short periods of absence that have not lasted for a full uninterrupted year shall not be taken into account, and in any case, the period shall never be extended beyond a total of 30 years. Absence due to fault does not qualify for an exception to the ordinary statute of limitations.

§ 1476

Even a person who has taken possession of a movable thing directly from an illegitimate or dishonest possessor, or who is unable to identify the prior possessor, must wait twice the duration of the otherwise ordinary period of acquisitive prescription.

§ 1477

A person relying on acquisitive prescription for a period of 30 years need not provide evidence of a lawful title. However, if the possessor's bad faith is proven against him, acquisitive prescription is precluded even during this longer period.

Statute of limitations. General

§ 1478

1) Insofar as every acquisition by adverse possession involves a statute of limitations, both are completed within a single period in accordance with the prescribed requirements. As for the statute of limitations itself, however, the mere non-exercise of a right that could have been exercised is sufficient after ten years.

2) Claims that have been legally established and claims arising from enforceable settlements or enforceable instruments are subject to a 30-year statute of limitations.

§ 1479

All rights against a third party, whether or not they are recorded in public registers, thus generally expire at the latest after ten years of non-use or after a period of silence observed for that length of time.

§ 1480

Claims for overdue annual payments, in particular interest, annuities, maintenance payments, alimony, and annuities agreed upon for the repayment of principal, expire after three years; the right itself becomes time-barred after 30 years of non-use.

Exceptions

§ 1481

Obligations arising from family law and, more generally, from the law of persons, e.g., to provide children with indispensable maintenance, as well as those arising from the rights listed above (§ 1459) mentioned right to freely dispose of one's property, e.g., the obligation to have a joint property divided or a boundary determined, cannot be subject to a statute of limitations.

§ 1482

Similarly, a person who could have exercised a right on another's land in its entirety or in various ways is not restricted in his right merely because he exercised it for however long on only a part of the land or only in a specific manner; but the restriction must be brought about by acquisition or prescription of the right of prohibition or impediment (§ 351). This also applies to the case where a person has hitherto exercised a right belonging to all members of a community only against certain members thereof.

§ 1483

As long as the creditor holds the pledged property, the failure to exercise the right of pledge cannot be raised as a defense against him, and the right of pledge does not become time-barred. The debtor's right to redeem his pledged property also remains not subject to the statute of limitations. However, to the extent that the claim exceeds the value of the pledged property, it may in the meantime be extinguished by the statute of limitations.

§ 1484

For the statute of limitations to apply to rights that can be exercised only rarely, it is required that, during the 30-year limitation period, no use has been made of any of the three opportunities to exercise such a right (§ 1471).

§ 1485

The general rule that a right is lost due to non-use only after ten years have elapsed applies only to those cases for which the law has not prescribed a shorter period (Section 1465).

Special Statute of Limitations

§ 1486

The following claims are barred after five years:

1. for the delivery of goods, the performance of work, or other services in a commercial, business, or other enterprise;
2. for the delivery of agricultural and forestry products in an agricultural or forestry enterprise;
3. for the provision of board, care, medical treatment, education, or instruction by persons engaged in such activities or in institutions serving these purposes;
4. for rent and lease payments;
5. of employees in respect of remuneration and reimbursement of expenses under service contracts for unskilled laborers, day laborers, domestic servants, and all private servants, as well as of employers in respect of advances granted on such claims;
6. doctors, veterinarians, midwives, private tutors, attorneys, legal agents, trustees, asset managers, auditors, financial advisors, economic advisors, tax advisors, and all other persons publicly appointed to handle certain matters, in respect of remuneration for their services and reimbursement of their expenses, as well as the parties in respect of advances made to such persons;
7. A spouse's claim for compensation for his or her contribution to the other spouse's acquisition of property is subject to a five-year statute of limitations, beginning at the end of the month in which the contribution was made.

§ 1487

The rights to revoke a gift due to the donee's ingratitude, to rescind a contract for consideration due to a breach exceeding half the value, or to contest the division of joint property that has been made, as well as claims arising from fear or error in the contract where the other contracting party is not guilty of fraud, must be asserted within three years. After this period has elapsed, they are barred by the statute of limitations.

§ 1487a

The right to contest a testamentary disposition, to claim the statutory share, to challenge testamentary conditions or encumbrances on bequests, to assert a better or equal right after the transfer of ownership has taken place, to hold the donee liable for shortfall of the statutory share, or to assert other rights arising from a transaction upon death must

must be asserted in court within three years of becoming aware of the facts relevant to the existence of the claim. Regardless of such awareness, these rights are barred by the statute of limitations thirty years after the testator's death.

§ 1488

The right of easement is extinguished by non-use if the party subject to the easement opposes its exercise and the entitled party has not asserted their right for three consecutive years.

§ 1489

1) Any action for damages is barred by the statute of limitations three years from the time when the damage and the identity of the tortfeasor or the party liable for compensation became known to the injured party; the damage may have been caused by a breach of a contractual obligation or without reference to a contract.

2) If the injured party has not become aware of the damage or the identity of the tortfeasor or the party liable for compensation, the right to sue expires after ten years.

3) If the injured party has not become aware of the damage or the identity of the person who caused the damage or is liable for compensation, and if the damage resulted from one or more criminal acts punishable by imprisonment for six months or more, the right to sue expires only after 30 years. The same applies, regardless of the injured party's knowledge, if the damage resulted from a felony.

§ 1489a

1) Any action for damages against a financial intermediary licensed by the FMA shall be barred by the statute of limitations three years from the time at which the damage and the identity of the tortfeasor or the party liable for compensation became known to the injured party, but in any event ten years from the time at which the transaction was executed.

2) Claims for restitution, as well as claims for information and accounting, against a financial intermediary licensed by the FMA are subject to a statute of limitations of three years from the time the principal became aware of any payments or other benefits arising from the transaction; in any event, however, such claims are subject to a statute of limitations of ten years from the date on which the transaction was executed.

§ 1490

1) Actions for defamation consisting solely of verbal, written, or gestural insults may no longer be brought after one year has elapsed. However, if the defamation consists of physical assault, the right to sue for satisfaction shall last for three years.

2) The provisions of § 1489 shall apply to actions for damages arising from the endangerment of another's credit, livelihood, or advancement through the dissemination of untrue facts.

§ 1491

Some rights are limited by law to an even shorter period. In such cases, the provisions applicable in the places where these rights are addressed shall prevail.

§ 1492

The period during which the law of bills of exchange applies to a bill of exchange is determined by the Bill of Exchange Act.

§ 1493

Inclusion of the predecessor's period of prescription

Anyone who takes possession of a thing in good faith from a lawful and bona fide possessor is, as a successor, entitled to include the period of acquisitive prescription of their predecessor (§ 1463). The same applies to the statute of limitations. In the case of acquisitive prescription of 30 years, this inclusion applies even without a lawful title, and in the case of the statute of limitations itself, even without good faith or innocent ignorance.

Suspension of the Statute of Limitations

§ 1494

With respect to persons who, due to a lack of mental capacity, are unable to manage their own rights—such as minors or persons who lack the use of reason—the period of acquisitive prescription or the statute of limitations cannot begin to run unless a legal representative has been appointed for such persons. Although the period of acquisitive prescription or limitation continues to run once it has begun, it may never expire earlier than two years after the obstacles have been removed.

§ 1495

Likewise, between spouses or registered partners, as well as between minors or other persons under guardianship and their guardians, trustees, or curators, the period of acquisitive prescription or limitation may not commence as long as the marriage or registered partnership remains in force or the guardianship, trusteeship, or curatorship by the same person continues, The period of acquisitive prescription or the statute of limitations shall neither commence nor continue. This does not apply to claims by a spouse or registered partner for compensation for their contribution to the other's acquisition; however, the statute of limitations is suspended for as long as legal proceedings between the spouses or registered partners to decide on a claim are pending and are being duly pursued.

§ 1496

Absence due to civil or military service, or a complete suspension of the administration of justice—e.g., during times of plague or war—suspends not only the commencement but also, for as long as this impediment lasts, the continuation of the acquisitive prescription or statute of limitations.

§ 1497

Interruption of the Statute of Limitations

Both acquisitive prescription and the statute of limitations are interrupted if the party seeking to rely on them has, before the expiration of the limitation period, either expressly or tacitly acknowledged the other party's right, or if the party is sued by the entitled party and the action is duly pursued. However, if the action is declared inadmissible by a final judgment, the statute of limitations shall be deemed uninterrupted.

Effect of Adverse Possession or the Statute of Limitations

§ 1498

Any person who has acquired ownership of a thing or a right may apply to the court for a declaration of ownership against the previous owner, and, if the right in question is a matter of public record, may have it entered into the public registry.

§ 1499

Similarly, after the statute of limitations has expired, the obligor may obtain the cancellation of his obligation as recorded in the public registers or the declaration of nullity of the right previously granted to the obligee and of the documents issued in that regard.

§ 1500

However, a right acquired by adverse possession or the statute of limitations may not be to the detriment of a person who, relying on the public records, acquired a thing or a right prior to the incorporation of said right into the public records.

§ 1501

Unless the parties object, the statute of limitations shall not be considered ex officio.

§ 1502

Waiver or Extension of the Statute of Limitations

The statute of limitations may neither be waived in advance nor may a longer limitation period than that prescribed by law be agreed upon.

II. Property Law

of December 31, 1922

I hereby approve the following resolution adopted by the State Parliament at its session on November 21, 1922, pursuant to Articles 2, 14, 21, 22, and 66(1) of the Constitution:

Introduction

Article 1

A. Application of the Law

1) The law applies to all legal matters for which it contains a provision, whether by its wording or by interpretation.

2) If no provision can be derived from the law, the judge shall decide in accordance with customary law and, where such is lacking, in accordance with the rule that he would establish as a legislator.

3) In doing so, he shall follow established doctrine and tradition.

B. Content of Legal Relationships

Art. 2

I. Acting in Good Faith

1) Everyone must act in good faith in the exercise of their rights and in the fulfillment of their duties.

2) The manifest abuse of a right shall not be protected by law. Art. 3

II. Good faith

1) Where the law has attached a legal effect to a person's good faith, the existence of such good faith shall be presumed.

2) A person who, given the circumstances, could not have exercised the due care reasonably expected of them, is not entitled to invoke good faith.

Art. 4

III. Judicial Discretion

Where the law refers the judge to his discretion, to the assessment of the circumstances, or to important reasons, he must render his decision in accordance with law and equity.

Art. 5

C. General Provisions of the Law of Obligations

1) The general provisions applicable to the law of obligations also apply to civil law relationships.

2) Where the law refers to custom or local practice, the existing law shall be deemed to reflect such custom or practice unless a different custom is proven.

D. Rules of Evidence

Art. 6

I. Burden of Proof

Unless otherwise provided by law, the party deriving rights from an alleged fact must prove its existence.

Art. 7

II. Evidence by Public Document

1) Public registers and public documents constitute full proof of the facts they attest to, unless the inaccuracy of their content is proven.

2) Such proof is not subject to any particular form. Art. 8

E. Competent Authorities

1) Unless otherwise provided by law, the District Court has jurisdiction.

2) The court shall decide on disputes arising from the application of this Act in civil proceedings, unless non-contentious proceedings are reserved or otherwise provided for.

3) The right to appeal its decisions or orders to higher courts is reserved.

4) Unless otherwise provided by law, decisions or orders issued by municipal bodies may be appealed to the Administrative Court in administrative proceedings; decisions or orders issued by the government or other administrative authorities or bodies of the state may also be appealed to the Administrative Court in administrative proceedings.

F. International Law

Art. 9

I. Generally

Repealed Art.
10

II. Types of Matters

Repealed

III. Immovable Property

Art. 11

1. Substantive law

Repealed Art.

12

2. Form

Repealed

IV. Movable Property

Art. 13–18 Repealed

Art. 19

V. Jurisdiction

The Liechtenstein authorities have jurisdiction over all actions in rem, including actions for possession, relating to a Liechtenstein immovable property or to a movable property located in the Principality at the time the action is brought.

1. Section

Ownership

1. Title

General Provisions

A. Content of Ownership

Art. 20

I. In General

1) The owner of a thing may dispose of it at will within the limits of the law.

2) They have the right to demand its return from anyone who withholds it and to defend against any unjustified interference.

Art. 20a

II. Animals

1) Animals are not things.

2) Insofar as no special regulations exist for animals, the provisions applicable to property apply to them.

B. Scope of Ownership

Art. 21

I. Components

1) The owner of a thing has ownership of all its components.

2) A component of an item is anything that, according to local custom, is considered part of its composition and cannot be separated without destroying, damaging, or altering the item.

Art. 22

II. Natural Fruits

1) The owner of a thing also owns its natural fruits.

2) Natural fruits are the periodically recurring products and yields that, according to the customary understanding, are obtained from a thing in accordance with its intended purpose.

3) Until they are separated, the natural fruits are part of the thing.

III. Accessories

Art. 23

1. Definition

1) Unless an exception is made, the disposition of a thing also extends to its appurtenances, insofar as these are owned by the disposer.

2) Accessories are movable items that, according to local custom or the clear intention of the owner of the principal item, are permanently intended for its management, use, or safekeeping and are connected to, adapted to, or otherwise related to the principal item in such a way as to serve it.

3) If an item is an accessory, a temporary separation from the principal item does not deprive it of this status.

4) Accessories to immovable property may be noted in the land register. Art. 24

2. Exclusion

Accessories never include movable items that serve the owner of the principal item only for temporary use or consumption, or that have no connection to the nature of the principal item, nor do they include items that are associated with the principal item solely for storage, sale, or rental.

C. Joint Ownership

I. Co-ownership

Art. 25

1. Relationship of the Co-owners

1) If several persons own a thing in shares and without external division, they are co-owners. Unless otherwise specified, they are co-owners in equal shares.

2) Each co-owner has the rights and obligations of an owner with respect to his or her share, and this share may be sold or pledged by him or her and may be attached by his or her creditors.

Art. 26

2. Rules of Use and Management

1) The co-owners may agree on rules of use and management that deviate from the statutory provisions and stipulate therein that such rules may be amended with the consent of a majority of all co-owners. The rules of use and management may be noted in the land register. 1a) Any amendment to provisions of the rules of use and management concerning the allocation of exclusive rights of use also requires the consent of the co-owners directly affected.

2) They may not revoke or restrict the powers to which each co-owner is entitled:

1. to demand that the administrative acts necessary for the preservation of the value and usability of the property be carried out and, if necessary, ordered by a judge;

2. to take, on their own initiative and at the expense of all co-owners, the measures that must be taken immediately to protect the property from imminent or increasing damage.

Art. 26a

3. Ordinary Administrative Acts

1) Every co-owner is authorized to perform ordinary administrative acts, in particular to carry out repairs, cultivation, and harvesting work, to provide short-term storage and supervision, to conclude contracts for these purposes, and to exercise the powers arising from them and from the lease,

lease and service contracts, including the payment and receipt of sums of money on behalf of the entire property.
2) With the consent of a majority of all co-owners, the authority to perform these administrative acts may be regulated differently, subject to the provisions of the law on necessary and urgent measures.
Art. 26b
4. More Significant Administrative Acts
1) With the consent of a majority of all co-owners, who together represent the majority of the property, more significant administrative acts may be carried out, in particular the change of crop type or use, the conclusion and termination of lease and tenancy agreements, participation in land improvements, and the appointment of an administrator whose authority is not limited to ordinary administrative acts.
2) The provisions regarding necessary construction measures remain reserved.
5. Construction Measures
Art. 26c
a) necessary
Maintenance, restoration, and renovation work necessary to preserve the value and usability of the property may be carried out with the consent of a majority of all co-owners, provided that such work is not permitted to be performed by individual co-owners as part of routine management.
Art. 26d
b) Useful
1) Renovation and remodeling work intended to increase the value or improve the economic efficiency or usability of the property requires the consent of a majority of all co-owners who together represent the majority of the property.
2) Alterations that significantly and permanently impede a co-owner's use of the property for its previous purpose or render such use uneconomical may not be carried out without the co-owner's consent.
3) If the alteration requires a co-owner to incur expenses that are unreasonable for him, in particular because they are disproportionate to the property's value

If the cost of repairing his share of the property exceeds his share of the costs, such repairs may be carried out without his consent only if the other co-owners assume his share of the costs to the extent that it exceeds a reasonable amount.

Art. 26e

c) Work for the purpose of beautification and convenience

1) Construction work that serves solely to beautify the property, enhance its appearance, or improve its convenience of use may be carried out only with the consent of all co-owners.

2) If such work is ordered with the consent of a majority of all co-owners who together represent the larger part of the property, they may be carried out even against the will of a dissenting co-owner, provided that this does not permanently impair his right of use and enjoyment, and the other co-owners compensate him for any merely temporary impairment and cover his share of the costs.

Art. 27

6. Disposition of the Property

1) Each co-owner is authorized to represent, use, and enjoy the property to the extent that this is compatible with the rights of the others.

2) The sale or encumbrance of the property, as well as any change in its intended use, requires the consent of all co-owners, unless they have unanimously agreed on a different arrangement.

3) If there are real property liens or encumbrances on co-ownership shares, the co-owners may no longer encumber the property themselves with such rights. Art. 28

7. Bearing of Costs and Expenses

1) Unless otherwise specified, the administrative costs, taxes, and other expenses arising from the co-ownership or relating to the common property shall be borne by the co-owners in proportion to their shares.

2) If a co-owner has borne such expenses in excess of this share, he may demand reimbursement from the others in the same proportion.

Art. 28a

8. Binding Nature of Regulations and Entries in the Land Register

1) The rules of use and administration agreed upon by the co-owners, the administrative resolutions adopted by them, and the court judgments

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) In the case of co-ownership shares in real property, they may be noted in the land register.
9. Exclusion from the community
Art. 28b
a) Co-owner
1) A co-owner may be excluded from the community by a court judgment if, through his conduct or the conduct of persons to whom he has granted the use of the property or for whom he is responsible, obligations toward all or individual co-owners are so seriously breached that the continuation of the community cannot reasonably be expected of them.
2) If the co-ownership consists of only two co-owners, each has the right to bring an action; otherwise, unless otherwise agreed, an action requires authorization by a majority resolution of all co-owners with the exception of the defendant.
3) If the judge orders the defendant's exclusion, he shall order the defendant to sell his share and, in the event that the share is not sold within the set time limit, shall, upon request, order its public auction in accordance with the provisions governing the forced sale of real property, excluding the provisions regarding the dissolution of co-ownership.
Art. 28c
b) Other Entitled Parties
The provisions regarding the exclusion of a co-owner apply mutatis mutandis to the usufructuary and to the holder of any other real right or registered personal right of use in a co-ownership share.
10. Repeal
Art. 29
a) Right to Partition
1) Every co-owner has the right to demand the dissolution of co-ownership unless it is precluded by a legal transaction, by division into condominium ownership, or by the designation of the property for a permanent purpose.

2) Termination may be excluded for a maximum of thirty years by an agreement, which, for real property, must be in writing to be valid and may be registered in the land register.

3) Termination may not be demanded at an inopportune time.

Art. 30

b) Type of Division

1) The partition shall be effected by physical division, by private sale, or by auction with division of the proceeds, or by transfer of the entire property to one or more of the co-owners, with the others being bought out.

2) If the co-owners cannot agree on the method of termination, the property shall be physically divided by order of the court; if this is not possible without a significant reduction in its value, it shall be auctioned off publicly or among the co-owners.

3) Physical division may be accompanied by a monetary adjustment of the shares in the event of unequal shares.

Art. 30a

c) Domestic Animals

1) In the case of animals kept in a domestic setting and not for financial or commercial purposes, the court shall, in the event of a dispute, award sole ownership to the party who, from an animal welfare perspective, ensures the best care for the animal.

2) The court may order the person to whom the animal is awarded to pay reasonable compensation to the other party; it shall determine the amount at its discretion.

3) It shall take the necessary precautionary measures, in particular regarding the temporary placement of the animal.

Art. 30b Repealed

II. Joint Ownership

Art. 31

1. Prerequisite

If several persons, who are bound together by law or contract, own a thing by virtue of their community, they are joint owners, and each has a right to the whole thing. Art. 32

2. Effect

1) The rights and obligations of the co-owners are governed by the rules applicable to their statutory or contractual partnership.

2) Unless otherwise provided, the exercise of ownership and, in particular, the disposition of the property requires the unanimous decision of all co-owners.

3) As long as the joint ownership continues, a right to partition or to dispose of a fraction of the property is excluded.

Art. 33

3. Termination

1) Termination occurs upon the sale of the property or the dissolution of the community.

2) Unless otherwise specified, partition shall be carried out in accordance with the provisions governing co-ownership.

2. Title

Real Property

1. Section

Subject Matter, Acquisition, and Loss of Real Property

A. Subject Matter

Art. 34

I. In general

1) The subject matter of real property ownership is land.

2) Real property within the meaning of this Act includes:

1. real property,
2. the independent and permanent rights entered in the land register,
3. mines,
4. co-ownership shares in parcels of land. Art.

35

II. Definitions

1) Real property is any parcel of land with sufficiently defined boundaries.

2) Independent and permanent rights are easements or concessions on a parcel of land that

1. are established neither for the benefit of a dominant property nor exclusively for the benefit of a specific person, and

2. are established for a term of at least 30 years or at most 100 years. Art. 36

III. Dependent Ownership

1) A parcel of land may be linked to another parcel in such a way that the owner of the principal parcel is also the owner of the associated parcel. The associated parcel shares the legal fate of the principal parcel and cannot be sold, pledged, or encumbered separately.

2) If the linkage is established for a permanent purpose, the co-owners' statutory right of first refusal and the right to rescind the transaction may not be asserted.

3) A contract within the meaning of paragraph 1 requires official certification of the signatures.

4) The dependent ownership may be noted in the land register. Art. 37

B. Form of Legal Transactions

1) Legal transactions concerning real property (such as sale, exchange, limited real rights, right of first refusal, right of repurchase, right of purchase, etc.) must be in writing to be valid.

2) For entry in the land register, the signatures must be officially certified. The signature of the pledgee on the pledge agreement does not require official certification.

3) Dispositions of property upon death and the marriage contract must comply with the formal requirements prescribed by the laws of succession and matrimonial property law.

C. Acquisition

Art. 38

I. Registration

1) The acquisition of real property requires registration in the land register.

2) In the case of acquisition by appropriation, inheritance, expropriation, foreclosure, or judicial judgment, however, the acquirer obtains ownership even before registration, but

but may dispose of the property in the land register only after registration has taken place.

II. Types of Acquisition Art. 39 Repealed Art. 40

1. Acquisition by Appropriation

The acquisition of a parcel of land is governed by the provisions regarding ownerless property.

2. Land redistribution

Art. 41

a) In general

1) Soil displacement from one parcel of land to another does not result in a change of boundaries.

2) Parts of the ground and other objects that have thereby passed from one property to another are subject to the provisions governing incorporated objects or connections of objects.

Art. 41a

b) Permanent

1) The principle that soil movements do not result in a change of boundaries does not apply to areas with permanent soil movements if these areas have been designated as such by the government.

2) When designating these areas, the nature of the affected parcels of land must be taken into account.

3) The fact that a parcel of land belongs to such an area must be noted in the land register.

Art. 41b

c) Redefinition of Boundaries

1) If a boundary becomes impractical due to a land shift, any affected landowner may request that it be redetermined.

2) Any increase or decrease in value must be compensated.

d) Procedure

Art. 41c

aa) When determining the perimeter for areas with permanent ground shifts

1) The perimeter for areas with permanent ground movements shall be depicted in a plan following its determination by the government (Art. 41a) and made available for public inspection for 30 days.
2) In all other respects, the provisions of the Surveying Act regarding the public display and objection procedure apply mutatis mutandis to the determination of the area's perimeter.
Art. 41d
bb) In the event of the redrawing of inappropriate boundaries
1) If boundaries within an area perimeter with permanent ground movements defined by the government become inappropriate (Art. 41b), the competent municipality shall, at the request of the landowners, initiate a procedure to redraw the boundaries.
2) The municipality must first define a perimeter that encompasses the area containing the properties affected by the ground movement. The perimeter of the area requires government approval.
3) The redefinition and, if necessary, the re-surveying of the boundaries must be carried out by the official surveying authorities.
4) The plan showing the newly defined boundaries must be publicly posted for 30 days, together with the compensation for excess and shortfall values. The provisions of the Surveying Act apply mutatis mutandis to the public posting and objection procedure.
5) The municipality bears the costs of the procedure for redefining the boundaries; Article 53(1)(b) and (2) of the Surveying Act applies mutatis mutandis to the costs of publication. The costs of any resurveying of the boundaries are to be borne by the state.
6) Inappropriate boundaries of minor extent shall be resolved between the affected landowners in a simplified procedure.
7) The government shall regulate the details of the procedure for redrawing the boundaries, in particular the simplified procedure under paragraph 6, by ordinance.
4. Acquisition by Adverse Possession
Art. 42
a) Ordinary acquisitive prescription
If a person is registered as the owner in the land register without justification, their ownership may no longer be contested once they have possessed the property in good faith for ten years

the entry in the land register, their ownership can no longer be challenged.

Art. 43

b) Extraordinary Adverse Possession

1) If a person possesses a property that is not recorded in the land register as his or her own, continuously and unchallenged for 30 years, he or she may, provided he or she is acting in good faith, demand to be registered as the owner.

2) Under the same conditions, this right is available to the possessor of a parcel of land whose owner is not identifiable from the land register or who, at the start of the 30-year period of acquisitive prescription, was deceased or declared missing.

3) However, registration may only take place upon a decision by the district court in non-contentious proceedings, provided that no objection has been raised within a period set by official notice or that any objection raised has been dismissed through legal proceedings.

Art. 44

c) Time Limits

The provisions governing the statute of limitations for claims shall apply mutatis mutandis to the calculation of time limits, the interruption, and the suspension of acquisitive prescription.

Art. 45

III. Right to Registration

1) The basis of acquisition gives the acquirer a personal claim against the owner for registration and, if the owner refuses, the right to have ownership granted by a court.

2) In cases of acquisition by appropriation, inheritance, expropriation, foreclosure, or a court judgment, the acquirer may effect registration on their own initiative.

Art. 46

D. Loss

1) Real property ceases to exist upon cancellation of the registration, as well as upon the complete destruction of the property.

2) The time at which loss occurs in the event of expropriation is determined by the law governing expropriation.

E. Judicial Measures

Art. 46a

I. Where the owner cannot be located

1) If the owner entered in the land register cannot be identified, if his or her place of residence is unknown, or if the name or place of residence of one or more of his or her heirs is unknown, the court may, upon application, order the necessary measures.

2) In particular, the court may appoint a representative. Upon application, it shall determine the scope of the representative's authority. Unless otherwise specified, this authority is limited to measures of preservation.

3) An application for the ordering of measures may be filed by:

1. any person with a legitimate interest;

2. the Office of Justice.

4) The ordering of measures does not interrupt the period for extraordinary acquisitive prescription.

Art. 46b

II. In the absence of the prescribed bodies

If a legal entity registered as the owner in the land register no longer has the required governing bodies, any person with a legitimate interest, or the Office of Justice, may petition the court to order the necessary measures regarding the property.

2. Section

Content and Limitations of Real Property Ownership

A. Content

Art. 47

I. Scope

1) Ownership of land extends upward and downward to the airspace and the subsoil, to the extent that there is an interest in exercising such ownership.

2) Subject to statutory limitations, it includes all structures and plants, as well as springs.

II. Boundaries

Art. 48

1. Type of Demarcation

1) The boundaries are indicated by the land registry plans and by the demarcations on the property itself.

2) If the existing land registry plans and the demarcations conflict, the land registry plans are presumed to be correct.

3) This presumption does not apply to areas designated by the government as subject to land shifts.

Art. 49

2. Obligation to demarcate

Every landowner is obligated to cooperate at the request of a neighbor to determine an uncertain boundary, whether by correcting the land registry plans or by installing boundary markers.

Art. 50

3. Action for Boundary Determination

If a neighboring landowner refuses to cooperate in determining the boundary, or if the course of the boundary is disputed, a lawsuit may be filed in court.

Art. 51

4. Costs

Repealed

Art. 52

5. Co-ownership of boundary markers

1) If boundary markers between two parcels of land are located on the boundary, co-ownership by the two neighbors is presumed.

2) Subject to Art. 89.

III. Structures on the Property

1. Land and building materials

Art. 53

a) Ownership

1) If a person uses material belonging to another to construct a building on their own land, or uses their own material on another's land, such material becomes part of the property.

2) However, if the use took place without the owner's consent, the owner of the material is entitled to demand, at the landowner's expense, the removal of the material and its return, provided this is possible without causing disproportionate damage.

3) Under the same conditions, if the use took place without the landowner's consent, the landowner may demand the removal of the material at the builder's expense.

Art. 54

b) Compensation

1) If the material is not separated from the ground, the landowner must pay reasonable compensation for the material.

2) If the landowner who is constructing the building acts in bad faith, the judge may award full damages.

3) If the building material owner acts in bad faith, the judge may also award only the minimum value of the structure to the landowner.

Art. 55

c) Allocation of Land Ownership

If the value of the structure clearly exceeds the value of the land, the party acting in good faith may demand that ownership of the structure and land be assigned to the owner of the materials in exchange for reasonable compensation.

Art. 56

2. Overhanging Structures

1) Structures and other installations that extend from one parcel of land onto another remain part of the parcel from which they originate if the owner of that parcel has a real right to their existence.

2) The right to the superstructure may be entered in the land register as an easement.

3) If a superstructure is unauthorized, and the aggrieved party fails to object in a timely manner despite having become aware of this, the person who erected the superstructure, acting in good faith, may, if the circumstances warrant it, be granted the right in rem to the superstructure or ownership of the land in exchange for reasonable compensation.

Art. 57

3. Building Rights

1) Structures and other installations that are dug into, built upon, or otherwise permanently connected to the land on or beneath the surface of another's land may have a separate owner if their existence is registered in the land register as an easement.

2) The creation of a building right on individual floors of a building is excluded.

Art. 58

4. Utilities

1) Utility lines for supply and disposal that are located outside the property they serve belong, unless otherwise provided, to the owner of the structure and to the structure from which they originate or to which they are connected.

2) Unless neighbor law applies, the encumbrance of another's property with such lines is established by creating an easement.

3) The easement arises upon the construction of the line, provided it is visible from the outside. Otherwise, it arises upon registration in the land register. Art. 59

5. Structures on Land

1) Huts, shacks, barracks, and the like retain their separate ownership if they are erected on another's land without the intention of a permanent connection.

2) Their existence is not entered in the land register. Art. 60

IV. Plantings on the Property

1) If a person uses another's plants on their own property, or their own plants on another's property, the same rights and obligations arise as when using building materials or erecting movable structures.

2) The creation of an easement on plants and woodlands in accordance with building law is excluded.

V. Liability of the Landowner

Art. 61

1. In the event of an infringement of property rights

1) If a person suffers damage or faces a threat of damage because a landowner has exceeded the scope of their property rights, that person may bring an action to have the damage remedied, to be protected against the threat of damage, and to recover damages.

2) If a structure or facility deprives a neighboring property of certain characteristics, the aforementioned claims exist only if the regulations in force at the time of the structure's or facility's construction were not complied with.

Art. 61a

2. In the case of lawful use of the property

If a landowner, in the lawful management of his property, particularly during construction, temporarily causes a neighbor excessive and unavoidable inconvenience and thereby causes damage, the neighbor may only claim compensation from the landowner.

B. Restrictions

Art. 62

I. In general

1) Statutory restrictions on ownership exist without registration in the land register.

2) Any cancellation or modification thereof by legal act must be in writing and entered in the land register to be valid.

3) The cancellation or modification of restrictions on ownership of a public-law nature is excluded.

II. Restrictions on Disposal

1. Statutory rights of first refusal

Art. 63

a) Principles

1) Statutory preemptive rights may also be exercised in a foreclosure auction, but only on the date of the auction and under the conditions under which the property is awarded to the highest bidder; otherwise, statutory preemptive rights may be asserted under the conditions applicable to contractual preemptive rights.

2) The right of first refusal lapses if the property is sold to a person who is entitled to a right of first refusal of the same or higher priority.

3) Statutory preemptive rights may neither be inherited nor assigned. They take precedence over contractual preemptive rights.

Art. 64

b) Exercise

1) The seller must notify the persons entitled to pre-emption of the conclusion and content of the purchase agreement.

2) If the person entitled to the right of first refusal wishes to exercise their right, they must do so within three months of becoming aware of the conclusion and content of the contract. The right can no longer be exercised two years after the new owner is entered in the land register.

3) The person entitled to pre-emption may assert their claim against any owner of the property within these time limits.

Art. 65

c) Amendment, Waiver

1) An agreement that excludes or modifies a statutory right of first refusal requires official certification of the signatures to be valid. It may be noted in the land register if the right of first refusal is held by the respective owner of another property.

2) Once the right of first refusal has arisen, the entitled party may waive the exercise of such right in writing.

Art. 66

d) In co-ownership and building lease relationships

1) Co-owners have a right of first refusal against any non-co-owner who acquires a share.

2) The owner of a parcel of land encumbered with an independent and perpetual building right also has a right of first refusal against any acquirer of that right, as does the holder of that right against the encumbered parcel of land, to the extent that the latter is claimed through the exercise of his right.

3) Agreements regarding the waiver or modification of the right of first refusal may be noted 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 exists for the period specified in the registration against any owner under the registered conditions or, in the absence thereof, under the conditions under which the property was sold to the third party.

2) The right of first refusal may be exercised when the property is sold, as well as in connection with any other legal transaction that is economically equivalent to a sale (event triggering the right of first refusal). In particular, the following do not constitute events triggering the right of first refusal: acquisition by inheritance, foreclosure, and acquisition for the fulfillment of public duties, provided that the conditions for expropriation are met.

3) The seller must notify the person entitled to the right of first refusal of the conclusion and the terms of the purchase agreement.

4) The right of first refusal expires three months after the holder has been notified of the sale; it expires in any case 25 years after the registration of the priority notice, unless a longer period has been agreed upon in the contract.

Art. 66b

3. Rights of Purchase and Repurchase

1) If a right of purchase or a right of repurchase is registered as a preliminary notice in the land register, it remains in effect against any owner for the period specified in the preliminary notice.

2) Unless a longer period has been agreed upon in the contract, the right of purchase expires in any case upon the expiration of ten years, and the right of repurchase expires in any case upon the expiration of 25 years from the date of the annotation.

III. Neighbor Law

Art. 67

1. Excessive Impacts

1) Everyone is obligated, in the exercise of their property rights—such as in the operation of a business on their property—to refrain from any excessive impact on the property of neighbors.

2) In particular, any harmful effects or effects not justified by the location and nature of the properties or by local custom—such as air pollution, foul odors, noise, sound, vibrations, radiation, or the deprivation of sunlight or daylight—are prohibited.

2. Buildings

Art. 68

a) Rule

1) In the case of buildings, the owner may not damage neighboring properties by disturbing or endangering their soil or by impairing existing structures.

2) The provisions regarding overhanging structures apply to structures that violate the provisions of neighbor law.

3) In all other respects, subject to the special provisions of public law, the following restrictions apply.

b) Statutory Distances

Art. 69

aa) In general

Repealed

Art. 70

bb) In relation to roads and paths

Repealed

c) Profiles

Art. 71

aa) Procedure

Repealed Art.

72

bb) Effects

Repealed Art.

73

d) Deprivation of liberty

1) If, by constructing a new building or raising the height of an existing one while complying with the statutory setback requirements, a person deprives a neighboring property of sunlight or a neighboring building of light and thereby causes significant damage, the neighbor is entitled to claim compensation within one year of the completion of the exterior construction.

2) In the case of connected rows of houses, this provision applies only to the construction of a taller building.

Art. 74

e) Reconstruction

Repealed Art. 75

Repealed Art.

76–79 Repealed

3. Excavations

Art. 80

a) General

When conducting excavations, the owner must not damage neighboring properties by disturbing or endangering their soil or by impairing existing structures.

b) Peat extraction

Art. 81–83

Repealed

4. Plants

Art. 84

a) Rule

1) If overhanging branches or encroaching roots damage a neighbor's property and are not removed within a reasonable time after the neighbor's complaint, the neighbor may cut them off and keep them.

2) If a landowner tolerates branches overhanging developed or built-up land, he has a right to the fruit growing on them (Anries).

3) These provisions do not apply to forest properties that border each other, nor to cases where branches overhang a property in common use.

4) In case of doubt, trees on the boundary shall be regarded as jointly owned by the two landowners.

Art. 85

b) Distances

1) Standard trees that are not fruit trees, as well as nut trees, may not be planted closer than six meters to the boundary; other fruit trees, no closer than four meters; dwarf and landscape trees and shrubs, no closer than 50 centimeters; and vines, no closer than 30 centimeters. If the neighboring property is a vineyard, standard trees may not be planted closer than eight meters to it.

2) The right to object to trees planted too close expires five years after planting.

3) The above distances do not need to be observed in relation to wooded areas.

5. Boundary Markers

Art. 86

a) Art

Repealed

b) Distances

Art. 87

aa) From the neighboring property

Repealed

Art. 88

bb) Across from streets, paths, etc.

Repealed

Art. 89

c) Ownership

1) In cases of doubt, fences on the boundary between two parcels of land shall be deemed to be jointly owned by the two landowners.

2) For enclosures of completely enclosed parcels, unless the adjoining parcel is also an enclosure, it is presumed that they are appurtenances of the enclosed parcel.

3) Fences that enclose properties bordering on roads, public squares, forests, and common lands are presumed to be appurtenances of the enclosed properties.

d) Obligation to Enclose

Art. 90

aa) In general

1) Bridges, ponds, ditches, pits, and similar hazardous areas must be fenced off or covered.

2) The municipal council shall ensure compliance with this provision, and the government, as the supervisory authority, shall issue the necessary orders in administrative proceedings if necessary.

3) In other cases, the municipal council shall decide on the necessity and type of fencing in the event of a dispute.

Art. 91

bb) In the case of mutual grazing

1) Where mutual grazing takes place on adjacent properties, each adjacent landowner may demand fencing at the expense of both parties.

2) Each adjacent landowner must erect and maintain a section of the fence corresponding to their interest.

3) If properties used for grazing are separated by footpaths or farm roads, there is no obligation to erect a fence unless otherwise agreed or unless local custom dictates otherwise.

Art. 92

cc) In the case of grazing on one side

1) Every property on which grazing takes place must be fenced off from neighboring properties where grazing does not take place at the owner's expense, unless a different local custom can be demonstrated.
2) Unless local custom provides otherwise, every property must be fenced off from other properties on which general grazing takes place, with the exception of public roads and paths.
3) The costs of this fencing shall be borne by the owners of all properties protected thereby, in proportion to their respective interests.
Art. 93
6. Water Drainage
1) Every landowner is obligated to collect water that naturally flows from the property situated above, such as rainwater, snowmelt, and water from springs that are not tapped.
2) No one may alter the natural flow to the detriment of a neighbor.
3) The wastewater necessary for the lower property may be diverted to it only to the extent that it is indispensable for the upper property.
Art. 94
7. Drainage
1) In the case of drainage, the owner of the lower property must accept the water that previously flowed to him naturally without compensation.
2) If he suffers damage as a result of the pipeline, he may demand that the owner of the upper property extend the pipeline through the lower property at his own expense.
8. Cross-passages
Art. 95
a) Duty to Tolerate
1) Every landowner is obligated to permit the passage of pipes and conduits for supply and disposal in exchange for full compensation if another property cannot otherwise be connected or can only be connected at disproportionate cost.
2) The right to right-of-way under neighbor law cannot be asserted in cases where the right of eminent domain applies.

3) If the beneficiary or the encumbered party so requests, the rights of way shall be entered in the land register as easements at the beneficiary’s expense. The right of way may be asserted against a purchaser acting in good faith even without such registration.

Art. 96

b) Protection of the Interested Party’s Interests

1) The encumbered landowner is entitled to have his interests taken into account in a reasonable manner.

2) Where extraordinary circumstances justify it, he may, in the case of above-ground lines, demand that the portion of land over which these lines are to be routed be acquired from him to an appropriate extent in return for full compensation.

Art. 97

c) Change in circumstances

1) If circumstances change, the encumbered party may demand that the line be relocated in a manner consistent with his interests.

2) The costs of the relocation shall generally be borne by the entitled party.

3) Where special circumstances justify it, however, a reasonable portion of the costs may be imposed on the encumbered party.

d) The Procedure

Art. 98

aa) Application

1) Anyone wishing to use a neighboring property for such crossings may, if no agreement can be reached with the owner of said property, submit an application for permission to the municipal council.

2) The application must be supported by a written statement of reasons. The accompanying plan must precisely specify the content and scope of the right of way sought, as well as the location of the strip of land to be used for the line.

3) The municipal council must notify the mortgagees of the application to safeguard their rights.

Art. 99

bb) Decision

1) The municipal council grants the party subject to the right of way a 14-day period for filing an objection.

2) In the event of an objection, the municipal council shall decide whether the legal requirements for granting permission for the right of way are met, and to what extent and in what manner it is to be granted.
3) The municipal council may, at the expense of the applicant, obtain an expert opinion.
4) Compensation for the established right of way shall be determined at the same time.
Art. 100
cc) Appeals
Within one month of notification of this decision, any party may file a lawsuit with the district court regarding both the right of way and the compensation.
Art. 101
dd) Procedure for Relocations
1) Requests for the relocation of a right of way due to a change in circumstances must be submitted by the party subject to the encumbrance to the municipal council, stating the reasons, if an agreement cannot be reached with the owner of the property.
2) The municipal council shall decide whether and in what manner the relocation is to take place and whether a portion of the relocation costs is to be borne by the party subject to the easement.
3) Within one month of notification of this decision, either party may file a lawsuit with the district court.
9. Rights of Way
Art. 102
a) Emergency access
1) If a landowner does not have adequate access from his property to a public road, he may demand that his neighbors grant him a right of way in exchange for full compensation.
2) This provision applies in particular when, as a result of land improvements or similar developments, a right of way becomes necessary or the existing right of way becomes insufficient.

3) The claim is directed primarily against the neighbor who, given the previous ownership and access conditions, can most reasonably be expected to grant the right of way, and secondarily against the neighbor for whom the right of way is least detrimental.

4) In determining the right of way, the interests of both parties must be taken into account.

5) Disputes shall be resolved in non-contentious proceedings.

b) Right of way

Art. 103

aa) Existence

1) The right of way is recognized where a corresponding practice can be demonstrated.

2) If it is mutually applicable to owners of neighboring fields, it ceases to exist without compensation as soon as it is officially terminated by one party.

3) If it encumbers a single parcel of land, it may be redeemed for half the value of the four-meter-wide footprint.

Art. 104

bb) Extent

1) The extension must be limited to four meters everywhere.

2) In municipalities where the right of way is exercised, the municipal council must determine each spring and fall when the exercise of this right may begin and when it must end. The decision is final.

3) On field paths and field roads, the right of extension may be exercised at any time, provided that damage is avoided.

Art. 105

c) Riesen

1) The owner of a forest, as well as the owner of timber harvested there for which there are no or only unsuitable means of transport, is entitled to demand that the owners of adjacent properties allow the timber to be transported through their land at a suitable location—if necessary, using sleds, toboggans, or special devices such as wire ropes and wooden tracks—in exchange for full compensation.

2) In any case, the skidding must, if practicable, take place in winter and with as little damage as possible to the lower-lying properties.

3) In the event of disputes, the Regional Court shall decide in the first instance, in expedited non-contentious proceedings, on both the obligation to grant passage and the obligation to pay damages.
4) Such rights may be requested and granted either on a case-by-case basis or permanently for the future.

Art. 106

d) Public Field and Footpaths

1) Owners of properties crossed by public field and footpaths must permit their use at all times.
2) The municipality must maintain them so that they can be used for their intended purpose.
3) Complaints regarding violations of the right of use may be filed with the municipal council.

Art. 107

e) Winter Paths

1) Unless otherwise stipulated by regulations or contracts, the usual winter paths shall generally be used only when there is a sledding slope or when the ground is frozen.
2) In cases of urgency and if no other suitable path is available, it is permitted, as an exception, to travel on snow-free and unfrozen ground from mid-February to the first of March.
3) If this causes significant damage to the landowner, the landowner must be compensated.

Art. 108

f) Local Use

1) The exercise of these rights must be carried out with the utmost care for the land in question.
2) In all other respects, existing local practices shall govern the manner and extent of the exercise of these rights, in particular with regard to watering routes, winter routes, hayracks, haystacks, and the like.

Art. 109

g) Entry in the Land Register

1) Easements directly established by law, as well as customary winter paths, exist by operation of law without registration.

2) However, if they are of a permanent nature, they shall be noted in the land register.
Art. 110
10. Emergency logging
1) If an alp lacks sufficient timber of its own or logging rights, the owner of the adjacent forest best suited for this purpose is obligated to supply, in exchange for full compensation, the timber necessary for the construction and maintenance of the stables and alpine huts, provided that no other material can be used for these purposes without incurring excessive costs.
2) The district court shall decide on the existence and scope of this obligation, as well as on the obligation to pay compensation, in non-contentious proceedings.
Art. 111
11. Right of Snow Clearance
The right of snow clearance shall be maintained in accordance with existing contracts, customs, or previous practice.
Art. 112
12. Maintenance Obligation
Landowners shall contribute to the costs of the facilities necessary for the exercise of neighborly rights in proportion to their interest.
IV. Right of Access and Defense
Art. 113
1. Access
1) Entry into forests and pastures and the gathering of wild berries, mushrooms, and the like are permitted to everyone to the extent customary in the locality, unless the municipal council issues specific, limited prohibitions in an administrative prohibition proceeding in the interest of crops.
2) The public law provisions of hunting and fishing legislation shall apply to the entry onto private property for the purpose of hunting and fishing.
Art. 114
2. Removal of objects carried onto property and the like
1) If objects are carried onto another’s property by water, wind, avalanches, or other forces of nature or accidental events, or if animals, such as livestock, swarms of bees, poultry, and fish, end up on another’s property,

In such cases, the landowner must allow the entitled party to locate and remove such items.

2) The landowner may demand compensation for any resulting damage and has a right of retention with respect to these items.

Art. 115

3. Prevention of Danger and Damage

1) If a person can avert imminent damage or present danger to himself or others only by encroaching upon the land of a third party, the latter is obligated to tolerate the encroachment as soon as the danger or damage is disproportionately greater than the impairment caused by the encroachment.

2) Such an obligation to tolerate interference applies in particular to the performance of necessary repairs on neighboring buildings, the erection of scaffolding required for this purpose—for which, however, a strip of land no more than one meter wide may be used— the trimming and repair of fences and similar work, and for passage and transit, provided that the usual route has become unusable for any reason.

3) Reasonable compensation must be provided for any damage resulting therefrom.

V. Public surveying markers

Art. 116–118

Repealed

VI. Prevention of the fragmentation of property

Art. 119

Repealed Art.

120

Repealed Art.

121

Repealed

VII. Heritage Protection

Art. 122

1. Duties of the Municipal Council

Repealed Art.

123

2. Expropriation

The right of eminent domain may be exercised for the purpose of preserving buildings or building components of artistic or historical value, as well as natural monuments.

VIII. Land Improvements

Art. 124–140 Repealed

IX. Redistribution of Building Land Art. 141–147 Repealed

Art. 148

X. Public Works

1) Regulations governing river, stream, and canal improvements to be carried out by public authorities, as well as related land reclamation and similar works, are reserved for special legislation.

2) In case of doubt, the government shall decide whether a planned project is subject to such special legislation.

C. Rights to Springs and Wells

Art. 149

I. Ownership of Springs and Spring Rights

1) Springs are components of real property and may only be acquired as property together with the land from which they arise.

2) The right to springs on another's land is established as an easement by entry in the land register.

3) Repealed

Art. 150

II. Diversion Beyond the Country's Borders

The provisions governing the diversion of public waters beyond the national border apply to the diversion of springs beyond the national border.

III. Tapping of springs

Art. 151

1. Compensation

1) If springs and wells that are used to a significant extent or have been tapped for the purpose of exploitation are damaged to the detriment of the owner or user—

If the water rights holder's water is diverted, impaired, or contaminated by structures, installations, or other measures taken by others, compensation may be claimed.

2) If the damage was caused neither intentionally nor through negligence, or if the injured party is at fault, the Regional Court shall determine at its discretion whether, to what extent, and in what manner compensation is to be paid.

Art. 152

2. Restoration

1) If springs and wells that are indispensable for the cultivation or habitation of a property or for drinking water supplies are dug up or contaminated, restoration to the previous condition may be demanded, to the extent that this is at all possible.

2) In other cases, such restoration may be demanded only where special circumstances justify it.

Art. 153

IV. Spring Community

1) If neighboring springs belonging to different owners, as the outflow of a common catchment area, together form a group of springs, any owner may request that they be tapped jointly and supplied to the entitled parties in proportion to the previous flow rate of the springs.

2) The costs of the joint installation shall be borne by the entitled parties in proportion to their interest.

3) If one of the entitled parties objects, each of them is authorized to properly tap and divert their spring even if the flow of the other springs is thereby impaired, and is liable for compensation only to the extent that their spring has been enhanced by the new facilities. Art. 154

V. Use of Third-Party Springs

1) Wells, springs, and streams that are privately owned may be used by anyone for household and farm needs during periods of exceptional water shortage, or if the owner of a property is temporarily unable to use their own well due to cold weather or similar reasons, provided this can be done without causing significant inconvenience to the owner.

2) In such cases, the user is obligated to contribute reasonably to the cleaning and, in the event of prolonged shared use, also to the maintenance of the well.

3) The use of another's water must be carried out with the utmost consideration for the owner's interests. Any damage resulting from such use must be compensated.

4) In the event of a dispute, the municipal council shall decide on the right to water supply. Art. 155

VI. Emergency Well

1) If a property lacks the water necessary for the house and yard and such water cannot be diverted from elsewhere without entirely disproportionate effort and expense, the owner may demand, in non-contentious proceedings, that a neighbor who is able to supply such water without being in need himself assign a share of a well or spring in exchange for full compensation, and the owner is entitled to use the access necessary for this purpose.

2) In determining the emergency well, preference shall be given to the interests of the party obligated to provide it.

3) If circumstances change, a modification of the agreed arrangement may be requested.

VII. Obligation to Cede

Art. 156

1. Water

1) If springs, wells, or streams are of no use to their owner, or of very little use in relation to their potential utility, the owner may be required to transfer them, in exchange for full compensation, for the purposes of drinking water supply, fire hydrant systems, or other public welfare projects.

2) Such compensation may consist of the supply of water from the new facility.

Art. 157

2. Land

Owners of drinking water supply systems may, by way of expropriation, demand the transfer of the surrounding land to the extent necessary to protect their springs from contamination.

D. Alpine Cooperative

Art. 158

I. Principle

1) An alp register (Seybuch) shall be maintained for each alp belonging to an alp cooperative that is divided into partial rights, such as cow rights or grazing rights, which constitute independent objects of trade.

2) The existence of an alpine register shall be noted in the land register for the parcels of land belonging to the alpine cooperative.

Art. 159

II. Record-keeping and Legal Remedies

1) The alpine register is maintained by the Office of Justice.

2) The Office of Justice may delegate the maintenance of the alpine register to a member of the board of directors of the alpine cooperative. The Office of Justice is responsible for the direct supervision of the person entrusted with maintaining the register. The Office of Justice must revoke this person's authority to maintain the register if proper maintenance of the register is no longer ensured.

3) An appeal against decisions of the Office of Justice or the person entrusted with maintaining the register may be filed with the Appeals Commission for Administrative Matters within 14 days.

Art. 160

III. Fees and Costs

If the maintenance of the alpine register is delegated, the alpine cooperative must bear the costs of maintaining the alpine register itself. The alpine cooperative may charge fees in accordance with the regulations applicable to land registry maintenance.

Art. 161

IV. General Ledger

1) The Alpine register consists of a main register.

2) A separate page with its own number must be opened for each partial right.

3) Only whole partial rights may be recorded.

V. Entries

Art. 162

1. General

1) The transfer of ownership and the creation of limited real rights in partial rights shall be entered in the main register.

2) Contracts concerning partial rights require, to be valid, the same form as that prescribed for contracts concerning real property.

Art. 163

2. Registration

1) Entries are made on the basis of a written application and upon proof of the legal basis.

2) The provisions governing the land register apply to the requirements for filing.

Art. 164–166

Repealed Art.

167

3. Effect

1) The transfer of a partial right and the creation of a limited real right in such a right do not take legal effect until they are entered in the general ledger.

2) Anyone who relies in good faith on an entry in the main register is to be protected in their rights.

3) The defense that a person was unaware of an entry in the main register is precluded.

4. Relationship to the Land Register

Art. 168

a) Effect

1) Ownership and limited real rights in the alp as a unit are determined by the entries in the land register.

2) Rights acquired under land registry law in the alp as a unit take precedence over rights acquired in the partial rights.

Art. 169

b) Applicable Law

In all other respects, the provisions of land registry law regarding the procedure for entries and deletions apply mutatis mutandis to the Alpine Pasture Register. Art. 170

VI. Maintenance of the Electronic Alpine Pasture Register

1) The Alpine Land Register may be maintained electronically (electronic Alpine Land Register).

2) The provisions governing the maintenance of the computerized land register apply mutatis mutandis.

3) The government shall regulate the details of the registration procedure and the maintenance of the register by ordinance.

3. Section

Condominium Ownership

A. Content and Subject Matter

Art. 170a

I. Definition

1) Condominium ownership is the co-ownership share in a parcel of land that grants the co-owner the exclusive right to use and finish the interior of specific parts of a building.

2) The condominium owner is free to manage, use, and design the interior of his or her own units, but may not hinder any other condominium owner from exercising the same right, nor may he or she damage the common structural elements, facilities, and equipment in any way or impair their function or appearance.

3) They are obligated to maintain their premises in a manner necessary to keep the building in perfect condition and good appearance.

Art. 170b

II. Subject Matter

1) The subject matter of a special right may be individual units or parts of units that must be self-contained as apartments or as units of rooms for commercial or other purposes with their own access, but may include separate ancillary rooms.

2) The following may not be allocated to the condominium owner as a special right:

1. the land on which the property is situated and the building rights under which the building is constructed, if applicable;
2. the structural elements that are essential to the stability, structural layout, and strength of the building or the rooms of other condominium owners, or that determine the external form and appearance of the building;
3. the facilities and installations that also serve the other condominium owners for the use of their units.

3) Other components of the building may be declared common property in the deed of establishment and, in the same form, also by a subsequent agreement of the condominium owners; if this has not been done, it is presumed that they have been separated as subject to exclusive rights.

Art. 170c

III. Disposition

1) By law, a condominium owner does not have a right of first refusal against any third party who acquires a unit; however, such a right may be established in the deed of establishment or by subsequent agreement and noted in the land register.

2) Similarly, it may be stipulated that the sale of a condominium unit encumbered by a usufruct or a right of residence, as well as its leasing, is only legally valid if the other condominium owners have not raised an objection within 14 days of being notified, based on a resolution they have adopted.

3) The objection is invalid if it was raised without good cause, which the judge shall determine at the request of the party against whom the objection was raised.

B. Establishment and Termination

Art. 170d

I. Establishment

1) Condominium ownership is established by entry in the land register.

2) Registration may be requested:

1. on the basis of an agreement among the co-owners regarding the structuring of their shares as 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 regarding the creation of co-ownership shares and their conversion into condominium ownership.

3) To be valid, the legal transaction must be publicly notarized by the Office of Justice or, if it is a disposition of property upon death or an agreement on the division of an estate, it must comply with the form prescribed by inheritance law.

Art. 170e

II. Spatial Demarcation and Value Ratios

1) In addition to the spatial division, the deed of establishment shall specify the share of each unit as a fraction of one hundredth or one thousandth of the value of the real property or the building right.

2) Changes to the value shares require the consent of all directly affected parties and the approval of the meeting of condominium owners; however, each condominium owner is entitled to a correction if their share was incorrectly determined due to an error or has become incorrect as a result of structural changes to the building or its surroundings.

Art. 170f

III. Termination

1) Condominium ownership terminates upon the extinction of the real property or the building right and upon its deletion from the land register.

2) Cancellation may be requested by a condominium owner who holds all shares, either pursuant to a termination agreement or without one; however, it requires the consent of the persons holding real rights in the individual units, whose rights cannot be transferred to the property without causing them harm.

3) Termination may be requested by any condominium owner if the building:

1. has been destroyed to more than half its value and reconstruction is not possible without an onerous burden; or

2. has been divided into condominiums for more than 50 years and can no longer be used for its intended purpose due to its poor structural condition.

4) The condominium owners who wish to continue the community may avert the dissolution by compensating the remaining owners.

C. Management and Use

Art. 170g

I. Applicable provisions

1) The provisions on co-ownership apply to the authority to perform administrative acts and undertake construction measures. Unless these provisions themselves preclude it, they may be replaced by other rules, but only in the deed of establishment or by a unanimous resolution of all condominium owners.

2) Furthermore, any condominium owner may request that regulations governing the management and use of the property be drawn up and entered in the land register; for these regulations to be binding, they must be adopted by a resolution passed by a majority of the

condominium owners, who together hold more than half of the shares, and may be amended by this majority, even if it was established in the founding deed.

3) Any amendment to the regulatory allocation of exclusive rights of use also requires the consent of the condominium owners directly affected.

II. Common Costs and Expenses

Art. 170h

1. Existence and Distribution

1) The condominium owners shall contribute to the expenses of the common property and to the costs of the common administration in proportion to their value share.

2) Such expenses and costs include, in particular:

1. expenses for routine maintenance, repairs, and renovations 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 administrator's compensation;
3. the public-law contributions and taxes imposed on the condominium owners as a whole;
4. interest and principal payments to mortgagees for whom the condominium is liable or to whom the condominium owners are jointly and severally liable.

3) If certain common building components, facilities, or installations do not serve individual condominium units, or serve them only to a very limited extent, this must be taken into account when allocating costs.

2. Liability for Contributions

Art. 170i

a) Statutory lien

1) The community is entitled to establish a lien on the share of each respective condominium owner for contribution claims arising over the last three years.

2) Registration may be requested by the administrator or, if no such administrator has been appointed, by any condominium owner authorized to do so by a majority resolution or by a judge, and by the creditor for whom the contribution claim has been attached.

3) In all other respects, the provisions governing the creation of a builder's lien apply mutatis mutandis.
Art. 170k
b) Right of retention
1) The community has a right of retention, similar to that of a landlord, over the movable property located in the premises of a condominium owner and belonging to the furnishings or use of such premises, for contribution claims arising over the past three years.
Art. 170l
III. Legal Capacity of the Community
1) In its own name, the association acquires the assets resulting from its management activities, such as contribution claims and the available funds derived therefrom, including the renovation fund.
2) The condominium owners' association may sue and be sued in its own name, and may be sued and be subject to legal proceedings at the location of the property.
D. Organization
I. Meeting of Condominium Owners
Art. 170m
1. Competence and Legal Status
1) In addition to the powers specified in other provisions, the meeting of condominium owners has, in particular, the following powers:
1. to decide on all administrative matters not falling within the administrator's purview;
2. to appoint the administrator and supervise his activities;
3. to elect a committee or a representative to whom it may delegate administrative matters, such as the task of advising the administrator, reviewing the administrator's management, and reporting to the assembly and making proposals;
4. to approve annually the budget, the financial statement, and the allocation of costs among the owners;
5. to decide on the establishment of a renovation fund for maintenance and renovation work;
6. to insure the building against fire and other hazards and to take out the customary liability insurance, and furthermore to oblige the condominium owner who

has made structural alterations to their units involving extraordinary expenses to pay an additional share of the premium if they do not take out supplementary insurance at their own expense.
2) Unless the law contains specific provisions, the provisions regarding the association's governing bodies and the contesting of association resolutions shall apply to the assembly of condominium owners and to the committee.
Art. 170n
2. Convening and Conduct
1) The meeting of condominium owners shall be convened and chaired by the administrator, unless the meeting has decided otherwise.
2) The resolutions must be recorded in the minutes, and the minutes must be kept by the administrator or by the condominium owner presiding over the meeting.
Art. 170o
3. Exercise of Voting Rights
1) Several persons who jointly own a unit have only one vote, which they cast through a representative.
2) Likewise, the owner and the usufructuary of a unit must agree on the exercise of voting rights; otherwise, the usufructuary shall be deemed to have voting rights in all matters of administration, with the exception of structural measures that serve merely for utility, beautification, or convenience.
Art. 170p
4. Quorum
1) The meeting of condominium owners has a quorum if half of all condominium owners, who together hold half of the shares, but at least two condominium owners, are present or represented.
2) In the event of insufficient attendance, a second meeting must be convened, which may not take place before ten days have elapsed since the first.
3) The second meeting has a quorum if one-third of all condominium owners, but at least two, are present or represented.
II. The Administrator
Art. 170q
1. Appointment

1) If the appointment of the administrator by the meeting of the condominium owners does not take place, any condominium owner may request that the court appoint the administrator.
2) The same right also applies to anyone with a legitimate interest, such as a mortgagee or an insurer.
Section 170r
2. Dismissal
1) The administrator may be dismissed at any time by resolution of the meeting of condominium owners, subject to any claims for compensation.
2) If the meeting of condominium owners refuses to dismiss the administrator without good cause, any condominium owner may request judicial dismissal within one month.
3) A manager appointed by a judge may not be removed without the judge's approval before the expiration of the term for which he was appointed.
3. Duties
Art. 170s
a) Implementation of Provisions and Resolutions Concerning Management and Use
1) The administrator shall carry out all acts of joint administration in accordance with the provisions of the law and the regulations, as well as in accordance with the resolutions of the meeting of condominium owners, and shall take all urgent measures on his own initiative to prevent or remedy damage.
2) He allocates the common costs and expenses among the individual condominium owners, issues invoices to them, collects the contributions, and manages the available funds and ensures their use in accordance with their intended purpose.
3) He shall ensure that the provisions of the law, the regulations, and the house rules are observed in the exercise of special rights and in the use of the common parts of the property and building, as well as the common facilities.
Art. 170t
b) External Representation
1) The administrator represents both the community and the condominium owners externally in all matters of joint administration that fall within the scope of his statutory duties.

2) To conduct a civil proceeding to be initiated or one initiated by the opposing party, the administrator requires prior authorization from the assembly of condominium owners, subject to urgent cases in which the authorization may be obtained retroactively.
3) Declarations, requests, judgments, and orders addressed to the condominium owners as a whole may be effectively served by delivery to the administrator at his residence or at the location of the property in question.
3. Title
Ownership of Movable Property
Art. 171
A. Subject
The subject matter of ownership of movable property consists of tangible objects that are movable by nature, as well as natural forces that can be subject to legal control and do not form part of real property.
B. Modes of Acquisition
I. Transfer
Art. 172
1. Transfer of Possession
1) The transfer of ownership of movable property requires the transfer of possession to the acquirer.
2) A person who, in good faith, receives a movable thing in transfer of ownership becomes the owner of that thing as soon as he or she is protected in possession of the thing under the rules of possession, even if the transferor is not authorized to transfer ownership.
2. Retention of Title
Art. 173–186
Repealed Art.
187
3. Acquisition without Possession
1) If the item remains with the transferor as a result of a special legal relationship, the transfer of ownership is ineffective against third parties if the intent was to disadvantage them or to circumvent the provisions regarding possessory liens.
2) The district court shall decide on this at its discretion. Art. 188
II. Acquisition by Appropriation

Only ownerless items may be acquired as property through appropriation.

III. Found Property

1. Public Notice, Inquiry

Art. 189

a) General

1) Anyone who finds a lost item must notify the owner thereof and, if the owner is unknown, either report the find to the municipality or the state police or ensure that a notice and inquiry appropriate to the circumstances is issued.

2) He is required to report the find if the value of the item clearly exceeds 100 francs.

3) Anyone who finds an item in an inhabited house or in an establishment open to the public must hand it over to the owner, tenant, or the persons entrusted with supervision.

Art. 189a

b) Regarding Animals

Anyone who finds a lost animal must, subject to Art. 189 para. 3, notify the owner thereof and, if the owner is unknown, report the find to the state police.

Art. 190

2. Safekeeping and Auction

1) The found property shall be kept in a proper manner.

2) It may be publicly auctioned by the municipality or the state police after prior notice if it requires costly maintenance or is subject to rapid deterioration, or if it has been kept by the authorities for more than one year.

3) The proceeds of the auction shall take the place of
the item. Art. 191

3. Acquisition of Ownership and Surrender

1) Anyone who fulfills their obligations as a finder acquires ownership of the item if the owner cannot be identified within five years of the public notice or report.

1a) For animals kept in a domestic setting and not for financial or commercial purposes, the period is two months.

1b) If the finder entrusts the animal to an animal shelter with the intention of permanently relinquishing ownership of it, the shelter may dispose of the animal as it sees fit after two months have elapsed from the date the animal was entrusted to it.
2) If the item is returned, the finder is entitled to reimbursement of all expenses as well as a reasonable finder's fee.
3) If the item is found in an inhabited house or in an institution serving public use or traffic, the owner, tenant, or institution is considered the finder but is not entitled to a finder's fee.
4) The special provisions applicable to public transportation facilities remain reserved.
Art. 192
4. Treasure and Scientific Objects
The acquisition of ownership of a treasure and of found ownerless natural objects and antiquities is governed by the provisions regarding ownerless property.
Art. 193
IV. Delivery
1) If movable property is brought to a person by water, wind, avalanches, or other forces of nature or accidental events, or if animals belonging to others come into his custody, he shall have the rights and obligations of a finder.
2) If a swarm of bees flies into another person's inhabited beehive, it becomes the property of the owner of that hive without any obligation to pay compensation.
Art. 194
V. Processing
1) If a person has processed or transformed another's property, the new item belongs to the processor if the work is of greater value than the material; otherwise, it belongs to the owner of the material.
2) If the processor did not act in good faith, the district court may, even if the labor is of greater value, award the new item to the owner of the material.
3) Claims for damages and for unjust enrichment remain reserved. Art. 195
VI. Combination and Mixing
1) If movable property belonging to different owners is mixed or combined in such a way that the labor and expenses can no longer be separated without substantial damage or disproportionate

labor and expense, the parties involved acquire co-ownership of the new thing, in proportion to the value of the individual parts at the time of the combination.
2) If a movable thing is mixed or combined with another in such a way that it appears as an incidental component thereof, the entire thing belongs to the owner of the principal component.
3) Claims for damages and for unjust enrichment remain reserved. Art. 196
VII. Acquisition by Adverse Possession
1) If a person has possessed another's movable property continuously and unchallenged for five years in good faith as his own, he becomes the owner by adverse possession.
1a) In the case of animals kept in a domestic setting and not for financial or commercial purposes, the period is two months.
2) Involuntary loss of possession does not interrupt the acquisition of ownership by adverse possession if the possessor regains possession of the property within one year or by filing a lawsuit during that period.
3) The provisions governing the statute of limitations for claims apply mutatis mutandis to the calculation of time limits, the interruption, and the suspension of acquisitive prescription.
Art. 197
C. Loss
Ownership of movable property is not extinguished by loss of possession alone, but only when the owner renounces his right or when another subsequently acquires ownership.

Section 2
Limited Real Rights
Title 4
Easements and encumbrances
Section 1
Easements
Art. 198
A. Subject Matter

1) A parcel of land may be encumbered for the benefit of another parcel of land in such a way that its owner must tolerate certain encroachments by the owner of that other parcel of land or may not exercise his or her right of ownership in certain respects for the benefit of the latter.
2) An obligation to perform acts may be attached to an easement only incidentally. For the acquirer of the dominant or servient property, such an obligation is binding only if it results from the entry in the land register.
B. Creation and Extinction
I. Creation
Art. 199
1. Registration
1) The creation of an easement requires entry in the land register.
1a) If the exercise of an easement is limited to a portion of the property and the specific location is not sufficiently described in the certificate of title, it must be depicted graphically in an extract from the land register plan.
2) Unless otherwise provided, the provisions governing real property shall apply to acquisition and registration.
3) Acquisition by adverse possession is possible only with respect to properties in which ownership may be acquired by adverse possession.
Art. 200
2. Creation at One's Own Expense
The owner is authorized to establish an easement on his property for the benefit of another property belonging to him.
II. Extinction
Art. 201
1. General
Any easement ceases to exist upon the cancellation of the registration, as well as upon the complete extinction of the encumbered or the entitled property.
Art. 202
2. Merger
1) If the beneficiary becomes the owner of the encumbered property, he may have the easement deleted.

2) Until such cancellation takes place, the easement remains in force as a right in rem.

Art. 203

3. Redemption

1) If an easement has lost all significance for the dominant tenement, the servient party may demand its cancellation.

2) If the beneficiary still has an interest, but it is of disproportionately minor significance compared to the encumbrance, the easement may be redeemed in whole or in part in exchange for compensation.

C. Content

I. Scope

Art. 204

1. General

1) The beneficiary is authorized to do whatever is necessary to maintain and exercise the easement.

2) However, he is obligated to exercise his right in the least intrusive manner possible.

3) The encumbered party may not take any action that prevents or impedes the exercise of the easement.

4) The easement takes precedence over all limited real rights that arose after it or whose holders consented to its creation.

Art. 205

2. According to the entry

1) To the extent that rights and obligations are clearly evident from the entry, the entry shall be decisive for the content of the easement.

2) Within the scope of the entry, the content of the easement may be derived from the reason for its acquisition or from the manner in which it has been exercised unchallenged and in good faith over a prolonged period.

Art. 206

3. In the event of a change in needs

If the needs of the dominant tenement change, the servient tenement may not be expected to bear an additional burden.

4. Rights of Way

Art. 207

a) Footpath

1) Unless otherwise indicated in the land registry entry or supporting documents, the following presumptions apply regarding the scope of the rights of way.

2) The right of way includes the right to walk across the servient property or the designated footpath, but does not include the right to ride, drive, or herd livestock.

3) In case of doubt, the width of the footpath is 50 centimeters.

4) The airspace must be clear to a height of two meters.

Art. 208

b) Other limited rights of way

1) Anyone who has a limited right of way for livestock may lead tethered livestock along the path and may also ride on it.

2) In case of doubt, the width of this path is two meters.

3) The right of way for winter travel and the right of way for horseback riding may be exercised from mid-November through mid-March.

Art. 209

c) General right of way

1) Anyone with a general right of way may drive on the path, ride on it, and drive unfenced livestock along it.

2) If the path is fenced on both sides, its width, in case of doubt, is the width specified in the Building Code.

Art. 210

5. Grazing Rights

1) In case of doubt, grazing rights may only be exercised with livestock that has been wintered on the forage of the dominant property.

2) Notwithstanding the existence of the easement, the encumbered party is entitled to take the measures necessary for the management of their property. If the beneficiary suffers significant damage as a result, they may claim compensation.

Art. 211

6. Local custom

In all other respects, the scope of rights of way—such as footpaths, beaten paths, carriageways, cattle tracks, winter paths, and logging roads—as well as grazing rights, logging rights, watering rights, irrigation rights, and the like, shall be determined by custom and local practice, unless otherwise specified in individual cases.

Art. 211a

7. Where there are multiple beneficiaries

1) If several beneficiaries are involved in a common facility based on the same easement and nothing else has been agreed, the provisions applicable to co-owners shall apply mutatis mutandis.

2) The right to withdraw from the community by relinquishing the easement may be excluded by agreement in the form prescribed for the easement agreement for a maximum period of 30 years. The agreement may be noted in the land register.

Art. 212

II. Burden of Maintenance

1) If the exercise of the easement requires a structure, the easement holder must maintain it.

2) If the structure also serves the interests of the encumbered party, both parties shall bear the burden of maintenance in proportion to their respective interests. A deviating agreement is binding on the acquirer of the dominant estate and the acquirer of the servient estate if it can be inferred from the land register records.

3) Unless the land registry entry, the supporting documents, or the previous exercise of the right indicate otherwise, the holder of the easement must clear the property of wood, stones, etc., that have come onto the property through the exercise of his right.

Art. 213

III. Relocation of the Encumbrance

1) If the exercise of the easement affects only a part of the property, the owner may, if he demonstrates an interest and bears the costs, demand that the easement be relocated to another location no less suitable for the easement holder.

2) He is also authorized to do so if the easement has been registered in the land register as being located at a specific point.

3) Repealed

Art. 214

IV. Division of a Parcel of Land

1) If the dominant or servient property is divided, the easement continues to exist on all parts.

2) If, according to the supporting documents or the circumstances, the exercise of the easement is limited to individual parts, it shall be deleted from the parts not affected.
3) The rectification procedure shall be governed by the provisions regarding the cancellation and amendment of land registry entries.
Art. 215
Repealed
Section 2
Usufruct and Other Easements
A. Usufruct
Art. 216
I. Subject
1) Usufruct may be established in respect of movable property, real property, rights, or an estate.
2) Unless otherwise specified, it grants the beneficiary full enjoyment of the object.
II. Creation
Art. 217
1. In general
1) To establish a usufruct, the transfer to the acquirer is required for movable property or claims, and registration in the land register is required for real property.
2) Unless otherwise provided, the provisions governing ownership apply to the acquisition of movable property and real property, as well as to registration.
Art. 218
2. By Statute
1) A statutory usufruct of real property is effective against third parties who are aware of the right, even without entry in the land register.
2) It becomes effective against all persons upon entry.
III. Extinction
Art. 219
1. Grounds
1) Usufruct ceases upon the complete extinction of its object and, in the case of real property, upon the cancellation of the entry where such entry was necessary for the creation of the right.

2) Other grounds for termination, such as the passage of time, waiver, or death of the beneficiary, entitle the owner of the real property only to the cancellation of the entry.
3) Statutory usufruct ceases upon the cessation of its basis. Art. 220
2. Duration
1) Usufruct ends upon the death of the beneficiary and, in the case of legal entities, upon their dissolution.
2) However, it may last for a maximum of 100 years in
such cases. Art. 221
3. Compensation for Loss
1) The owner is not obligated to restore the lost item.
2) If he restores it, the usufruct is also restored.
3) If compensation is provided for the lost item, as in the case of expropriation or insurance, the usufruct continues to apply to the substitute item.
4. Counter-performance
Art. 222
a) Obligation
If the usufruct has ended, the possessor must return the object to the owner.
Art. 223
Repealed Art.
224
b) Liability
1) The usufructuary is liable for the loss or depreciation of the property, unless he proves that such damage occurred through no fault of his own.
2) He must replace items that have been consumed, provided that such consumption is not part of the usufruct.
3) He is not required to compensate for the depreciation of the items resulting from the proper use of the property.
Art. 225
c) Uses

1) If the usufructuary has made improvements or carried out renovations for which he was not obligated, he may, upon returning the property, claim compensation in the same manner as an agent acting without authority.
2) He may remove any improvements he has made for which the owner is unwilling to pay compensation, but he is obligated to restore the property to its previous condition.
Art. 226
5. Statute of Limitations on Claims for Compensation
The owner's claims for compensation due to alteration or depreciation of the property, as well as the usufructuary's claims for compensation for use or for the removal of improvements, are barred by the statute of limitations one year after the return of the property.
IV. Contents
1. Rights of the Usufructuary
Art. 227
a) In General
1) The usufructuary has the right to possession, use, and enjoyment of the property.
2) He is responsible for its administration.
3) In exercising this right, he must act in accordance with the principles of prudent management.
Art. 228
b) Natural fruits
1) Natural fruits belong to the usufructuary if they have ripened during the term of his or her right.
2) The person who cultivates the field is entitled to reasonable compensation from the person who receives the ripe fruit for the use of the land; however, such compensation shall not exceed the value of the ripe fruit.
3) Components that are not products or yields remain the property of the owner of the thing.
Art. 229
c) Interest
Interest on usufruct capital and other periodic payments belong to the usufructuary from the day his right begins until the time it ceases, even if they do not become due until later.

Art. 230

d) Transferability of the Right

1) Usufruct may, unless it is a strictly personal right, be transferred to another person for exercise.

2) The owner is entitled to assert his rights directly against the transferee.

2. Rights of the owner

Art. 231

a) Supervision

The owner may object to any unlawful use or use that is inappropriate for the property.

b) Preservation

Art. 232

aa) In general

1) The owner is entitled to demand security from the usufructuary as soon as he demonstrates that his rights are at risk.

2) Even before the property is handed over, he may demand security if the subject matter of the usufruct consists of consumable goods or securities.

3) For securities, deposit of the securities is sufficient as security.

Art. 233

bb) In the case of a gift and statutory usufruct

1) The right to security does not exist against the person who gifted the object to the owner subject to usufruct.

2) In the case of statutory usufruct, the claim is subject to the special rules governing the legal relationship.

Art. 234

cc) Consequences of Failure to Provide Security

If the usufructuary fails to provide security within a reasonable period set for that purpose, or if, despite the owner's objection, the usufructuary does not cease the unlawful use of the property, the Regional Court shall, in non-contentious proceedings, deprive the usufructuary of possession of the property until further notice and appoint an administrator.

Art. 235

3. Duty to Take Inventory

The owner and the usufructuary have the right to request at any time, in non-contentious proceedings, that a written inventory of the objects of the usufruct be drawn up at joint expense.

4. Encumbrances

Art. 236

a) Maintenance of the Property

1) The usufructuary must maintain the property in its current condition and, on his own initiative, carry out repairs and renovations that are part of ordinary maintenance.

2) If more significant work or measures are necessary to protect the property, the usufructuary must notify the owner thereof and permit their execution.

3) If the owner fails to remedy the situation, the usufructuary is authorized to take the necessary measures at the owner's expense.

Art. 237

b) Maintenance and Management

1) The usufructuary shall bear the expenses for the ordinary maintenance and management of the property, the interest on any capital debts attached thereto, as well as taxes and duties, in proportion to the duration of his right.

2) If taxes and duties are levied on the owner, the usufructuary shall reimburse him to the same extent.

3) All other expenses shall be borne by the owner; however, if the usufructuary does not advance the necessary funds to the owner free of charge upon request, the owner may realize assets subject to usufruct for this purpose.

Art. 238

c) Obligation to Pay Interest in the Case of Usufruct of an Asset

If an estate is subject to usufruct, the usufructuary shall pay interest on capital debts but may, where circumstances justify it, demand to be released from this obligation to pay interest by having the usufruct limited to the remaining surplus of the assets after the debts have been repaid.

Art. 239

d) Insurance

1) The usufructuary must insure the property against fire and other risks for the benefit of the owner, to the extent that such insurance is considered, according to local custom, to be part of the duties of prudent management.
2) In this case, as well as when an already insured item is subject to usufruct, the usufructuary must bear the insurance premiums for the duration of the usufruct.

V. Special Cases

1. Real Property

Art. 240

a) Fruits

1) The usufructuary of a piece of real property must ensure that it is not used beyond the usual extent due to the nature of the usufruct.
2) To the extent that fruits have been harvested beyond this extent, they belong to the owner.

Art. 241

b) Economic Use

1) The usufructuary may not make any changes to the economic use of the property that would be of significant disadvantage to the owner.
2) He may neither remodel nor substantially alter the property itself.
3) He is permitted to establish new quarries, marl pits, peat bogs, and the like only after prior notification to the owner and provided that the economic use of the property is not thereby substantially altered.

Art. 242

c) Forest

1) If a forest is the subject of usufruct, the usufructuary may claim the use of the forest to the extent justified by a reasonable economic plan.
2) Both the owner and the usufructuary may require compliance with a plan that does not impair their rights.
3) If, in the event of a storm, snow damage, fire, insect infestation, or for other reasons, there is significant over-harvesting, it should be gradually reduced, or the management plan should be adjusted to the new circumstances; the proceeds from

excess use shall be invested at interest and used to offset the shortfall.

Art. 243

d) Mines

The provisions governing usufruct of forests shall apply mutatis mutandis to usufruct of objects whose use consists in the extraction of mineral resources, such as, in particular, mines.

Art. 244

2. Consumable and Valuable Items

1) Unless otherwise specified, the usufructuary acquires ownership of consumable property but is liable to pay compensation for the value the property had at the commencement of the usufruct.

2) If other movable property is transferred on the basis of an estimate, the usufructuary may, unless otherwise specified, dispose of it freely, but becomes liable for compensation if he exercises this right.

3) In the case of agricultural facilities, herds, inventories, and the like, compensation may be provided in the form of items of the same type and quality.

3. Claims

Art. 245

a) Content

1) If claims are subject to usufruct, the usufructuary may collect their amount.

2) Notices to the debtor, as well as dispositions of securities, must be issued by the creditor and the usufructuary; notices from the debtor must be directed to both.

3) The creditor and the usufructuary have a mutual right to consent to the measures that are part of prudent administration in the event that the claim is at risk.

Art. 246

b) Repayments and Reinvestment

1) If the debtor is not authorized to make repayment to the creditor or the usufructuary, he must either pay both jointly or deposit the funds.

2) The subject matter of the performance, such as repaid capital, is subject to usufruct.

3) Both the creditor and the usufructuary are entitled to a secure and interest-bearing reinvestment of the capital.

Art. 247

c) Right of Assignment

1) The usufructuary has the right to demand, within three months of the commencement of the usufruct, the assignment of the claims and securities subject to his usufruct.

2) If such assignment takes place, the usufructuary becomes liable to the former creditor for the value of the claims and securities at the time of assignment and must provide security in this amount, unless this requirement is waived.

3) Unless waived, the transfer takes effect only upon provision of security.

B. The Right of Residence

Art. 248

I. In general

1) The right of residence consists of the authority to occupy a dwelling in a building or in a part thereof.

2) It is non-transferable and non-hereditary.

3) Unless otherwise provided by law, it is subject to the provisions governing usufruct.

Art. 249

II. Rights of the Person Entitled to the Dwelling

1) The right of residence is generally determined according to the personal needs of the holder of the right.

2) However, unless the right is expressly limited to the holder personally, the holder may allow family members and members of the household to reside with him or her in the dwelling.

3) If the right of residence is limited to a part of a building, the holder of the right may share the facilities intended for common use.

Art. 250

III. Expenses

1) If the beneficiary is entitled to an exclusive right of residence, he or she bears the costs of ordinary maintenance.

2) If he has only a right of shared use, the maintenance costs are borne by the owner.

C. Building rights

Art. 251

I. Subject Matter and Entry in the Land Register

1) A parcel of land may be encumbered with an easement granting a person the right to erect or maintain a structure on or beneath the surface of the land.

2) Unless otherwise agreed, this right is transferable and inheritable.

3) If the building right is independent and permanent, it may be entered in the land register as a parcel of land. The entry is made on the basis of a modification plan prepared by a licensed surveyor. Such a plan is also required for the cancellation of the building right.

Art. 251a

II. Content, Scope, and Priority

1) The contractual provisions regarding the content and scope of the building right, including the location, design, extent, and purpose of the structures, as well as the use of undeveloped areas that are utilized in connection with the exercise of the building right, are binding on every acquirer of the building right and the encumbered property.

2) Further contractual provisions may be registered in the land register if the parties so agree.

III. Consequences of the Expiration of the Term

Art. 251b

1. Reversion

If the building right ceases to exist, the existing structures revert to the landowner, becoming part of his property.

Art. 251c

2. Compensation

1) The landowner must pay the former holder of the building right reasonable compensation for the structures reverting to the landowner; however, this compensation is subject to the claims of creditors to whom the building right was pledged, and may not be paid to the former holder of the building right without their consent.

2) If the compensation is not paid or secured, the former holder of the building right or a creditor to whom the building right was pledged may demand

that a mortgage of the same rank be registered in place of the extinguished building right to secure the claim for compensation.
3) The registration must take place no later than three months after the building right has lapsed.
Art. 251d
Repealed
IV. Early Reversion
Art. 251e
1. Requirements
If the holder of the building right grossly exceeds the scope of his or her right in rem or breaches contractual obligations, the landowner may bring about early reversion by demanding that the building right, with all rights and encumbrances, be transferred to him or her.
Art. 251f
2. Exercise of the Right of Reversion
1) The right of reversion may be exercised only if adequate compensation is paid for the reverting structures; in determining the amount of such compensation, the culpable conduct of the holder of the building right may be taken into account as a basis for reduction.
2) The transfer of the building right to the landowner takes place only once the compensation has been paid or secured.
Art. 251g
3. Other Cases of Application
Any right that the landowner has reserved for the early termination or reversion of the building right due to a breach of duty by the holder of the building right is subject to the provisions governing the exercise of the right of reversion.
V. Liability for the building lease rent
Art. 251h
1. Right to Establish a Lien
1) To secure the building lease rent, the landowner is entitled to establish a lien against the respective holder of the building right on the building right entered in the land register, up to a maximum amount of three annual payments.

2) If the consideration is not set in equal annual installments, the right to the statutory lien exists for the amount that would be attributable to three years if distributed equally.
Art. 251i
2. Registration
1) The lien may be registered at any time while the building right remains in effect and is exempt from cancellation in foreclosure proceedings.
2) In all other respects, the provisions governing the creation of a builder's lien 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 extended at any time in the form prescribed for its creation for a new term of no more than 100 years; however, a prior commitment to do so is not binding.
Art. 252
D. Right to a Spring
1) The right to a spring on another's property encumbers the spring property with the easement of appropriation and diversion of the spring water.
2) Unless otherwise agreed, it is transferable and inheritable.
3) If the right to a spring is independent and perpetual, it may be entered in the land register as a parcel of land.
Art. 253
E. Other easements
1) Easements of other kinds may be established on real property in favor of any person or community, provided that such easements serve a specific purpose for someone, such as for the conduct of shooting exercises or for the use of a path or footbridge.
2) Unless otherwise agreed, they are non-transferable, and their content is determined by the ordinary needs of the beneficiaries.
3) In all other respects, they are subject to the provisions governing easements.
Art. 253a
F. Judicial Measures

The provisions governing judicial measures in cases where the owner cannot be located or where the prescribed organs of a legal entity are missing apply mutatis mutandis to beneficiaries of an easement registered in the land register.

3. Section

Encumbrances

Art. 254

A. Subject

1) An encumbrance obligates the respective owner of a parcel of land to perform a service for a beneficiary, for which the owner is liable exclusively with the parcel of land.

2) The beneficiary may be the owner of another parcel of land.

3) Subject to easements under public law, an easement may only involve a performance that arises from the economic nature of the encumbered property or that is intended to meet the economic needs of a beneficiary's property.

B. Creation and Extinction

I. Creation

Art. 255

1. Registration and Mode of Acquisition

1) An easement must be registered in the land register in order to be established.

2) Upon registration, a specific amount must be stated as its total value in the currency of the state; in the case of periodic payments, this amount shall be twenty times the annual payment, unless otherwise agreed.

3) Unless otherwise provided, the provisions governing real property apply to the acquisition and registration of an easement.

Art. 256

2. Public-law easements

1) Public-law encumbrances arise without registration in the land register.

2) The following are considered public law encumbrances:

1. the costs of a land readjustment;

2. the development costs associated with a land readjustment or other public development.

Art. 257

Repealed

II. Extinction

Art. 258

1. In general

1) The encumbrance is extinguished upon cancellation of the entry, as well as upon the complete extinction of the encumbered property.
2) In the event of waiver, redemption, or other grounds for extinction, the encumbered party acquires a claim against the entitled party for the cancellation of the entry.

2. Redemption

Art. 259

a) By the creditor

1) The creditor may demand the release of the encumbrance by agreement and, furthermore:
1. if the encumbered property is divided and the creditor does not accept the transfer of the debt to the individual parcels;
2. if the owner reduces the value of the property and offers no other security in lieu thereof;
3. if the debtor is in arrears on three annual payments.
2) If the creditor demands redemption due to the division of the property, he must give one year's notice of termination of the encumbrance 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 furthermore:
1. if the contract on which the easement is based is not performed by the beneficiary;
2. after the encumbrance has existed for thirty years, even if a longer term or non-redemption had been agreed upon.
2) If redemption occurs after the easement has existed for thirty years, it must in all cases be preceded by one year's notice.
3) Such redemption is excluded if the encumbrance is linked to an inalienable easement.

Art. 261

c) Redemption Amount

The redemption shall be made in the amount entered in the land register as the total value of the encumbrance, subject to proof that the encumbrance actually has a lower value.

Art. 262

3. Statute of Limitations

1) The encumbrance is not subject to a statute of limitations.

2) The individual payment is subject to the statute of limitations from the time it becomes a personal obligation of the obligor.

C. Content

Art. 263

I. Creditor's Rights

1) The creditor of the real estate encumbrance has no personal claim against the debtor, but only a right to satisfaction from the value of the encumbered property.

2) However, the individual obligation becomes a personal debt upon the expiration of three years from the date it becomes due, for which the property is no longer liable.

Art. 264

II. Liability

1) If the property changes hands, the purchaser automatically becomes the debtor of the real estate encumbrance.

2) If the property is divided, the owners of the parcels become debtors of the real estate charge. The debt is transferred to the parcels in accordance with the provisions governing the registration of real estate liens.

3) If an encumbrance exists in favor of a property entitled to it, and if that property is subdivided, the encumbrance shall continue to exist in favor of the individual parcels in proportion to their size.

4) However, if the performance is indivisible, the debtor may only perform to all entitled parties jointly, and each creditor may only demand performance to all of them.

Title 5

The Mortgage

1. Section

General Provisions

A. Requirements

Art. 265

I. Types
1) A mortgage is established by means of a mortgage deed or a registered mortgage note.
2) The creation of other types of real estate liens is not permitted.
II. Form of the Claim
Art. 266
1. Amount
1) When creating a real estate lien, a specific amount of the claim in the national currency must be stated in all cases.
2) If the amount of the claim is indefinite, a maximum amount shall be specified up to which the real property is liable for all claims of the creditor.
Art. 267
2. Interest
The obligation to pay interest may be determined in any manner within the limits established to prevent abuses in the area of interest rates.
III. Real Property
Art. 268
1. Pledgeability
Repealed
2. Specificity
Art. 269
a) For Individual Parcels of Land
1) When establishing a real property pledge, the parcel of land being pledged must be specifically identified.
2) Parts of a parcel of land may not be pledged until such time as the parcel has been subdivided in the land register.
Art. 270
b) In the case of multiple properties
1) A real property lien may be established on multiple properties for a single claim if they belong to the same owner or are owned by debtors who are jointly and severally liable.
2) In all other cases, when multiple parcels of land are pledged to secure the same claim, each parcel must be encumbered with a specific portion of the debt.

3) Unless otherwise agreed, this encumbrance shall be based on the relative values of the properties.

B. Creation and Extinction

I. Creation

Art. 271

1. Registration

Subject to statutory exceptions, the mortgage is created upon registration in the land register.

Art. 272

2. In the case of joint ownership

1) If a property is held in co-ownership, each owner may pledge his or her share.

2) If a property is held in joint ownership, it may be pledged only as a whole and in the name of all owners.

Art. 273

II. Extinction

1) The real estate mortgage is extinguished upon cancellation of the registration as well as upon the complete extinction of the property.

2) Extinction as a result of expropriation is governed by special legislation.

III. Mortgages in Connection with Land Consolidation

Art. 274

1. Transfer of Mortgage Rights

1) In the event of land consolidation and re-surveying, the real estate liens encumbering the properties to be transferred shall be transferred, in their previous order of priority, to the replacement properties allocated.

2) If a single parcel of land replaces several individual parcels that have been pledged for different claims, or not all of which are encumbered, the liens shall be transferred to the new parcel of land while preserving their previous priority to the greatest extent possible.

3) The mortgagee may not be expected to accept a deterioration of his lien to the extent that, due to its priority or amount, it no longer appears to be covered by the first half of the value of the official appraisal.

Art. 275

2. Termination by the Debtor
The debtor is authorized to redeem liens on real property included in a land consolidation as of the date of implementation of such consolidation, subject to a three-month notice period.
Art. 276
3. Compensation in Cash
1) To the extent that a landowner is compensated in whole or in part with money for his or her mortgaged land included in the consolidation, such monetary compensation shall be liable for the liens existing on the relevant land up to the amount of the compensation and shall be distributed to the creditors in accordance with their priority, or, in the event of equal priority, in accordance with the size of their claims.
2) Such monetary compensation may be paid to the landowner only if no real property liens encumber the relevant land, or if an express written waiver from the real property lien creditor(s) is submitted.
C. Effect
Art. 277
I. Scope of the Mortgage
1) The real property lien encumbers the real property, including all fixtures and appurtenances.
2) If, at the time of the pledge, items are expressly listed as appurtenances and noted in the land register, such as machinery and hotel furnishings, they shall be deemed appurtenances unless it is demonstrated that they cannot be classified as such under the provisions of the law.
3) The rights of third parties with respect to the appurtenance remain reserved. Art. 278
II. Rent and Lease Payments
1) If the pledged property is rented or leased, the lien also extends to the rent or lease payments accruing from the date of approval of the receivership or from the date of commencement of insolvency proceedings against the debtor until the sale of the property or, if the reorganization plan is confirmed, until that date.
2) This lien is effective against the debtors of such rents only after they have been notified by the receiver or the opening of the insolvency proceedings has been published in the official gazette.

3) Legal transactions by the property owner concerning rent or lease payments that have not yet become due, as well as attachments by other creditors, are not effective against a mortgagee who has been granted compulsory administration over the collateral or whose assets are subject to insolvency proceedings.

Art. 279

III. Statute of Limitations

Claims for which a real estate mortgage is registered are not subject to a statute of limitations.

IV. Security Powers

1. Measures in the Event of a Decline in Value

Art. 280

a) Prohibition and Self-Help

1) If the owner diminishes the value of the pledged property, the creditor may have the regional court prohibit him from taking any further detrimental action.

2) The creditor may be authorized by the district court to take appropriate measures and may do so even without authorization if there is imminent danger.

3) He may demand reimbursement from the owner for the costs of the measures and has a lien on the property for this purpose. 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 it is not entered in the land register within six months of the completion of the measures, it may not be asserted against third parties who rely in good faith on the land register.

5) Non-contentious proceedings apply.

Art. 281

b) Security, Restoration, Payment

1) If a reduction in value has occurred, the creditor may demand that the debtor secure his claims or restore the previous state of affairs.

2) If there is a risk of a decrease in value, the creditor may demand security.

3) If the demand is not met within a period set by the regional court, the creditor may claim payment of the debt in an amount sufficient to secure his claim.
4) Non-contentious proceedings apply. Art. 282
2. Diminution in Value Through No Fault of the Owner
1) Diminutions in value that occur through no fault of the owner entitle the creditor to security or payment only to the extent that the owner is covered for the damage.
2) The creditor may, however, take measures to remedy or prevent the loss of value. The creditor has a lien on the property for the costs of such measures, without the owner being liable for them. This lien arises without registration in the land register and takes precedence over any registered encumbrance.
3) If the amount of this lien exceeds 1,000 francs and it is not entered in the land register within six months of the completion of the measures, it cannot be asserted against third parties who rely in good faith on the land register.
4) The non-contentious procedure applies. Art. 283
3. Separation of Small Parcels
1) If a portion of the property valued at less than one-twentieth of the secured claim is sold, the creditor may not refuse to release that portion from the lien, provided that a proportionate payment is made or the remainder of the property offers him sufficient security.
2) The release may be asserted in non-contentious proceedings. Art. 284
V. Further Encumbrances
1) A waiver by the owner of the right to impose further encumbrances on the mortgaged property is non-binding.
2) If, after the creation of the mortgage, an easement or encumbrance is imposed on the property without the consent of the mortgagee, the mortgage takes precedence over the subsequent encumbrance, and the latter is extinguished as soon as its existence, upon foreclosure, causes harm to the prior mortgagee.

3) However, the holder of the easement or encumbrance is entitled to priority satisfaction from the proceeds for the value of the encumbrance over subsequent registered claimants.

VI. Place of Pledge

Art. 285

1. Effect of the pledged property

1) The security interest is limited to the collateral specified at the time of registration.

2) Mortgages may be created in second or any other rank, provided that a specific amount is reserved as a condition of registration. Art. 286

2. Mortgage Liens in Relation to One Another

1) If real estate liens of different ranks are established on a parcel of land, upon the cancellation of a real estate lien, the subsequent real estate lien creditor has no claim to move up to fill the gap.

2) Another mortgage may be established in place of the preceding mortgage that has been discharged.

3) Agreements regarding the advancement of mortgagees have real property effect only if they are registered.

Art. 287

3. Vacant Mortgage Positions

If a real property lien is established in a lower rank without the existence of a prior one, if the debtor has not disposed of a prior lien title, or if the prior claim amounts to less than what is registered, then upon the realization of the lien, the proceeds from the lien shall be allocated to the actual lienholders according to their rank, without regard to the vacant lien positions.

VII. Satisfaction from the Mortgage

Art. 288

1. Method of Satisfaction

1) The creditor has the right, in the event of non-payment, to be paid from the proceeds of the sale of the property.

2) Any agreement stipulating that the real property pledge shall vest in the creditor as ownership if the creditor is not satisfied is invalid.

3) If multiple properties are pledged for the same claim, enforcement proceedings for the sale of the collateral must be directed against all of them simultaneously; however, the sale shall be carried out only to the extent necessary, as ordered by the Regional Court.

Art. 289

2. Distribution of Proceeds

1) The proceeds from the sale of the property shall be distributed among the mortgage creditors in accordance with their priority.

2) Creditors of equal rank are entitled to equal satisfaction among themselves.

Art. 290

3. Scope of the Security

1) The mortgage provides the creditor with security:

1. for the principal claim;
2. for the costs of enforcement and default interest;
3. for three annual interest payments due at the time of the opening of insolvency proceedings or the filing of a petition for enforcement, and the interest accrued since the last interest date; in the case of a registered mortgage, only the interest actually owed is secured by the mortgage.

2) The originally agreed interest rate may not be increased by more than 5% to the detriment of subsequent mortgage creditors.

3) Any increase in the interest rate requires the consent of the junior mortgagees.

Art. 291

4. Security for Expenses Incurred

1) If the mortgagee has incurred expenses necessary for the preservation of the mortgaged property, in particular by paying insurance premiums owed by the owner, the mortgagee shall have a lien on the real property for such expenses. 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 is not entered in the land register within six months of the performance of the substitute act, it may not be asserted against third parties who have relied in good faith on the land register.

VIII. Lien for Land Improvements

Art. 292 and 293

Repealed

Art. 294

IX. Claim to the insurance proceeds

1) An insurance sum that has become due may be paid to the owner of the insured property only with the consent of all mortgage creditors.

2) However, it must be handed over to the owner against adequate security for the purpose of restoring the collateral.

Art. 295

X. Untraceable Creditor

If a mortgagee cannot be identified or if his or her place of residence is unknown, the court may, in cases where the law requires the creditor's personal involvement and such involvement is urgently necessary, order the necessary measures upon application by the debtor or other interested parties.

2. Section

The Mortgage Deed

Art. 296

A. Purpose and Form

1) A mortgage deed may be used to secure any claim, whether present or future or merely contingent, by way of a lien.

2) Repealed

3) The pledged property need not be owned by the debtor.

B. Creation and Extinction

Art. 297

I. Creation

1) A mortgage is established on a specific parcel of land even for claims of an indeterminate or variable amount and retains its priority as of the date of registration regardless of any fluctuations.

2) The registration of the mortgage deed is certified to the creditor on a copy of the contract document.

3) In addition to the certificate of registration, an extract from the land register shall be issued to the creditor upon request.

4) Repealed

5) Repealed
II. Extinction
Art. 298
1. Right to Cancellation
1) If the claim has been extinguished, the owner of the encumbered property may demand that the creditor consent to the cancellation of the entry.
2) Repealed
Art. 299
2. Position of the Owner
1) If the landowner is not the debtor of the secured claim, he may redeem the lien under the same conditions under which the debtor is authorized to satisfy the claim.
2) If he satisfies the creditor, the creditor's rights pass to him by operation of law.
3. Unilateral redemption
Art. 300
a) Prerequisites and Enforcement
1) The purchaser of a parcel of land who is not personally liable for the debts encumbering it may, provided that no enforcement proceedings have been initiated, redeem the liens if they exceed the value of the land by paying the creditors the purchase price or, in the case of a gratuitous transfer, the amount at which he values the land.
2) He must notify the creditors of the intended redemption in writing, giving six months' notice.
3) The redemption amount shall be distributed among the creditors according to their priority.
Art. 301
b) Public Auction
1) In the event of such redemption, the creditors have the right, within one month of notification of the acquisition and upon advance payment of the costs, to demand a public auction of the collateral, which must be conducted within one additional month after the demand was made, following public notice.
2) If a higher price is achieved in this auction, that price shall be deemed the redemption amount.
3) The costs of the auction shall be borne by the purchaser if a higher price is achieved; otherwise, they shall be borne by the creditor who requested it.
Art. 302

4. Termination

1) Termination of the claim by the creditor is effective against the owner of the pledged property who is not the debtor only if it is directed against both the debtor and the owner.

2) Termination by the debtor must be directed to the person who is his creditor at the time of termination.

3) If the debtor does not know who this is, he may direct the termination to the last creditor known to him.

4) Any subsequent acquirer of the claim must accept this termination as binding upon them.

5. Declaration of Nullity

Art. 303–306

Repealed

C. Effect

I. Ownership and Liability

Art. 307

1. Disposition

1) If a property encumbered by a mortgage is sold, the liability of the mortgage and the debtor remains unchanged unless otherwise agreed.

2) However, if the new owner has assumed liability for the secured claim, the former debtor is released from liability unless the creditor notifies the new owner in writing within one year that he intends to retain the former debtor as the obligor.

Art. 308

2. Subdivision

1) If a portion of the property encumbered by a mortgage or one of several mortgaged properties belonging to the same owner is sold, or if the mortgaged property is subdivided, the mortgage liability shall, in the absence of any other agreement, be distributed in such a way that each portion is encumbered in proportion 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 secured claim be repaid within one year.

3) If the purchasers have assumed liability for the lien claims encumbering their properties, the former debtor is released from liability unless the

creditor does not declare in writing to the former debtor within one year that he intends to retain him.
Art. 309
3. Notification 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 begins on the date of this notification. Art. 310
II. Assignment of the Claim
The lien follows the claim.
D. Statutory mortgage
I. Under public law
Art. 311
1. In general
1) If public law grants the creditor a right to a lien for claims directly related to the encumbered property, such a lien arises upon entry in the land register.
2) If statutory liens in an amount exceeding 1,000 francs arise under public law without entry in the land register and are not entered in the land register within six months after the underlying claim becomes due, but no later than two years after the claim arises, they may no longer be asserted against third parties who rely in good faith on the land register after the expiration of the registration period.
3) Article 312 remains reserved.
Art. 312
2. Without Registration
A statutory lien exists without entry in the land register:
1. in favor of the state, taking precedence over all other liens, for the taxes on real property due for the last year ended at the time of the opening of bankruptcy proceedings or the filing of a petition for liquidation and for the current year, on the real property subject to taxation;
2. in favor of the municipalities, ranking only after the aforementioned tax claim of the State, for the taxes on real property for the last year ended at the time of the opening of bankruptcy proceedings or the filing of a petition for liquidation and for the current year, on the real property subject to taxation;

3. in favor of building insurance companies, only after the aforementioned tax claims of the state and the municipalities, for the most recently due and the current annual premium;

4. for contributions to public enterprises attributable to real estate and buildings (such as land improvements, etc.), only after the aforementioned tax claims of the state and municipalities and the premium claims of building insurance companies, for the contribution obligation during the last five years.

II. Private Law

Art. 313

1. Cases

1) The right to establish a statutory mortgage is effective against any subsequent owner of the property and against creditors in bankruptcy:

1. for the seller’s claim against the sold property;

2. for the claims of co-heirs and co-owners arising from the partition of real property that belonged to the community;

3. for the claims of craftsmen or contractors who have supplied materials and labor, or labor alone, on a property for construction or other works, demolition work, scaffolding, excavation safety, or similar purposes, against that property, whether their debtor is the property owner, a craftsman or contractor, a tenant, a lessee, or another person entitled to the property.

2) If a tenant, a lessee, or another person entitled to the property is the debtor of claims by craftsmen or contractors, the claim exists only if the property owner has given his consent to the performance of the work.

3) The entitled party may not waive statutory real property liens under this Article in advance.

Art. 314

2. Sellers, Co-heirs, and Municipalities

The right to registration expires if the registration of the lien of the seller, the co-heirs, or the municipality is not effected no later than three months after the transfer of ownership.

3. Tradespeople and Business Owners

Art. 315

a) Registration

1) The lien of craftsmen and contractors may be entered in the land register from the time they have undertaken to perform the work.

2) The registration must take place no later than four months after the completion of the work.

Art. 316

b) Determination of the Claim and Security

1) Registration may only take place if the claim has been acknowledged by the owner or established by a court, and may not be demanded if the owner provides sufficient security for the claimed debt.

2) In the event of disputes regarding the determination of claims eligible for a lien, as well as regarding the provision of sufficient security for such claims, a preliminary order from the regional court in summary proceedings may be requested for the purpose of a preliminary entry in the land register.

3) In the event of a dispute, the provisionally established claim and the entry in the land register may be challenged through legal proceedings.

Art. 317

c) Ranking

If several statutory liens of craftsmen and contractors are entered in the land register, they shall, even if they are of different dates, have equal claims to satisfaction from the lien.

Art. 318

d) Priority

1) If the claims of craftsmen and contractors are lost in the sale of the pledged property, the loss resulting from the portion of the proceeds exceeding the value of the land shall be compensated by the prior lienholders, 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 lienholder disposes of his lien, he must compensate the craftsmen and contractors for what is thereby deprived from them.

3) Once the commencement of construction has been noted in the land register at the request of an authorized party, liens may be registered only as land mortgage deeds until the expiration of the registration period.

3. Section

Registered Mortgage

Art. 319

I. Purpose; Relationship to the Claim Arising from the Underlying Relationship

1) A registered mortgage establishes a personal claim secured by a mortgage.

2) The claim under the mortgage note exists alongside the claim to be secured, which the creditor may be entitled to against the debtor under the underlying relationship, unless otherwise agreed.

3) With respect to the claim under the registered mortgage, the debtor may invoke the personal defenses arising from the underlying relationship against the creditor as well as against legal successors who are not acting in good faith.

II. Creation and Extinction

Art. 320

1. Creation

1) The registered mortgage bond comes into existence upon entry in the land register.

2) It is registered in the name of the creditor or the property owner. Art. 321

2. Extinction

1) If there is no creditor or if the creditor waives the lien, the debtor may choose to have the entry in the land register deleted or to leave it in place.

2) The debtor is also entitled to continue using the registered mortgage. Art. 322

III. Transfer

1) The transfer of the registered mortgage is effected by entering the new creditor in the land register based on a written declaration by the previous creditor.

2) Only payments made by the debtor to the person who is registered as the creditor in the land register at the time of payment have discharging effect. The debtor must be notified of a change in creditor.

Art. 323

IV. Pledge

The pledge of the registered mortgage is effected by entering the movable property pledgee in the land register based on a written declaration by the creditor entered in the land register.

Art. 324

V. Status of the Owner

1) The status of the owner of the pledged property who is not the debtor is determined in accordance with the provisions governing the mortgage deed.

2) In the case of a registered mortgage, the debtor's defenses also apply to the owner of the pledged property.

Art. 325

VI. Disposition

1) If the real property encumbered by a registered mortgage is sold, the liability of the real property and the debtor remains unchanged unless otherwise agreed.

2) If the new owner has undertaken to the transferor to assume liability for the secured claim, the new owner's liability and the transferor's release shall take effect only upon the mortgagee's consent to the assumption of debt. Such consent must be given within one year.

3) The transferor and the new owner may set a deadline for the creditor's acceptance; upon the expiration of this deadline, the acceptance shall be deemed refused if the creditor remains silent.

Art. 326

VII. Division

1) The provisions governing the creation of a mortgage apply to the consequences of the division of the property.

2) However, any assumption of debt associated therewith shall be governed by Art. 325.

VIII. Mortgage claims and ancillary agreements

Art. 327

1. General Provisions

1) The mortgage claim may neither relate to the underlying relationship nor contain conditions or consideration.

2) The registered mortgage may contain ancillary agreements under the law of obligations regarding interest, repayment, and termination, as well as other ancillary provisions relating to the mortgage claim. A reference to a separate agreement is permissible.

Art. 328

2. Termination

1) The registered mortgage 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 notice period shorter than three months for the creditor, unless the debtor is in default of payment of the amortization or interest.

Art. 329

IX. Protection of Good Faith

The claim under the mortgage and the lien are valid, in accordance with the entry, for any person who has relied in good faith on the land register. Art. 330

X. Defenses of the Debtor

1) The debtor may assert only defenses arising from the entry in the land register or to which he is personally entitled against the creditor bringing the action against him.

2) Agreements containing ancillary provisions relating to the mortgage claim may be asserted against a bona fide purchaser of the registered mortgage only if they are evident from the land register.

Art. 331

XI. Place of Payment

1) Unless otherwise agreed, the debtor must make all payments at the creditor's place of residence or registered office.

2) If the creditor’s domicile or registered office is unknown or has been transferred to the detriment of the debtor, the debtor may discharge his obligation by depositing the payment with the competent authority at his own domicile or registered office or at the creditor’s former domicile or registered office.

Art. 332

XII. Changes in the Legal Relationship

1) If the legal relationship changes in favor of the debtor, namely through repayment of the debt, the debtor may require the creditor to consent to the entry of the change in the land register.

2) Without such an entry, a bona fide purchaser of the registered mortgage note may not be held liable for the effect of the change in the legal relationship. Art. 333

XIII. Repayment

If the mortgage claim has been repaid, the debtor may require the creditor to consent to the transfer of the registered mortgage to the debtor’s name.

Art. 334

XIV. Notice to the Creditor

1) If the holder of a registered mortgage has been unknown for ten years and no interest has been claimed during that time, the owner of the mortgaged property may request that the Regional Court issue a summons to the holder, through three public notices, to come forward; otherwise, the mortgage will be deleted from the land register.

Art. 335–355

Repealed

4. Section

Issuance of Bond Certificates Secured by a Mortgage

Art. 356

A. Bonds for loans secured by a mortgage

Bond certificates issued in the name of the creditor or to the bearer may be secured by a mortgage:

1. by creating a mortgage deed or a promissory note for the entire bond issue and designating a representative for the creditors and the debtor;

2. by establishing a mortgage on the entire loan in favor of the issuing agency and creating a lien on this mortgage claim for the bondholders.

B. Issuance of debt instruments and bonds in series

Art. 357–364

Repealed

Title 6

The Pledge of Movable Property

1. Section

Possessory Pledge and Right of Retention

A. Possessory Pledge

I. Establishment

Art. 365

1. Possession by the Creditor

1) Unless otherwise provided by law, movable property may be pledged only by transferring possession of the pledged item to the pledgee.

2) A bona fide recipient of the pledged item acquires the security interest, provided that no third parties have rights arising from prior possession, even if the pledgor was not authorized to dispose of the item.

3) The security interest is not established as long as the pledgor retains exclusive control over the item.

2. Statutory lien on savings deposits

Art. 366

a) General

Repealed ,

Art. 367

b) Coverage

Repealed

Art. 368

3. Subsequent Pledge

A subsequent pledge is created when the pledgee is notified in writing of the subsequent pledge and instructed to surrender the pledged property to the subsequent creditor after the pledgee has been satisfied.

Art. 369

4. Pledge by the pledgee

The creditor may re-pledge the pledged property only with the consent of the pledgor.

II. Loss

Art. 370

1. Loss of Possession

1) The possessory lien is extinguished as soon as the creditor no longer possesses the pledged item and cannot reclaim it from third-party possessors.

2) It has no effect as long as the pledged item remains in the exclusive control of the pledgor with the creditor's consent.

3) The lien ceases to exist as soon as the claim for which it was created has been extinguished.

Art. 371

2. Obligation to Return

1) If the lien has lapsed as a result of the repayment of the claim or for any other reason, the creditor must return the pledged item to the entitled party.

2) The provisions regarding the right of retention remain reserved.

3) He is not obligated to return the pledged property, in whole or in part, until he has been fully satisfied.

Art. 372

3. Creditor's Liability

1) The creditor is liable for any loss of value or destruction of the pledged item, unless he proves that this occurred through no fault of his own.

2) If the creditor has disposed of or re-pledged the pledged item without authorization, he shall be liable for all damages resulting therefrom.

III. Effect

Art. 373

1. Rights of the Creditor

1) In the event of non-satisfaction, the creditor has the right to be paid from the proceeds of the pledge through private sale of the pledged property, even without judicial authorization or involvement.

2) Repealed

3) The lien provides him with security for the claim, including contractual interest, enforcement costs, and default interest.

Art. 374

2. Scope of the Lien

1) The lien encumbers the pledged property, including its appurtenances.

2) Unless otherwise agreed, the creditor must, subject to the right of retention, surrender the natural fruits of the pledged property to the owner as soon as they cease to be part of the property.

3) Fruits that are part of the pledged property at the time of its realization are subject to the lien.

Art. 375

3. Ranking of Liens

1) If several liens exist on the same property, the creditors shall be satisfied in accordance with their priority.

2) The priority of liens is determined by the time of their creation. Art. 376

4. Forfeiture Agreement

Any agreement providing that the pledged property shall vest in the creditor as his property if he is not satisfied is void.

Art. 377

5. Pledge in favor of a third party

1) If the property is pledged as security for a third party's debt, the owner may redeem the lien under the same conditions under which the debtor is authorized to settle the debt.

2) If the owner satisfies the creditor, the creditor's rights pass to the owner.

6. Depreciation

Art. 378

a) Rights of the Owner

1) If the pledgee significantly infringes upon the rights of the owner of the pledged property and continues the infringing conduct despite a warning from the owner, the owner may, in non-contentious proceedings, demand that the pledged property be deposited at the pledgee's expense.

2) If there is a risk of deterioration of the pledged property or a significant reduction in its value, the owner may, in non-contentious proceedings, demand that

the pledged property be returned in exchange for other appropriate security.

Art. 379

b) Rights of the Creditor

1) If the secured claim is no longer covered due to a decrease in value, the secured creditor may demand additional security.

2) If this demand is not met within a reasonable period of time, the creditor may demand the realization of the pledge regardless of the maturity of the claim.

B. Right of Retention

Art. 380

I. Requirements

1) The creditor may retain movable property and securities that are in the creditor's possession with the debtor's consent until the claim is satisfied, provided the claim is due and, by its nature, is related 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 has the right of retention, unless third parties have rights arising from prior possession, even if the item he received in good faith does not belong to the debtor.

Art. 381

II. Exceptions

1) The right of retention cannot be exercised with respect to items whose nature does not permit their realization.

2) Likewise, retention is precluded if it is contrary to an obligation assumed by the creditor, an instruction given by the debtor before or at the time of delivery of the item, or public policy.

Art. 382

III. In the Event of Insolvency

1) In the event of the debtor's insolvency, the creditor has the right of retention even if the claim is not yet due.

2) If the insolvency occurred only after the delivery of the item or became known to the creditor, the creditor may exercise the right of retention even if it is precluded by an obligation previously assumed by the creditor or by a specific instruction from the debtor.

Art. 383

IV. Effect

1) If the debtor fails to fulfill his obligation, the creditor may, if he is not sufficiently secured, realize the retained item as a pledge after prior notification to the debtor.

2) The regional court shall take the necessary steps on behalf of the debtor to realize retained negotiable instruments.

1. Section

The Lien on Claims and Other Rights

Art. 384

A. General

1) Claims and other rights may be pledged if they are transferable.

2) Unless otherwise provided, the lien on such items is governed by the provisions regarding personal property liens.

B. Establishment

Art. 385

I. For claims with or without a promissory note

1) To pledge a claim for which there is no document or only a promissory note, the pledge agreement must be in writing and, if applicable, the promissory note must be surrendered.

2) Repealed

3) The pledgee and the pledgor may notify the debtor of the creation of the pledge.

4) To pledge other rights, in addition to a written pledge agreement, the form prescribed for the transfer must be observed.

Art. 386

II. In the case of securities

1) In the case of bearer securities, subject to paragraph 1a, the transfer of the certificate to the pledgee is sufficient for the creation of a pledge.

1a) In the case of bearer shares deposited with the custodian pursuant to Art. 326a para. 1 PGR, the pledge is effected by entry in the register pursuant to Art. 326c PGR.
2) For other securities, the certificate must be handed over in conjunction with an endorsement or a declaration of assignment.
3) The right to assert a right of retention with respect to securities pledged invalidly remains reserved.
Art. 387
III. In the case of commercial papers
1) If there are securities representing goods, a security interest in the goods is created by pledging the securities.
2) If, in addition to a commodity document, there is also a special pledge certificate (warrant), the pledging of the pledge certificate is sufficient to create the pledge, provided that the pledge, along with the amount of the claim and the maturity date, is entered on the commodity document itself.
Art. 388
IV. Subsequent Pledge
A subsequent pledge of a claim is valid only if the prior pledgee is notified in writing of the subsequent pledge by the creditor of the claim or by the subsequent pledgee.
C. Effect
Art. 389
I. Scope of the Lien
1) In the case of a lien on an interest-bearing claim or on a claim with other periodic ancillary payments, such as dividends, unless otherwise agreed, only the current claim is deemed to be included in the pledge, and the creditor has no claim to past-due payments.
2) However, if there are separate documents for such ancillary rights, these shall, unless otherwise agreed, be deemed to be included in the pledge to the extent that the lien on them has been properly established.
Art. 390
II. Representation of Pledged Shares
Pledged shares shall be represented at the general meeting by the shareholders and not by the pledgees.
Art. 391
III. Management and Repayment

1) If prudent administration requires the termination and collection of the pledged claim, the creditor may carry this out, and the pledgee may demand that it be carried out.
2) Once the debtor has been notified of the pledge, he may make payments to one party only with the consent of the other.
3) In the absence of such consent, the debtor must deposit the amount owed with the district court.
4) Repealed
2. Section **on**
Financial Collateral,
Art. 392
I. General Provisions
1) To secure liabilities, financial collateral may be created pursuant to an agreement between a collateral taker and a collateral provider within the meaning of Art. 1(2)(a) to (e) of Directive 2002/47/EC of the European Parliament and of the Council of June 6, 2002, on financial collateral arrangements (EEA Legal Compilation: Annex XXII
- 4.01), as amended by Directive 2009/44/EC, financial collateral may be created.
1a) Security recipients and security providers from a third country are treated as equivalent to the security recipients and security providers referred to in paragraph 1.
2) For the purposes of this Act, the following definitions apply:
1. "Financial collateral": cash collateral, financial instruments, or credit claims that are provided as collateral in the form of a full transfer of title or in the form of a limited security interest, regardless of whether the provision is based on a master agreement or general terms and conditions;
2. "Financial collateral in the form of a transfer of full title": the complete transfer of ownership or assignment of a financial collateral or the transfer of all rights thereto for the purpose of securing or otherwise covering liabilities, including repurchase agreements;
3. "Financial collateral in the form of limited security interests": security interests in financial collateral, whereby ownership or title to the collateral remains fully, conditionally, or otherwise limitedly with the collateral provider at the time of creation;

4. "Cash collateral": an amount credited to an account in any currency or a comparable monetary claim, such as a money market demand deposit, but not cash;
5. "Financial instruments": shares and other securities equivalent thereto, bonds, and other securitized or unsecuritized debt instruments that can be traded on the capital market, as well as all other commonly traded securities that entitle the holder to acquire such shares, bonds, or other securities through subscription, purchase, or exchange, or result in a cash payment (excluding cash), including units in undertakings for collective investment, money market instruments, and any rights or claims related to any of the aforementioned assets;
6. "Eligible Obligation": an obligation secured by a financial collateral arrangement that gives rise to a right to a cash payment or delivery of financial instruments and that consists, in whole or in part, of present or future, conditional or unconditional, due or past due obligations (including those arising from a master agreement or similar arrangement), from obligations of a person other than the collateral provider to the collateral taker, and from obligations that are merely general or determined or determinable by their nature and arise from time to time;
7. "book-entry securities": financial collateral in the form of financial instruments that are registered in a registry or recorded in a custody account maintained by or for an intermediary;
8. "relevant account": the register or custody account in which the entry or booking is made, on the basis of which the collateral taker obtains financial collateral pursuant to Section 7, even if the register or account is maintained by the collateral taker itself;
9. "Bankruptcy and liquidation proceedings": bankruptcy proceedings and comparable comprehensive proceedings in which a court or authority is involved, the assets are liquidated, and the proceeds are distributed appropriately among the creditors, shareholders, or members, regardless of whether the proceedings are initiated due to insolvency or voluntarily or compulsorily. This also includes comprehensive proceedings concluded by a reorganization plan or a similar measure;

10. "Reorganization proceedings": reorganization proceedings and any comparable judicial or administrative measure aimed at securing or restoring the financial position of a party, which infringes upon the rights of third parties, including, in particular, measures providing for the suspension of payments or enforcement proceedings, or a reduction of claims;
11. "Close-out netting": a contractual provision within the framework of the creation of financial collateral or an agreement covering the creation of financial collateral, or—if the contracting parties have not reached an agreement—a statutory provision under which, in the event of enforcement or termination, by way of set-off, netting, or otherwise:
a) the relevant obligations are either immediately due and converted into a payment obligation equal to their estimated current value, or terminated and replaced by a corresponding payment claim; or
b) the value of the financial obligations due on both sides 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 Article 2(5) of Directive 2013/36/EU grants a credit in the form of a loan; institutions from Switzerland are treated as equivalent to these institutions;
13. "Delivery": the delivery of financial collateral to the collateral taker or its representative, the crediting by book entry, and any other transfer of possession or control of the financial collateral (unless the collateral taker already holds possession or control), even though the collateral provider has a right to the return of posted collateral in exchange for other collateral or a right to the return of excess collateral, or, in the case of credit claims, may collect the proceeds from such claims until further notice.
3) In all other respects, the definitions set forth in Directive 2002/47/EC, as amended by Directive 2009/44/EC, shall apply in addition.

Art. 393

II. Creation

1) The creation of financial collateral must be verifiable in writing. The evidence of the creation must allow for the identification of the relevant financial collateral.
2) For the proof referred to in paragraph 1, it is sufficient if securities transferred via securities clearing have been credited to the relevant account or if a corresponding balance in such securities exists, or if cash collateral has been credited to a designated account or a corresponding cash balance exists.
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 is sufficient to identify the claim and to demonstrate its designation as financial collateral between the parties, as well as vis-à-vis the debtor and/or third parties.
3) With respect to securities transferable via book-entry, ownership and other rights in rem may also be transferred by entry in the registry or by posting to the securities account.
III. Realization of Financial Collateral
Art. 394
1. In general
1) The collateral taker may, pursuant to a corresponding agreement, in the event of enforcement or termination, realize any financial collateral in the form of a limited real right by:
1. Sells or appropriates financial instruments and subsequently offsets their value against the relevant liabilities or uses them in lieu of payment;
2. offsets cash collateral against the relevant liabilities or uses it in lieu of payment.
3. sells or collects credit claims and subsequently offsets their value against the relevant liabilities or uses them in lieu of payment.
2) However, appropriation is permissible only if the parties have agreed to the authority to appropriate when creating the security interest and the security agreement allows for the valuation of the financial instruments and credit claims.
Art. 395

2. Procedure

1) Subject to the collateral agreement, financial collateral may be realized in the manner described in Art. 394 without prior notice, without judicial authorization or involvement, without auction, and without a waiting period.

2) A financial collateral may also be realized pursuant to a corresponding agreement if bankruptcy, liquidation, or reorganization proceedings have been opened against the collateral provider's assets.

IV. Right of Disposal over Financial Collateral in the Form of Limited Real Rights

Art. 396

1) The collateral taker may, pursuant to a corresponding agreement, exercise the right of disposal over financial collateral in the form of a limited real right.

2) If a collateral taker exercises its right of disposal, it must procure collateral of the same type, which must replace the original collateral no later than the due date of the relevant obligation. The collateral taker may, upon maturity of the obligation, either provide collateral of the same type or, to the extent provided for in the collateral agreement, set off the value of the collateral of the same type against the relevant obligations or use the collateral in lieu of payment.

3) The collateral procured as a substitute pursuant to paragraph 2 shall be treated as if it were the original collateral.

4) The agreed rights of the collateral taker to collateral provided by him pursuant to the first sentence of paragraph 2 shall not be rendered ineffective by his disposal of the financial collateral in accordance with its intended purpose.

5) If an event triggering enforcement or termination occurs before the secured party has fulfilled the obligation described in the first sentence of paragraph 2, that obligation may be included in the set-off resulting from termination.

6) This Article does not apply to credit claims.

Art. 397

V. Recognition of Full Title Transfer

1) A financial collateral arrangement may also be validly created by way of a transfer of full title pursuant to a corresponding agreement.

2) If, in the case of a transfer of full title, an enforcement or termination event occurs before the collateral taker has fulfilled its agreed obligation to retransfer collateral of the same type, this obligation may be included in the set-off resulting from termination.

Art. 398

VI. Set-off upon termination

1) Set-off upon termination becomes effective pursuant to a corresponding agreement even if:

1. bankruptcy, liquidation, or reorganization proceedings have been opened against the assets of the grantor or the secured party; and
2. the rights subject to set-off as a result of termination have been assigned, attached by court order or otherwise, or otherwise disposed of.

2) Unless the parties agree otherwise, contractual set-off following termination may be effected without prior notice, without judicial authorization or intervention, without auction, and without a waiting period.

Art. 399

VII. Principles of Valuation and Realization

In exercising the powers granted to him under this section, the collateral taker must value or realize financial collateral and determine the amount of the relevant liabilities in accordance with the principles of good business practice and in accordance with the agreement concluded between the parties. In doing so, he must take particular account of the estimated, market, or quoted value of the financial collateral. Any surplus must be returned to the collateral provider or credited to the collateral provider's account.

Art. 400

VIII. Waiver of Rights by the Debtor of Credit Claims

1) Notwithstanding the provisions on unfair contract terms, debtors of credit claims may validly waive the following rights in writing or in a form having the same legal effect:

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 used the credit claim as security; and
2. their rights arising from banking secrecy provisions, which would otherwise prevent the creditor of the credit claim from providing information about the credit claim or the debtor—with a view to using the credit claim as collateral—or limit the creditor's ability to do so.
2) The provisions of the Consumer Credit Act remain reserved. Art.
401–441
Repealed
Title 7
Rights to ownerless and public property
1. Section
General Provisions
A. Abandoned Property
Art. 442
I. Definition
1) Property is considered ownerless if no ownership can be proven.
2) Captured animals become ownerless when they regain their freedom and their owner does not immediately and continuously search for them and attempt to recapture them.
3) Domesticated animals become strays as soon as they revert to a wild state and no longer return to their owner.
4) Bee swarms do not become ownerless simply because they land on foreign soil.
II. Movable property
Art. 443
1. In general
1) Ownership of an ownerless movable thing is acquired when someone takes possession of it with the intention of becoming its owner.
2) The provisions of public law remain reserved. Art. 444
2. Treasure

1) If a valuable object is found which, under the circumstances, can be reasonably presumed to have been buried or hidden for a long time and to have no owner, it is considered a treasure.
2) Subject to the provision regarding objects of scientific value, the treasure shall belong to the owner of the land or of the movable property on which it was found.
3) The finder is entitled to reasonable compensation, which, however, may not exceed half the value of the treasure.
Art. 445
3. Scientific Objects
1) Unclaimed natural objects or antiquities of scientific value are the property of the state.
1a) Such items may not be sold without the permission of the Office of Culture. They cannot be acquired by adverse possession or in good faith. The claim for their return is not subject to a statute of limitations.
2) The owner of the property on which such items are found and the finder are obligated to notify the Office of Culture thereof. The owner of the property must permit their excavation in exchange for compensation for the damage caused.
3) The finder, and in the case of a treasure, also the owner, is entitled to reasonable compensation, which, however, shall not exceed the total value of the objects.
III. Real Estate
Art. 446
1. Scope of Application
There is no private ownership of public waters or of land unsuitable for cultivation, such as rocks and scree slopes, firn and glaciers, and the springs arising therefrom, subject to proof to the contrary. Art. 447
2. Acquisition
1) Repealed
2) The acquisition of a parcel of land registered in the land register may only take place if, according to the land register, it is ownerless.
3) In the case of such properties, it takes place through the entry of the occupant as owner in the land register.

4) Acquisition of a parcel of land not recorded in the land register takes place through taking possession of the parcel and its entry into the land register.
5) Article 43(3) applies to the entry in the land register. Article 448

3. Creation of New Territory

1) If land suitable for exploitation arises from alluvial deposits, embankments, soil displacement, changes in the course or level of a public waterway, or in any other way from unclaimed land, it belongs to the State of Liechtenstein.
2) If a person can prove that portions of land have been taken from his or her property, he or she may reclaim them within a reasonable period of time.

B. Public Property

I. In general

Art. 449

1. Definition

1) Public property is defined as property intended to serve public purposes directly.
2) Property owned by the state or municipalities, as well as property owned by public-law corporations or institutions, is not considered public property. Such property is treated as privately owned.

Art. 450

2. Application of Property Law

1) The provisions of this Act apply mutatis mutandis to public property, unless specific rules have been established for such property.
2) Easements and encumbrances may be created both in favor of and to the detriment of public property.
3) Repealed
4) However, no rights may be acquired by prescription on public land. Art. 451

II. Administrative Assets of the State and Municipalities

1) The administrative assets of the state and municipalities include those items owned by the state or a municipality that are intended, through their direct utility value, to serve the state or a municipality in the performance of their public-law duties, in particular for the operation of public institutions.
2) The sale of real property belonging to the administrative assets of a municipality requires the consent of the member of the government responsible under the division of duties.
3) The pledging of real property belonging to the administrative assets of the state or a municipality is prohibited.

III. Property Intended for Public Use

Art. 452

1. In general

1) Waters, roads, squares, bridges, and land unsuitable for cultivation that are not demonstrably privately owned are items intended for public use.
2) Anyone may freely use property intended for public use to the extent customary in the locality and within the framework of the legal system.
3) This is subject to the provisions governing the use thereof.

Art. 453

2. Special Rights

1) As long as these items serve public use, private rights in them vis-à-vis the community may be acquired only by express concession, but not by appropriation or adverse possession.
2) Anyone who has acquired a special right to a thing in common use may exercise that right only to the extent permitted by their concession (grant) and required by their need. They shall not unnecessarily restrict common use.
3) If public interests are impaired by such use and exploitation, the government may prohibit them.

2. Section

Hydropower Art.

454–483 Repealed

3. Section:
Mines, Art.
484

A. Subject Matter of Mining

The provisions regarding mines apply to all measures for the exploration and commercial extraction of the following raw materials: metallic ores, fossil fuels, illuminants, and related substances, such as graphite, anthracite, hard coal, lignite, bituminous shale, asphalt, bitumen, and mineral oils, sulfur, sulfur ores, rock salt, and brine springs, but not peat.

B. Acquisition of Mining Rights

I. Prospecting

Art. 485

1. Issuance of the Prospecting Permit

1) Anyone wishing to prospect for substances to be extracted by mining or to resume previous mining operations, including 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 conflict with the public interest or harm interests that clearly far exceed the expected profit from the mine.

Art. 486

2. Contents of the Prospecting Permit

1) The prospecting permit is issued for one or more raw materials; however, for the same raw material and the same area, it is issued to only one applicant.

2) It grants the holder the right to prospect for a specific period of time and within a specific geographical area, to be determined based on mining conditions and economic interests.

3) It loses its validity if, during the specified period, the relevant prospecting work has not been carried out at all or has been unsuccessful.

4) For valid reasons, both the area and the duration of the prospecting permit may be extended.

Art. 487

3. Effect of Prospecting

1) The holder of the prospecting permit must have his discovery officially verified, particularly with regard to its anticipated suitability for mining, and must then apply to the government for the grant of the mining concession within a period of three months.
2) The government may grant an extension of this period for valid reasons.
II. The Grant
Art. 488
1. Requirements
1) If a mineral subject to mining regulations is discovered, its exploitation requires a concession issued by the government, which may be denied for the same reasons as the issuance of a prospecting permit. Applications for concessions must be made public, and objections may be filed within 14 days.
2) In the event that fossils other than those specified in the prospecting permit are found, the concession must clearly define the relationship with other entitled parties.
3) The rights of the state under the mining prerogative remain
reserved. Art. 489
2. Designation of the Licensee
1) The concession is granted to a specific person, company, corporation, or institution.
1a) The applicant must, in particular, demonstrate that professional management is ensured.
2) Neither the prospecting permit nor the concession may be transferred without the consent of the government.
Art. 490
3. Contents of the Grant Certificate
The concession of the mine is granted for one or more raw materials and for a specific area and period of time to be determined according to the circumstances, taking into account the need to enable rational exploitation. Art. 491
III. Settlement with the Landowner
1) The landowner on whose land mining operations are conducted or a mine is established is entitled to compensation for the land area used and for any other damages incurred.

2) Compensation shall be determined in accordance with the provisions governing compulsory expropriation.

3) Before the commencement of the damaging measures, the owner may demand security.

C. Loss of Mines

Art. 492

I. Expiration and Renewal

1) The concession expires upon the expiration of the concession period, but may be renewed upon request.

2) Renewal shall be governed by the same principles as the grant, taking into account changed circumstances, but shall not impose a significant burden on the holder of the mining rights.

3) If renewal is denied, the state shall fairly compensate the holder for the value of the facilities based on a judicial appraisal.

Art. 493

II. Forfeiture

1) The concession shall be declared forfeited by the government if the holder of the mining concession grossly violates the terms of the concession.

2) It shall automatically expire if the mine is not established within the period to be specified in the grant, as well as if operations are suspended for five consecutive years.

D. Contents of the Mines

Art. 494

I. Operating Regulations

1) The mine must be constructed and operated in a technically sound manner and in accordance with the regulations enacted for the protection of persons and property.

2) To protect land, buildings, transportation routes, and watercourses, the owner of the mine must observe all technical safety precautions and take the necessary measures to ensure compliance.

II. Right of Compulsory Expropriation

Art. 495

1. Subject of Expropriation

The owner of the mine may, by way of compulsory expropriation, be granted:
1. the land he requires for mining, construction, or any other operational purposes that cannot reasonably be avoided, or in respect of which damage caused by the operation that substantially reduces the value of the land cannot be avoided;
2. the water extracted by the mine, as well as the timber felled during construction, to the extent necessary for mining operations.
Art. 496
2. Restrictions
1) Compulsory expropriation shall be denied if its benefit to mining clearly does not exceed the value of the property claimed.
2) It may also be denied if transportation routes, public buildings, or works of greater public or economic importance would thereby be disrupted or endangered.
Art. 497
III. Obligations
1) The owner of the mine is obligated to construct, at his own expense, all facilities required by the concession and by law.
2) He shall compensate for all damages incurred by third parties, whether directly or indirectly, as a result of the mining or operation of the facility.

3. Section
Ownership and Land Registry
8. Title
Possession
A. Definition and Types
Art. 498
I. Definition
1) Whoever has actual control over a thing is its possessor.
2) In the case of easements and encumbrances, the actual exercise of the right is equated with possession of the thing.
Art. 499
II. Independent and Dependent Possession

1) If a possessor has transferred the thing to another person for a limited real right or a personal right, both are possessors.
2) The person who owns the thing as its owner has independent possession; the other has dependent possession.
Art. 500
III. Temporary Interruption
A temporary impediment or failure to exercise actual control, by its very nature, does not extinguish possession.
B. Transfer
Art. 501
I. Between Persons Present
1) Possession is transferred by the delivery of the thing itself or of the means that enable the recipient to exercise control over the thing.
2) Delivery is effected as soon as the recipient, with the consent of the previous possessor, is in a position to exercise control over the thing.
3) Repealed
Art. 502
II. Between Absent Parties
If the transfer takes place between absent parties, it is effected upon the delivery of the item to the recipient or the recipient's representative.
Art. 503
III. Without delivery
1) Ownership of an item may be acquired without delivery if a third party or the transferor himself remains in possession of the item by virtue of a special legal relationship.
2) This transfer of possession is effective against the third party only after the transferor has notified the third party thereof.
3) The third party may refuse to surrender the item to the acquirer for the same reasons that he could have refused to surrender it to the transferor.
Art. 504
IV. In the case of documents of title
1) If documents of title are issued to represent goods delivered to a carrier or a warehouse, the transfer of such a document shall be deemed a transfer of the goods themselves.

2) However, if a bona fide holder of the document of title is opposed by a bona fide holder of the goods, the latter takes precedence over the former.

C. Significance

I. Protection of Possession

Art. 505

1. Defense Against Attacks

1) Every owner may use force to defend against unlawful interference.

2) If the property is taken from him by force or surreptitiously, he may immediately regain possession of the premises by expelling the perpetrator and take the movable property back from the perpetrator caught in the act and being directly pursued.

3) In doing so, he must refrain from any use of force that is not justified by the circumstances.

Art. 506

2. Action for deprivation of possession

1) Anyone who has deprived another of a thing through unlawful interference is obligated to return it, even if he claims a better right to the thing.

2) If the defendant immediately establishes that he has a better claim and, on that basis, could demand the return of the item from the plaintiff, he may refuse to return it.

3) The action seeks the return of the property and damages.

Art. 507

3. Action for Disturbance of Possession

1) If possession is disturbed by unlawful interference, the possessor may bring an action against the disturber, even if the latter claims to have a right.

2) The action seeks the removal of the disturbance, an injunction against further disturbance, and damages.

Art. 508

4. Admissibility and Statute of Limitations of the Action

1) An action for unlawful interference is admissible only if the possessor, immediately after becoming aware of the interference and the perpetrator, demands the return of the property or the removal of the interference.

2) The right to bring an action is barred after one year has elapsed, starting from the date of the deprivation or disturbance, even if the owner did not become aware of the act or the perpetrator until later.

II. Legal Protection

Art. 509

1. Presumption of Ownership

1) The possessor of a movable thing is presumed to be its owner.

2) For any prior possessor, there is a presumption that he was the owner of the thing during the period of his possession.

Art. 510

2. Presumption in the Case of Independent Possession

1) If a person possesses a movable thing without intending to be its owner, they may assert the presumption of ownership on behalf of the person from whom they received it in good faith.

2) If a person possesses a movable item by virtue of a limited real right or a personal right, the existence of that right is presumed; however, the person may not invoke this presumption against the person from whom he or she received the item.

Art. 511

3. Action against the possessor

The possessor of a movable thing may invoke the presumption in favor of his superior right against any action, subject to the provision regarding unauthorized deprivation or disturbance of possession.

4. Right of Disposal and Restitution

Art. 512

a) In the case of entrusted property

A person who receives a movable thing in good faith as property or as a limited real right shall be protected in his acquisition even if the thing had been entrusted to the transferor without any authority to transfer it.

Art. 513

b) In the case of lost items

1) The owner of a movable item that has been stolen, lost, or otherwise taken against his will may reclaim it from any recipient within five years. Article 191 remains reserved.
2) If the item has been sold at a public auction, at a market, or by a merchant dealing in goods of the same kind, it may be reclaimed from the first and any subsequent recipient acting in good faith only upon payment of the price paid by such recipient.
3) The return of the item shall otherwise be governed by the provisions regarding the claims of the possessor in good faith.
Art. 514
c) With regard to money and bearer instruments
Money and bearer instruments may not be reclaimed from a recipient in good faith, even if they have been lost by the owner against his will.
Art. 515
d) In cases of bad faith
1) A person who has not acquired possession of a movable thing in good faith may be sued by the former owner at any time for its return.
2) However, if the former owner also did not acquire the item in good faith, he or she may not demand its return from a subsequent owner.
Art. 516
5. Presumption regarding real property
1) With respect to real property entered in the land register, a presumption of title and an action for possession exist only for the person who is registered.
2) However, whoever has actual control over the property may bring an action for unauthorized deprivation or disturbance of possession.
III. Liability
1. Possessor in good faith
Art. 517
a) Use
1) A person who possesses a thing in good faith is not liable to the rightful owner for damages arising from the use and enjoyment of the thing in accordance with his presumed right.
2) He is not required to compensate for anything that is lost or damaged in the process.

Art. 518

b) Claims for Compensation

1) If the rightful owner demands the return of the item, the possessor in good faith may claim compensation for necessary and beneficial uses and refuse to return the item until compensation is paid.

2) He may not claim compensation for other uses, but if such compensation is not offered to him, he may, before returning the thing, take back what he has used, provided this can be done without damaging the thing itself.

3) The fruits received by the owner shall be set off against the claim for expenses.

Art. 519

2. Possessor in Bad Faith

1) A person who possesses a thing in bad faith must return it to the rightful owner and compensate for all damage caused by the withholding, as well as for the fruits received or lost.

2) He has a claim for use only if such use would also have been necessary for the rightful owner.

3) As long as the possessor does not know to whom he is to return the thing, he is liable only for the damage for which he is at fault.

Art. 520

IV. Acquisition by Adverse Possession

A possessor entitled to acquisitive prescription may take into account the possession of his predecessor, provided that the latter's possession was also eligible for acquisitive prescription.

9. Title

The Land Register

A. Establishment

I. Contents

Art. 521

1. In general

1) A land register is maintained to record rights in real property, which is divided by municipality.

2) The land register consists of the main register and the plans, supporting documents, property descriptions, and the journal that supplement the main register.

3) The land register may be maintained on paper or electronically. Art. 522

2. Entry

1) The following properties are entered in the land register:

1. real property;
2. independent and permanent rights in real property;
3. mines;
4. co-ownership shares in real property.

2) Independent and permanent rights are entered upon application by the entitled party. The remaining types of real property are entered ex officio.

3. General Ledger

Art. 523

a) In general

1) Each parcel of land is assigned its own page and number in the main register.

2) Independent and permanent rights, mining rights, and co-ownership shares in parcels of land may be numbered separately throughout the state.

Art. 524

b) Ledger Page

Each general ledger page must contain separate sections regarding:

1. ownership;
2. the easements and encumbrances attached to the property or resting upon it;
3. the liens encumbering it;
4. the preliminary registrations;
5. the annotations;
6. the description of the property.

Art. 525

c) Journal, Supporting Documents

1) Applications for entry in the land register shall be entered in the journal in chronological order without delay, stating the applicant and the request.

2) The supporting documents upon the submission of which entries are made in the land register shall be appropriately organized and retained.

Art. 526

4. Plans for the Land Register

The registration and description of individual parcels in the land register are based on a map derived from the official cadastral survey.

Art. 527

5. Regulation

The government shall issue the necessary ordinance regarding the structure of the land register, in particular concerning:

1. the registration of parcels of land and the establishment of the main register;
2. the separate numbering of independent and permanent rights, mining rights, and co-ownership shares in parcels of land;
3. the form of the main register;
4. the subsidiary registers and the data to be included therein;
5. the measures to be taken in the event of the destruction or loss of a ledger page;
6. the storage of books, registers, and land registry files.

II. Land Registry Administration

Art. 528

1. General Provisions

1) The Office of Justice is responsible for the establishment and maintenance of the land register.

2) Repealed

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 as follows:

1. for the registration of ownership, ownership shares, and building rights: 6‰ of the value of the consideration; in the absence of such consideration, 6‰ of the assessed tax value, but at least 200 francs per transfer of ownership; in the case of acquisition pursuant to court decisions establishing legal relationships: 200 francs per transfer of ownership;
2. for the registration of ownership resulting from a merger of companies or similar transactions: 1‰ of the value of the consideration;
3. for the creation or increase of a mortgage: 2‰ of the mortgage amount or the amount of the increase;

4. for the creation or modification of an independent and permanent right or an encumbrance: 2‰ of the value of the right.
3) The government may establish minimum and maximum amounts for the value-based fees under paragraph 2 by ordinance.
4) For other official acts, the government shall set the fees by ordinance. They shall be commensurate with the time required and the significance of the matter.
5) The government shall regulate by ordinance the procedure for collecting fees, the securing of fees, and the collection of fees.
Art. 529a
Repealed Art.
530
b) Exemption from Fees
1) Entries, preliminary entries, annotations, or deletions in the land register made ex officio are exempt from fees, as are extracts from the land register intended for official use.
2) The Principality of Liechtenstein, the municipalities, domestic authorities and courts, as well as the Prince, are exempt from fees.
3) The Government may, by ordinance, exempt further cases from the obligation to pay fees and regulate the procedure.
Art. 531
c) Person Liable for Fees
1) Fees are owed by the person requesting the official act. In the case of changes in ownership, they are owed in equal shares by both parties.
2) If the request is made by several persons, they are jointly and severally liable. In the case of changes in ownership of real property, joint and several liability also applies to the purchaser of the property.
3) The parties reserve the right to claims for recourse and to deviate from these provisions.
Art. 532
3. Liability
1) The state is liable for any damage resulting from the maintenance of the land register and the updating of the land register map.
2) The provisions of the law on official liability apply.

4. Appeals and Proceedings

Art. 533

a) Appeal against the Rejection of a Registration

1) The applicant, as well as any other party affected by the rejection of a land registry application, may, within 14 days of service, file a petition with the Office of Justice or an appeal with the Appeals Commission for Administrative Matters.

2) An appeal against decisions of the Appeals Commission for Administrative Matters may be filed with the Administrative Court within 14 days of service.

Art. 534

b) Appeals in Other Cases

1) Any person affected by a decision of the Office of Justice that does not concern the rejection of an application may, within 14 days of service, file an objection with the Office of Justice or an appeal with the Appeals Commission for Administrative Matters.

2) An appeal against decisions of the Appeals Commission for Administrative Matters may be filed with the Administrative Court within 14 days of service.

Art. 535

c) Procedure

1) The provisions of the Law on General State Administration apply to the proceedings.

2) The Office of Justice has the right to file a counter-statement in the appeal proceedings.

B. Registration

I. Land registry entries

Art. 536

1. Ownership and Limited Real Rights

The following rights in real property shall be entered in the land register:

1. ownership;
2. easements and encumbrances;
3. liens.

2. Preliminary Notations

Art. 537
a) Personal Rights
1) Personal rights may be registered in the land register if such registration is expressly provided for by law, as in the case of rights of first refusal and repurchase, rights of purchase, leases, and rentals.
2) By virtue of the priority notice, they take effect against any rights acquired subsequently.
Art. 538
b) Restrictions on Disposal
1) Restrictions on disposal may be registered:
1. to secure disputed or enforceable claims;
2. to secure a prohibition on sale, encumbrance, or pledging pursuant to § 97a(1)(4) StPO;
3. in the cases provided for by law.
2) The court must permit the registration of a restriction to secure disputed or enforceable claims if the existence of a mandatory claim for the registration, cancellation, or modification of a right in rem is substantiated.
3) The restrictions on disposal take effect against any rights acquired subsequently by virtue of the priority notice.
Art. 539
c) Provisional entries
1) Provisional entries may be registered:
1. to secure asserted rights in rem;
2. in the event of a supplement to the certificate permitted by law.
2) They are made with the written consent of all parties involved or by order of the court, with the result that the right becomes effective in rem from the time of the provisional registration in the event of its subsequent determination.
3) After the claimant has established a prima facie case, the court approves the reservation by precisely determining its temporal and substantive scope and, if necessary, setting a deadline for the judicial assertion of the claims.
Art. 540
d) Registration of Subsequent Rights

A preliminary registration does not prevent the registration of a right of lower priority.

Art. 541

3. Notes

1) Private law relationships may be noted in the land register only in the cases provided for by law.

2) In addition, the regulations implementing this Act may provide for annotations arising from the land registry.

3) The municipality or another public authority must have the following entered in the land register:

1. a restriction on ownership under public law imposed on a specific parcel of land that imposes a permanent restriction on the owner’s use or disposal of the property or a land-related obligation;

2. public law encumbrances pursuant to Art. 256(2)(2).

4) The government shall determine by ordinance which additional public-law restrictions on ownership must be noted in the land register.

5) If the restriction on ownership ceases to apply, the municipality or the other public authority responsible for a public function must arrange for the deletion of the annotation in the land register. If the municipality or the other public authority responsible for a public function fails to act, the Office of Justice may delete the annotation ex officio.

II. Requirements for Registration

1. Applications

Art. 542

a) For entries

1) Entries are made on the basis of a written declaration by the owner of the property to which the disposition relates.

2) No declaration by the owner is required if the acquirer can rely on a statutory provision, a final judgment, or a document having the same legal effect as a judgment.

3) Ex officio entries are permitted only in the cases provided for in this Act or in the ordinance issued pursuant thereto.

Art. 543

b) Regarding Deletions

The deletion or amendment of an entry requires a written statement from the persons entitled under the entry.

2. Certificates

Art. 544

a) Valid proof

1) Land registry dispositions, such as registration, amendment, or deletion, may in all cases be carried out only on the basis of proof of the right of disposition and the legal basis.

2) Proof of the right of disposal consists of evidence that the applicant is the person authorized to dispose of the property in accordance with the land register or has received a power of attorney from such a person. The power of attorney must be a power of attorney for health care (§ 284b ABGB), a general power of attorney (§ 1006 ABGB), which must not be more than two years old at the time of filing, or a power of attorney issued for a specific transaction (§ 1008 ABGB).

3) Proof of the legal basis lies in the demonstration that the conditions required for its validity have been met.

Art. 545

b) Supplement to the Proof

If the legal basis has been established and the matter concerns only a supplement to the proof of the right of disposal, a provisional registration may take place with the owner's consent or by court order.

Art. 545a–545g

Repealed Art.

546

c) Insufficient evidence

If the documents required for a land registry disposition are not submitted, the application shall be rejected.

III. Type of entry

Art. 547

1. In general

1) Entries in the main register shall be made in the order in which the applications were filed.

2) Upon request and upon payment of the prescribed fee, an extract of all entries shall be issued to the parties concerned.

Art. 548

2. Easements and Encumbrances

The registration and cancellation of easements and encumbrances shall be recorded on the sheet of the property of the beneficiary and the encumbered property.

Art. 549

IV. Duty to Notify

The Office of Justice shall notify the parties concerned of any land registry decisions made without their knowledge.

Art. 550

V. Regulation

The government shall issue the necessary ordinance regarding the maintenance of the land register, in particular concerning:

1. registration and entry in the journal;
2. the requirements and manner of entries, preliminary notices, and annotations;
3. the issuance of mortgage deeds and documents relating to mortgage registrations;
4. the amendment, cancellation, and invalidation of mortgage titles;
5. the division, consolidation, and transfer of real property;
6. extracts.

Art. 551

C. Public Access to the Land Register

1) The land register is public.

2) Any person who demonstrates a credible interest is entitled to be granted access to the land register or to receive an extract from it.

3) Any person is entitled to receive the following information even without such an interest:

1. the designation and description of the property;
2. the name and identification of the owner;
3. the form of ownership and the date of acquisition;
4. the easements and encumbrances, as well as any annotations.

4) The government may issue a regulation stipulating that certain individuals may be provided with additional information without having to demonstrate an interest.

4a) Information or an extract may only be provided with respect to a specific parcel of land. A query based on personal data is not permitted.
5) The defense that a person was unaware of a land registry entry is precluded.
D. Effect
Art. 552
I. Significance of Non-Registration
1) To the extent that registration in the land register is required for the establishment of a right in rem, such a right exists as a right in rem only if it is apparent from the land register.
2) Within the scope of the entry, the content of a right may be substantiated by supporting documents or by other means.
II. Significance of registration
Art. 553
1. In general
1) Real rights arise and acquire their priority and effective date through entry in the land register.
2) Their effect is retroactive to the date of entry in the journal, provided that the required legal documents are attached to the application or, in the case of provisional entries, are subsequently submitted in a timely manner. Art. 554
2. Against third parties acting in good faith
1) Any person who has relied in good faith on an entry in the land register and has consequently acquired ownership or other rights in rem shall be protected in such acquisition.
2) This provision does not apply to the boundaries of parcels of land in areas designated by the government where land redistribution has taken place.
Art. 555
3. Against third parties acting in bad faith
1) If the entry of a right in rem is unjustified, a third party who knows or ought to know of the defect may not rely on the entry.
2) An entry is unjustified if it was made without legal basis or as a result of a non-binding legal transaction.

3) Any person whose real right is infringed by such an entry may directly invoke the invalidity of the entry against the third party acting in bad faith.

E. Cancellation and Amendment of Entries

I. Rectification

Art. 555a

1. Upon division of the property

1) If a parcel of land is divided, the easements, preliminary notices, and annotations must be adjusted for each subparcel.

2) The owner of the property to be divided must apply to the Office of Justice to specify which entries are to be deleted and which are to be transferred to the sub-plots. Otherwise, the application must be rejected.

3) If, based on the supporting documents or the circumstances, an entry does not apply to a parcel, it must be deleted from that parcel. The procedure is governed by the provisions regarding the deletion of an entry.

Art. 555b

2. In the case of the consolidation of parcels

1) Multiple parcels of land owned by a single owner may be consolidated only if no real property liens or encumbrances need to be transferred from the individual parcels to the consolidated parcel, or if the creditors consent to such a transfer.

2) If easements, preliminary notices, or annotations are registered against the properties, they may be consolidated only if the entitled parties consent or if their rights are not impaired by the nature of the encumbrance.

3) If easements, preliminary notices, or annotations in favor of the properties are registered, these may only be consolidated if the owners of the encumbered properties consent to this or if the encumbrance is not increased by the consolidation.

4) The provisions regarding the adjustment of the property upon division apply mutatis mutandis.

Art. 556

II. In the case of an unjustified entry

1) If the registration of a right in rem is unjustified or if a valid registration has been unjustifiably deleted or altered, any person whose rights in rem are thereby infringed may bring an action for the deletion or alteration of the registration.
2) This is without prejudice to rights in rem acquired by bona fide third parties through registration and claims for damages.

III. Simplified Cancellation

Art. 557

1. In the case of entries that are unquestionably meaningless or the extinction of a right in rem

1) The Office of Justice may delete an entry ex officio if it:
1. is time-limited and has lost its legal significance due to the expiration of the term;
2. relates to a non-transferable or non-heritable right of a deceased person;
3. cannot pertain to the property due to its location;
4. relates to a property that has ceased to exist.

2) The Office of Justice may, on its own initiative, request a judicial investigation and determination of the extinction of a right in rem and, upon order of the District Court, proceed with the deletion.

Art. 557a Repealed

2. For other entries

Art. 558

a) In general

1) If an entry is highly unlikely to have any legal significance, in particular because, according to the supporting documents or the circumstances, it does not concern the property, any person encumbered thereby may request its cancellation.
2) If the Office of Justice considers the request to be justified, it shall notify the entitled person that it will delete the entry unless the person files an objection with the Office of Justice within 30 days.

Art. 559

b) In the event of an objection

1) If the entitled person files an objection, the Office of Justice shall re-examine the request for deletion at the request of the person subject to the entry.
2) If the Office of Justice concludes that the request should be granted despite the objection, it will notify the entitled person that it will delete the entry from the

land register unless they file a declaratory action with the district court within three months to establish that the entry has legal significance.

Art. 560

IV. Corrections

1) The Office of Justice shall correct any erroneous registration. Unless the parties involved have given their written consent, it shall issue an order regarding the correction.

2) Instead of a correction, the incorrect entry may be deleted and a new entry made.

3) The Office of Justice may correct mere clerical errors on its own initiative at any time.

F. Maintenance of the Land Register Using Information Technology

Art. 561

I. General Principle

1) The land register may be maintained using information technology ("computerized land register").

2) The data from the main register, the journal, the property description, and the auxiliary registers are stored together in a single system and linked to one another.

3) To the extent that the provisions governing the maintenance of the land register using information technology do not contain any special provisions, the remaining provisions of this Act shall apply.

Art. 562

II. Order

1) The government shall order the maintenance of the computerized land register and determine the system to be used for this purpose.

2) In doing so, it shall verify whether the system complies with the legal requirements. Art. 563

III. Data Security

1) The data in the electronic land register must be maintained in such a way that its integrity and quality are preserved. It must be continuously protected and secured in accordance with generally accepted standards.

2) The government shall issue the necessary orders. Art.
564

IV. Data Availability

1) The following data must be accessible at short notice in the computerized land register:
1. the current data from the main register regarding the owners, as well as the deleted data of the legal predecessor and their predecessor, but always the data of all owners for a period to be determined by ordinance;
2. the current data from the main register regarding easements, encumbrances, mortgages, priority notices, and annotations, as well as the corresponding deleted data as of the date of their deletion;
3. the journal data regarding all pending registration proceedings and all registrations within a period to be determined by regulation.
2) It must be possible to retrieve the remaining data within a reasonable period of time. Art. 565
V. Data Access via Retrieval
1) The Office of Justice may, upon request, grant the following persons access to the data in the general ledger, the journal, and the subsidiary registers without requiring them to demonstrate a specific interest in each individual case:
a) surveyors, state and municipal authorities, as well as courts and law enforcement agencies, to the data they require to fulfill their statutory duties;
b) banks to the data they require to perform their duties in mortgage transactions;
c) certain individuals to the data:
1. the properties they own; or
2. of the properties to which they hold rights, provided they require the data to conduct their business activities or exercise their rights.
2) Repealed
3) The Office of Justice may, in individual cases and after reviewing the proof of interest, grant a person access to the relevant data.
4) Every query made by a person accessing the land registry data must be recorded electronically and must be readily retrievable for a period of one year.
5) The government may regulate further details by ordinance. Art. 566
VI. Ledger

1) The information regarding a parcel of land that is legible in writing and in figures on the equipment of the Office of Justice shall have the status of the main register if it can only be altered through a new registration procedure. The same status applies to a printout of this information created on the equipment of the Office of Justice and confirmed by the Office's signature.
2) The presentation of the data must clearly indicate that it pertains to a specific parcel of land at a specific point in time.
3) Entries in the general ledger must be organized by the relevant sections and must be legible in both text and numeric form. Easements and encumbrances may be shown separately.
Art. 567
VII. Journal
1) The information on the devices of the Office of Justice regarding registrations and proceedings initiated ex officio, which is legible in writing and in figures, shall have the significance of the journal.
2) The final order to enter the data into the journal application has the legal effect of an entry in the journal. The same effect applies to the printout of this information created on the Office of Justice's devices and confirmed by the Office's signature.
3) The presentation of the data must clearly indicate that it constitutes the journal's entries as of a specific point in time.
4) The system must be configured so that the data cannot be altered after the entry has been finalized.
Art. 568
VIII. Registration Procedure
1) The registration procedure is initiated by the entry in the journal.
2) The entry procedure is completed by means of specific entry commands:
1. the entry, modification, or deletion of general ledger data is declared legally effective;
2. the application is deemed to have been dismissed with final effect;
3. the application is deemed withdrawn;
4. an erroneous entry in the journal is declared invalid.

Art. 569

IX. Deletions, Changes, and Corrections

1) Entries are deleted by transferring the data from the set of legally effective data to the set of data that is no longer legally effective.

2) In the event of a change or correction, the new data shall be entered into the register of legally effective data in the general ledger, and the changed or corrected data shall be transferred to the register of data that is no longer legally effective.

3) Data that is no longer legally effective must be identified as such. Art. 570

X. Legal Effects

1) The execution of the entry command in the registration procedure, whereby the registration, amendment, or deletion of data concerning rights in rem is declared legally effective, has the legal effect of an entry in the main register.

2) The information regarding rights in rem that is legible in writing and in figures on the devices of the Office of Justice has the legal effects of the entry. The same effects apply to the printout of this information created on the devices of the Office of Justice and confirmed by the Office's signature.

Art. 571

XI. Regulation

The government shall issue the necessary ordinance regarding the maintenance of the electronic land register, in particular regarding:

1. the testing of the system to be used;
2. data security;
3. the availability of data;
4. 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 632l

Repealed Final
Provisions

Transitional Provisions

A. General Provisions

Art. 1

I. General Rule of Non-Retroactivity

1) The legal effects of facts that occurred prior to the entry into force of this Act shall continue to be assessed in accordance with the provisions of the law in force at the time such facts occurred.

2) Accordingly, acts performed prior to that time shall continue to be subject, with respect to their legal binding force and legal consequences, to the provisions in force at the time they were performed.

3) Events occurring after this date, however, shall be assessed under 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 that are established for the sake of public order and morality shall apply to all facts upon its entry into force, unless the Act provides for an exception.

2) Accordingly, provisions of the previous law that, in the view of the new law, are contrary to public order or morality shall no longer apply after the new law enters into force.

Art. 3

2. Content of Legal Relationships by Operation of Law

Legal relationships whose content is defined by law independently of the will of the parties shall be assessed in accordance with the new law after the entry into force of this Act, even if they were established prior to that date.

Art. 4

3. Unacquired Rights

Facts that occurred under the previous law but did not give rise to a legally protected claim at the time the new law came into force shall, after that time, be governed by the new law with respect to their effects.

Art. 5

III. Acquired rights in rem

1) Real rights existing at the time this Act enters into force shall, subject to the provisions regarding the land register, continue to be recognized under the new law.

2) With respect to their content, however, ownership and limited rights in rem shall be governed by the new law after the entry into force of this Act, unless an exception is provided for.

3) If their establishment were no longer possible under the new law, they shall remain subject to the previous law.

Art. 6

IV. Right to Registration in the Land Register

1) Claims for the creation of a right in rem established prior to the entry into force of this Act shall be recognized as valid if they comply with the formal requirements of the previous or the new law.

2) The content of a real right established by a legal transaction prior to the entry into force of this Act shall remain recognized under the new law, provided it is not incompatible with it.

B. Ownership

I. General Provisions

Art. 7

1. Acquisition by Adverse Possession

1) Acquisition by prescription shall be governed by the new law as of the effective date of this Act.

2) However, if an acquisitive prescription that also complies with the new law began under the previous law, the time that has elapsed until the entry into force of this Act shall be credited proportionally toward the period of acquisitive prescription.

3) Until the revision of the law governing general obligations, §§ 1452 et seq. of the ABGB shall apply to the calculation of periods, the interruption, and the suspension of acquisitive prescription.

Art. 8 Repealed

II. Real Estate

Art. 9

1. Rights of Repurchase and Tenancy

Repurchase and tenancy rights under the previous law regarding real property shall continue to be recognized.

2. Endowments

Art. 10

a) prior to February 1, 1923

1) The new law applies to endowments upon the entry into force of this Act.

2) Endowments existing at the time this Act enters into force shall continue to be recognized.

Art. 10bis

b) Prior to the entry into force of the new law

1) For foundations existing upon the entry into force of the Act of April 24, 2008, amending the law of property, the previous law applies.

2) The properties shall be entered individually in the land register. The foundation shall be noted.

Art. 11

3. Trees on Third-Party Land

Existing property rights to trees on another's land shall continue to be recognized under the previous law.

Art. 11bis

3bis Condominium Ownership

Condominium ownership governed by the former law is subject to the new provisions of this Act, even if the condominium units or parts thereof are not self-contained as residential or commercial units.

Art. 11ter

3ter Rectification of the Land Register

For the registration of existing condominium ownership, the government may order the rectification of the land register and issue special procedural regulations for this purpose.

4. Appendix to the Seybücher

Art. 12

Repealed Art.

13 Repealed

Art. 14

Repealed

Art. 15

III. Movable Property

1) Retention-of-title agreements established under the old law with real property effect shall continue to be recognized.

2) However, they must be entered in the register of retention of title within one year of this Act taking effect. Upon the expiration of this period without action, they become ineffective, but may still be entered at a later date.

C. Easements

Art. 16

I. New

Easements established since the entry into force of this Act require entry in the land register to have real effect, to the extent that such entry is required under the new law.

Art. 17

II. Existing

1) Easements existing at the time this Act enters into force shall continue to have legal effect without being entered in the land register.

2) To the extent that their registration would be required under the new law, they

a) with respect to parcels of land in municipalities or parts of municipalities where surveying within the meaning of the Act on State Surveying of February 1, 1945, has been legally concluded or will be concluded by December 31, 1965, until January 1, 1966,

b) if the conditions under letter a are not met, in the course of the surveying, but no later than the entry in the land register of the relevant legally binding survey, provided that the public invitation procedure (Art. 87 and 88 SchlT old SR) has been carried out,

c) if the requirements under letter b are not met, on the basis of the rectification procedure under the new law (Art. 61 et seq. Transitional Provisions SR),

to be entered in the existing land register entries or, with respect to subparagraph c, in the land register; otherwise, the easements shall expire.

3) Obligations incidentally associated with easements that were established prior to the entry into force of the legislative amendment of August 31, 2016, and that

can be inferred solely from the land register records may still be asserted against third parties who rely on the land register in good faith.

D. Mortgages

Art. 18

I. Recognition of Existing Mortgage Titles

1) Real estate liens existing at the time this Act enters into force shall remain recognized without the need for their adaptation to the new law.

2) Mortgages established under the previous law are treated as mortgage deeds under the new law.

3) The provisions of the new law regarding real estate mortgages apply to mortgages established under the previous law, unless an exception is provided for.

Art. 19

II. New Real Property Liens

1) After this Act enters into force, new real property liens may be created only in the forms and types recognized by this Act.

2) Statutory liens under Articles 312 and 313 that arise within five years of this Act taking effect shall rank after registered liens.

Art. 20

III. Extinction of Rights

1) The discharge and modification of liens, the release of liens, and similar matters shall be governed by the provisions of the new law after its entry into force.

2) Until the introduction of a new law on presumption of death, the provisions of the previous law regarding declaration of death shall apply in lieu of the presumption of death provided for in this Act, with the exception of the provisions regarding time limits.

3) The cancellation of mortgages under the old law may also be carried out in accordance with the provisions of the old law within five years after the entry into force of this Act.

Art. 21

IV. Scope of the Mortgage Liability

1) The scope of the lien shall be determined for all real property liens in accordance with the new law.

2) However, if the creditor has, by virtue of a special agreement, validly received certain items as collateral along with the real property, the lien on these items remains in force, even if they would not be included in the lien under the new law.

V. Rights and Obligations Arising from the Real Property Mortgage

Art. 22

1. In general

1) The rights and obligations of the creditor and the debtor, insofar as they relate to the effects of the contract, shall be determined in accordance with the previous law for liens existing at the time this Act enters into force.

2) With respect to the effects arising by operation of law and not subject to contractual modification, the new law shall apply to existing liens as of that date.

3) If the lien extends to multiple properties, the lien liability shall remain in effect under the previous law.

Art. 23

2. Security Interests

The rights of the lienholder during the existing relationship, namely security interests, as well as the rights of the debtor, shall be governed by the new law for all liens as of the effective date of this Act.

Art. 24

3. Termination and Transfer

The terminability of secured claims and the transfer of security interests shall be governed by the previous law for security interests already established at the time this Act enters into force, subject to the mandatory provisions of the new law.

Art. 25

VI. Ranking

1) Mortgage rights arising after the entry into force of this Act shall be assigned a fixed priority.

2) However, real estate liens created prior to the entry into force of this Act shall retain the right of advancement.

Art. 26

VII. Limitation Based on the Appraised Value

Repealed

Art. 27

VIII. Statutory liens under public law

1) Mortgage rights existing under public law and claims for the creation of such rights remain reserved.

2) In particular, the provisions of this Act do not affect Articles 120, 121, and 168 of the Act on General State Administration of April 21, 1922.

Art. 27a

IX. Continuation of Previous Law for Existing Types of Liens

1) Existing pledges of movable property, pledges of goods in transit, and mortgage bonds shall remain in force.

2) They remain subject to the provisions of the previous law (Art. 392–441).

Art. 27b Transitional Provisions

X. Continuation of the previous law for existing paper mortgage notes

1) Paper mortgage notes existing at the time the amendment of August 31, 2016, enters into force remain valid.

2) They remain subject to the provisions of the previous law.

3) If a change occurs with respect to an existing paper mortgage note, namely a change of creditor or a change of ownership, the paper mortgage note must be converted into a registered mortgage note. For this purpose, the paper mortgage note must be presented.

Art. 27c SchlT

XI. Conversion of the Type of Mortgage

The property owner and the parties entitled under the paper mortgage note may jointly apply for the conversion of a paper mortgage note registered prior to the entry into force of the legislative amendment of August 31, 2016, into a registered mortgage note. The paper mortgage note must be presented upon application.

E. Liens on vehicles

Art. 28

I. General Provisions

The effects of a movable property lien, as well as the rights and obligations of the lienholder, the pledgor, and the debtor, are governed by the new law from the time entry into force of this Act, even if the lien arose prior to that time.

Art. 29

II. Right of Retention

1) The right of retention under this Act also extends to items that came under the creditor’s control prior to its entry into force.

2) The creditor is also entitled to it for claims that arose prior to that time.

3) The validity of rights of retention arising prior to this date is governed by the provisions of this Act.

4) After this Act enters into force, the freight forwarder, the carrier, the commission agent, the lessor, and the lessee may only assert the right of retention.

Art. 30

F. Possession

1) Upon the entry into force of this Act, possession shall be governed by the new law.

2) Repealed

3) Repealed

G. The Land Register

I. Continuation of existing land registry entries

Art. 31

1. In general

1) Until the land register is introduced, the old land register will continue to be maintained, whether on individual or collective pages. The main register may also be maintained in loose-leaf form.

2) The maintenance of existing land register records shall be governed by the new law and, in the case of the main register in book form, in accordance with Art. 33 et seq. SchlT SR.

3) Where the new law provides for an entry in a column, the relevant entry must be made in the text, provided that the old land register does not have such a column.

4) Existing land register records are understood to mean the old land register maintained until January 31, 1923, as well as the continuation of the old land register. Art. 32

2. Effects

1) Real rights under the previous law that were not entered in the old land register remain valid even without entry; however, to the extent that they require entry under the new law, they may not be asserted against third parties who have relied in good faith on the previous land register entries. Excluded from this are easements that have expired pursuant to Art. 17 SchlT SR.

2) In all other cases, the previous land register entries shall, upon the entry into force of the property law, have the effects of the new law, unless an exception is provided for.

3) We reserve the right to make corrections to existing land registry entries.

3. Registration of new parcels

Art. 33

a) Independent and Permanent Rights

1) If independent and permanent rights are registered for entry in the land register, a separate land register page must be used for each one.

2) On the inventory page, the type (e.g., water rights) and duration of the right, as well as other information necessary for its identification, must be entered.

Art. 34

b) Collective Properties

1) If the entry of several properties belonging to the same owner on a single land register page is requested, a separate land register page must be opened for them.

2) The same principles apply to the entries as previously applied to encumbrances.

3) The page shall be labeled as a collective page.

4. Entries

a) Ownership

Art. 35

aa) In general

The transfer of ownership of individual parcels of land shall be registered in the same manner as before.

Art. 36

bb) Joint Ownership

When a parcel of land is acquired as joint property, the names of the joint owners must be listed and the following must be added: “as joint owners.”

Art. 37

cc) Co-ownership

1) When acquiring a property as co-owners, the co-owners must be listed individually, and the fraction of each co-owner's ownership interest (e.g., "one-third co-owner") must be specified.

2) The transfer of individual shares of ownership must be recorded on the ownership page.

Art. 38

dd) Dependent Co-ownership and Annotated Properties

1) In the case of dependent co-ownership, the entitled properties must be listed along with their respective fractions of ownership instead of the owners.

2) The same procedure applies mutatis mutandis to registered properties.

Art. 39

b) Easements and encumbrances

1) Easements and encumbrances are entered in the same manner as before on the sheet of the encumbered property and, where applicable, also on that of the entitled property.

2) In doing so, it must be indicated whether the entry is a right or an encumbrance (e.g., "as an encumbrance").

3) In the case of encumbrances, a total value must also be indicated.

c) Mortgages

Art. 40

aa) In general

1) If a mortgage is discharged without another mortgage taking its place, an empty lien entry must be recorded, specifying the amount and the priority.

2) The entry shall be assigned the same number as the deleted lien (e.g., "ad B: vacant lien, 10,000 francs, 2nd rank").

3) From the effective date of this Act, a change of creditor shall be entered only in the Register of Creditors and only upon request.

Art. 41

bb) Mortgage Notes

1) Mortgage bonds shall be registered in the same manner as mortgages have been registered to date.

2) The entry must include the designation "real estate pledge," the interest rate, the rank, and the preceding entries (e.g., "preceding entry: 10,000 francs and 5,000 francs").
3) Land improvement liens shall be designated as such.

Art. 42

cc) Mortgage and Annuity

1) Mortgage notes and promissory notes must be designated as such in the entry.
2) In the case of bearer instruments, the holder must be indicated in the land register; in the case of registered instruments, the creditor must be indicated.
3) The new law applies to the issuance and delivery of the instruments.
4) The mortgagee shall be identified on the encumbrance sheet.
5) In all other respects, the same principles apply to the registration of mortgage notes and liens as to the registration of real estate mortgages.

Art. 43

dd) Series Title

For serial titles, the number of titles must be specified in addition to the other information.

5. Notes

a) In general

Art. 44

aa) Form

1) Notations must be designated as such in the land register.
2) If they relate to a specific right, this designation must be indicated (e.g., “notice ad c”).
3) The content of the preliminary entry must be described in detail, specifying the identity of the entitled party and the type of preliminary entry (e.g., “Preliminary entry: mortgage in favor of X, 10,000 francs, 5%, second priority, transaction, Gült, 12,000 francs”).

Art. 45

bb) Location

1) Notices must be entered on the encumbrance sheet if their primary effect relates to liens (e.g., notice of the right of subrogation).
2) In all other cases, they must be entered on the property register (e.g., preliminary entries for rights of first refusal and repurchase).

3) If a priority notice applies to both ownership and an easement or encumbrance as well as a mortgage, it shall be entered under the right to which it primarily relates, while a reference to this entry shall be made on the other sheet (e.g., “Restriction on disposal, see register sheet”).

Art. 46

b) Restrictions on Disposal

1) Restrictions on disposal shall be entered on the register of rights.

2) A reference to this annotation must be made on the encumbrance sheet.

Art. 47

c) Provisional entries

1) Provisional entries shall be recorded on the encumbrance sheet if they relate to a lien; in all other cases, they shall be recorded on the inventory sheet.

2) If a provisional entry relates to ownership, a reference to the encumbrance sheet must be entered alongside the entry on the inventory sheet.

Art. 48

d) Rights of First Refusal, etc.

Rights of first refusal, repurchase, purchase, and lease and tenancy must be noted on the inventory sheet. A reference to these must be included on the encumbrance sheet.

6. Notes

Art. 49

a) General

Annotations must be designated as such in the land register and must refer to the right to which they pertain (e.g., “2nd annotation ad c”).

Art. 50

b) Accessory

If a note regarding appurtenances is required, it must be described in detail on the inventory sheet, and a reference to it must be made on the encumbrance sheet (e.g., “3. Note ad c: Appurtenances: the hotel furnishings belonging to the business as per receipt No. ”).

Art. 51

c) Easements and Public Law Restrictions

1) Statutory rights of way shall, upon request, be entered on the inventory sheet of the encumbered property and, where applicable, of the entitled property.

2) The same applies to public law restrictions on ownership.

Art. 52

d) Contractor's lien

The commencement of work by a construction contractor shall be noted on the encumbrance sheet.

Art. 53

e) Subjective rights in rem

Subjective rights in rem are noted on the cadastral record of the entitled property (e.g., "4. Note: Milk purchase right as an encumbrance on No. 53").

Art. 54

7. Remarks

1) A separate column in the land register is to be used for remarks.

2) Remarks regarding real estate liens shall be entered on the encumbrance sheet, specifying the number of the right to which they refer (e.g., "2nd remark ad c: Payment of 2,000 francs on May 15, 1923").

3) In all other cases, they shall be entered in the same manner on the inventory sheet.

Art. 55

8. Cancellations and Amendments

Deletions and amendments shall be made in accordance with the provisions of the new law. Art. 56

9. Documents

1) For entries, deletions, and amendments, the documents required by the new law must be submitted.

2) To register rights arising from inheritance, a court order from the Regional Court must be submitted as proof.

Art. 57

10. Documents

1) The existing record books shall remain unchanged.

2) From the effective date of this Act, the original supporting documents shall be retained by the Office of Justice.

3) They shall be bound into record books, as have the copies been to date.

11. Auxiliary registers

Art. 58

a) Journal

1) From the effective date of this Act, the journal shall be maintained by the Office of Justice.

2) The old forms may be used for this purpose, as long as they are still in stock, with the necessary adjustments to meet the requirements of the new law.

Art. 59

b) Register of Owners

The existing register of owners shall be completed and maintained.

Art. 60

c) Register of Creditors

1) As soon as this Act 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 acquired the lien under the new law must be entered in the register.

II. Introduction of the Land Register

1. In general

Art. 61

a) Requirements

The prerequisites for the establishment of the land register are the legally binding survey of the parcels of land and the clarification of rights in rem, preliminary entries, and annotations.

Art. 62

b) Order and Implementation

1) The government, upon the recommendation of the Office of Justice, orders the clarification and establishment of the land register for a municipality or part thereof. A prerequisite for this is the existence of a legally binding official survey.

2) This decision shall be officially published by the Office of Justice in an appropriate manner.

3) The rectification and establishment of the land register shall be carried out by the Office of Justice under the supervision of the government.

Art. 63

c) Costs and Fees

1) The costs for the revision and the establishment of the land register shall be borne by the state.

2) The registration of new rights and the appeal proceedings are subject to fees.

Art. 64

2. Surveying

1) The establishment and maintenance of the official surveying system are governed by the Surveying Act.

2) In areas without a legally binding official cadastral survey, the boundaries are indicated by the demarcations on the property itself. Their accuracy is presumed.

3. Adjustment

Art. 65

a) Principle

1) The purpose of the rectification is to determine the rights to parcels of land completely and unambiguously, to clarify unclear entries, and to delete superfluous and insignificant entries.

2) The rectification extends to:

1. the identification and registration of real rights that were not recorded in the previous land registry records but arose prior to the entry into force of the new property law, unless the previous public notice procedure has already been carried out with respect to easements under the old law;
2. the review of all rights in rem, preliminary notices, and annotations entered in the previous land register records, the correction of deficiencies, and the transfer of the previous entries to the land register;
3. the cancellation of rights in rem that are not registrable or have ceased to exist, as well as of superfluous and meaningless preliminary entries and annotations.

Art. 66

b) Clearing and Transfer of Existing Entries

1) Existing entries shall be reviewed ex officio to determine whether they are entered in the correct section, correspond to the actual circumstances and the new law, and are formulated in a clear and unambiguous manner.

2) If existing entries cannot be transferred to the land register, or cannot be transferred without modification, and require a contractual renewal, amendment,

or supplementation, the Office of Justice shall issue a ruling regarding the correction or deletion of the entry, whereby the provision of Art. 78 SchlT SR shall apply mutatis mutandis.
3) The Office of Justice may make purely formal corrections at any time ex officio, notifying the parties involved.
4) The Office of Justice shall delete entries that are obviously superfluous or meaningless ex officio, notifying the parties involved.
5) The corrected entries shall be transferred to the designated sections of the main register.
Art. 67
c) Treatment of Rights No Longer Justifiable
Real rights under the previous law, such as, in particular, rights of repurchase and rights of retention, which can no longer be established as such under the new law, shall be noted in the land register with a keyword.
Art. 68
d) Real Property
1) The properties are automatically entered in the land register.
2) The description of the properties is based on the data from the official survey; the description of the remaining properties is provided by the Office of Justice.
3) If a property is recorded in the existing land register entries that does not exist according to the official survey, the procedure set forth in Art. 78 et seq. SchlT SR shall be followed.
Art. 69
e) Building rights and water rights concessions under the old law
1) Structures of any kind that stand on another's land under the old law and are not movable structures, such as alpine huts, stables, bakehouses, granaries, and the like, shall, subject to Art. 66 para. 4 SchlT SR, be entered in the land register as independent and permanent building rights, provided that real property liens are attached to them.
2) The same applies to water rights concessions.
Art. 70
f) Ownership
1) If real estate is not registered in the name of the current owner, the Office of Justice shall instruct the parties concerned to obtain the necessary documentation and to submit the required applications.

2) If there is no entry for a property, the applicant may only be registered as the owner in the land register on the basis of proof of lawful acquisition.
3) In the case of co-ownership, the ownership ratio must be clarified; in the case of joint ownership, the joint ownership relationship must be clarified. In the case of the transfer of condominium ownership, the note "Establishment of condominium ownership prior to the construction of the building" must be deleted if the relevant conditions are met.
Art. 71
g) Easements and Encumbrances
1) If an easement or encumbrance existing under old law that was not previously subject to registration is submitted for registration, the Office of Justice shall submit a written proposal to the parties regarding the wording of the content and scope of the right.
2) In the case of the transfer of encumbrances, their total value shall be entered as an amount in the national currency.
Art. 72
h) Liens and Liens on Real Property
1) Mortgages established under the previous law shall be registered as real estate mortgages.
2) Mortgage titles whose creditors are unknown or have not come forward, and whose mortgage claims are likely no longer valid, shall be declared void at the expense of the encumbered party.
3) The statutory right of subrogation for real estate liens under the old law must be noted in the land register.
4) A decision must be made regarding the cancellation of invalidated mortgages (LGBl. 1940 No. 5) in accordance with Art. 78 SchlT SR.
Art. 73
i) Preliminary Notices and Annotations
The provisions of this section apply mutatis mutandis to preliminary entries and annotations.
4. Procedure
Art. 74
a) Information Sheet

1) The Office of Justice shall inform the landowner and the other parties concerned of the legal effects of the introduction of the land register by serving an information sheet.

2) At the same time, the Office of Justice may submit a written proposal for rectification.

Art. 75

b) Hearing of the Parties

1) If the proposed settlement does not receive the consent of all parties involved, or if the legal relationships are unclear, the Office of Justice may summon the landowners and the other parties involved to a hearing. Minutes must be taken of this hearing.

2) Where necessary to clarify the legal relationship, the hearing may be combined with an on-site inspection.

Art. 76

c) Plans; Inquiries with Third Parties

1) If the scope of an easement or encumbrance cannot be clearly and unambiguously defined, the parties involved must submit supplementary plans and sketches signed by them.

2) To the extent necessary, the parties must also contact third parties, such as former owners, neighbors, architects, surveyors, or construction tradespeople, to request information and copies of plans regarding the routing of utility lines, paths, and the like.

3) If necessary, the Office of Justice may require third parties to cooperate.

Art. 77

d) Coercive Measures

1) Any person who, without a valid excuse, fails to comply with a summons to appear or to cooperate in the settlement proceedings, and who also fails to be duly represented, may, following a warning from the Office of Justice, be fined up to 5,000 Swiss francs.

2) If the party concerned fails to comply with the request to cooperate, the Office of Justice shall, pursuant to Art. 78 SchlT SR, issue a ruling and, for the rest, conduct the settlement to the extent 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 rectification, the Office of Justice shall order the rectification or deletion of the entry.

2) An objection may be filed with the Office of Justice or an appeal may be lodged with the Appeals Commission for Administrative Matters against the decision of the Office of Justice within 14 days of service. In all other respects, Articles 534 and 535 apply.

3) The initiation of the appeal proceedings must be noted for all properties involved.

4) The right to bring an action for correction of the land register is reserved.

Art. 79

f) Undeliverable Decisions

1) Decisions that cannot be served must be posted simultaneously with the corrected registers.

2) If no appeal is filed during the public inspection period, the decision becomes final.

Art. 80

g) Change of Ownership

1) If the property is sold after a decision has been issued, the purchaser shall, by operation of law, succeed the seller in the pending proceedings.

2) The Office of Justice shall inform the purchaser of the property of the legal consequence referred to in paragraph 1. It shall notify the competent court of the change of ownership.

Art. 81

h) Implementation of Changes

The individual entries, amendments, or deletions shall be entered in the journal without delay and implemented in the land register if:

1. all parties have agreed to the Office of Justice's proposal for rectification or a final decision has been rendered thereon; or
2. a final order within the meaning of Art. 66, para. 2, SchlT SR exists.

5. Publication, Filing, and Entry into Force

Art. 82

a) Public inspection of the corrected registers (final call)

1) Upon completion of the rectification, the rectified registers and the non-deliverable orders shall be made available for public inspection. The period of public inspection shall be four weeks. The public inspection shall be officially announced in an appropriate manner.
2) The announcement must state that during the public inspection period, at the Office of Justice:
1. Objections regarding defects, inaccuracies, or incompleteness in the corrected registers must be submitted in writing, unless the party concerned has already consented to a proposed correction or a final decision has been issued;
2. Real rights in private or public land that arose prior to the entry into force of the property law and have not yet been registered must be reported in writing; this does not apply to easements under the old law for which the previous public notice procedure has already been carried out;
3. in the event that a decision cannot be served, the cancellation or rectification shall take place if no appeal is filed.
3) The Office of Justice shall no longer consider requests under paragraph 2 that have already been processed and shall issue the necessary decision.
Art. 83
b) Processing of Notifications and Objections
Applications or objections shall be processed in accordance with this section.
Art. 84
c) Establishment of the Land Register
1) After the Office of Justice has processed the applications and objections, it shall submit a report to the government.
2) Real rights that are still in dispute at that time shall be provisionally noted ex officio.
Art. 85
d) Entry into force of the land register
1) The government shall determine the date on which the land register takes effect.
2) The Office of Justice shall arrange for the official publication of this decision in an appropriate manner, noting the full legal effects of the property right.
3) Repealed
Art. 86
e) Consequences of Non-Registration

1) Real rights under the previous law that are not registered in the clearance procedure shall retain their validity but may not be asserted 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 land register's entry into force, they shall lapse.
3) Unregistered public law encumbrances and statutory liens arising prior to the entry into force of the amendment of August 31, 2016, may still be asserted against third parties who rely in good faith on the land register for a period of ten years following the entry into force.

Art. 87–98

Repealed

Art. 99

H. Establishment of a right in rem prior to the land register

1) The provisions of this Act shall enter into force even before the new land register has been opened.
2) The provisions of formal land registry law shall apply upon the entry into force of this Act until the introduction of the new land registry only to the extent specifically provided for.

Art. 100

J. Statute of Limitations

1) Where a statute of limitations of five or more years is newly introduced, the period that has elapsed shall be credited toward a statute of limitations that began before the entry into force of this Act; however, at least two years must still elapse from that point in time for the statute of limitations to expire.
2) Shorter limitation or enforcement periods established by this Act shall not begin to run until the entry into force of this Act.
3) In all other respects, the provisions of the new law shall apply to the statute of limitations from that point onward.

K. Amendment of Existing Law

Art. 101

I. Existing Laws

Upon the entry into force of this Act, the following Acts shall be amended as follows:

1. The provisions of Articles 1 through 7 of the Introduction apply to all areas of private law, and § 887 of the ABGB is thereby repealed.

2. Repealed

3. Repealed

II. Introduction of New Law

Art. 102

1. Retention of title

Repealed

2. Installment sales

Art. 103–105

Repealed

3. Peat extraction

Art. 106 to 112

Repealed Art. 113

4. Boundary markers

Repealed Art. 114

5. Prohibition of entry

Repealed Art. 115

6. State's right of retention for detention costs

Repealed Art. 116

7. Security interest

Repealed

8. Mortgage bonds

Art. 117–120

Repealed

9. Proceedings for the Protection of Possession

Art. 121 to Art. 125

Repealed

10. Common land cooperatives

Articles 126 through 131

Repealed

11. Invalidation of Securities

Art. 132 to Art. 137

Repealed

Art. 138

Repealed Art.

139

13. Jurisdiction of the Administrative Court

Repealed Art.

140

14. Field

Police

Repealed Art.

141

L. Repeal of Older Provisions

1) Upon the entry into force of this Act, all laws and regulations that conflict with it are repealed.

2) In particular, the following are repealed:

1. all relevant provisions of property law in the Austrian General Civil Code of 1810, introduced in this country by ordinance of

February 18, 1812, in particular §§ 285 through 530, 825 through 858, 1321 and 1322, 1368 through 1372, the provisions on leasehold and ground rent agreements, ground rent (§§ 1122 through 1150) and entailed estates, all conflicting provisions regarding contracts and regarding the statute of limitations and acquisitive prescription (§§ 1451 ff.), insofar as they conflict with the present law, as well as all relevant supplementary enactments;

2. Articles 306(1), (2), and (4) through 316, as well as all other relevant provisions of the General German Commercial Code of 1862, introduced in this country by the Act of September 16, 1865, LGBl. 1865 No. 10, and § 21 of the latter Act;

3. the Land Register Act of January 1, 1809, and the Explanatory Act of 27.

September 1839, published in the official gazette of January 5, 1915, LGBl. 1915 No. 1, all amendments relating to land registry law and the provisions of inheritance law concerning endowments in Section i of the Introductory Patent on Inheritance Law of April 6, 1846;

4. the Act of April 28, 1914, LGBl. 1914 No. 2, concerning the amendment and supplementation of the Princely Land Registry Patent of January 1, 1809, and the Princely Patent of September 27, 1839;
5. The Act concerning the amortization of old mortgage claims of November 15, 1903, LGBl. 1903 No. 7, within the meaning of Art. 20(3) of the Final Title;
6. the Act of January 21, 1918, LGBl. 1918 No. 5, concerning the abolition of the communal forests in Triesenberg;
7. the Act of December 20, 1915, LGBl. 1915 No. 17, concerning the separation of parcels of land in the land register for the purpose of public transportation and waterways;
8. the conflicting provisions of the Field Police Regulations of November 23, 1864, LGBl. 1864 No. 8, in particular §§ 24, 25, 28;
9. the conflicting provisions of the Building Code of July 14, 1870, LGBl. 1870 No. 6, particularly §§ 1, 7, 8, 9;
10. the conflicting provisions of the Forest Ordinance of October 8, 1865, LGBl. 1866 No. 2, in particular §§ 16 and 40;
11. the Act of March 7, 1864, LGBl. 1864 No. 2/3, concerning the use of waterways in the Principality of Liechtenstein;
12. Art. 3(3)(d) of the Act on Legal Aid Proceedings of April 22, 1922, LGBl. 1922 No. 19, insofar as it concerns the redrawing of boundaries and disputes arising from joint ownership;
13. the conflicting provisions of the Code of Civil Procedure of December 10, 1912, LGBl. 1912 No. 9, in particular §§ 486, 493, 541 through 547;
14. the Ordinance on Archaeological Finds of September 21, 1888, LGBl. 1888 No. 1;
15. The Ordinance of July 9, 1894, LGBl. 1894 No. 4, prohibiting the planting of trees in and immediately adjacent to vineyards;
16. The Ordinance Concerning the Redemption of Grazing and Pasture Rights of June 20, 1843;
17. the Law concerning the redemption of tithes of March 7, 1864, LGBl. 1864 No. 2/2, Art. 142

M. Final Provisions

1) This law is declared urgent and shall enter into force on the day of its promulgation.
2) The Government is entrusted with its enforcement.

3) It shall issue the necessary implementing regulations.

4) The government shall publish an official register pertaining to this law. Vaduz, December 31, 1922

III. Consumer Protection Act

of October 23, 2002

for the Protection of Consumers (Consumer Protection Act, KSchG)

I hereby approve the following resolution adopted by the Landtag:

A. Scope of Application, Definitions

Art. 1

Scope of Application, Definitions

1) This Act applies to legal transactions in which

a) on the one hand, a person for whom the transaction is part of the operation of their business (hereinafter referred to as the "business operator") and

b) on the other hand, a person for whom this does not apply (hereinafter referred to as the consumer).

2) A business within the meaning of paragraph 1(a) is any organization of independent economic activity established on a permanent basis, even if it is not profit-oriented. Legal entities under public law are always considered entrepreneurs.

3) Transactions carried out by a natural person prior to commencing the operation of their business in order to create the conditions for doing so do not yet form part of that business within the meaning of paragraph 1(a).

4) This Act does not apply to contracts that a person concludes with an employer as an employee or a person in a similar position.

5) Other provisions that are more favorable to the consumer remain unaffected.

6) The terms referring to persons and positions used in this Act shall be understood to include both men and women.

Art. 2

Implementation of EEA Legislation

This Act serves, in particular, to implement:

a) Directive 1999/44/EC of the European Parliament and of the Council of May 25, 1999, on certain aspects of the sale of consumer goods and associated guarantees (EEA Legal Collection: Annex XIX – 7e.01);

b) 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 Legal Collection: Annex XIX – 7d.01).

Art. 3

Mandatory Nature

To the extent that agreements deviate from this Act to the detriment of the consumer, they are invalid.

B. General Rules

Art. 4

Right of Withdrawal

1) If the consumer has not submitted his declaration of intent either at the business premises used by the merchant on a permanent basis for business purposes or at a booth used by the merchant for that purpose at a trade fair or market, he may withdraw from his offer to enter into a contract or from the contract itself. This withdrawal may be declared until the contract is concluded or within 14 days thereafter. This period begins upon delivery to the consumer of a document containing at least the name and address of the business, the information necessary to identify the contract, and a notice regarding the right of withdrawal, the withdrawal period, and the procedure for exercising the right of withdrawal; however, it begins no earlier than the conclusion of the contract, and, in the case of sales contracts for goods, on the day the consumer takes possession of the goods. If such a document has not been delivered, the consumer is entitled to the right of withdrawal for a period of 12 months and 14 days from the conclusion of the contract or delivery of the goods; if the business provides the document within 12 months of the start of the period, the extended withdrawal period ends 14 days after the consumer receives the document. For 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 applies if the business operator or a third party acting in concert with the business operator has brought the consumer to the premises used by the business operator for business purposes as part of a promotional trip, an excursion, or a similar event, or through personal, individual solicitation on the street.

3) The consumer does not have the right to cancel:

a) if the consumer initiated the business relationship with the business or its agent for the purpose of concluding this contract;

b) if the conclusion of the contract was not preceded by discussions between the parties or their agents;

c) in the case of contracts where the mutual performances are to be rendered immediately, if:

1. they are customarily concluded by entrepreneurs outside their business premises and the agreed consideration does not exceed 20 francs; or

2. the business, by its nature, is not conducted in permanent business premises and the consideration does not exceed 70 francs;

d) in the case of contracts subject to the Distance and Off-Premises Sales Act; or

e) in the case of contractual declarations made by the consumer in the physical absence of the business, unless the consumer was pressured to do so by the business.

4) The notice of withdrawal is not subject to any specific form. The withdrawal period is deemed to have been observed if the notice of withdrawal is sent within the period.

Art. 5

Right of Withdrawal in Case of Error

1) The consumer may also withdraw from their contract application or from the contract if, through no fault of their own, circumstances relevant to their consent—which the business operator presented as probable during the contract negotiations—do not occur or occur only to a significantly lesser extent.

2) Relevant circumstances within the meaning of paragraph 1 are:

a) the expectation of the cooperation or consent of a third party, which is necessary for the entrepreneur's service to be provided or for the consumer to use it;

b) the prospect of tax benefits;

c) the prospect of public funding; and

d) the prospect of a loan.

3) Withdrawal may be declared within one week. The period begins to run as soon as it becomes apparent to the consumer that the circumstances referred to in paragraph 1

will not occur or will occur only to a significantly lesser extent, and the consumer has received written notice of this right of withdrawal. However, the right of withdrawal expires no later than one month after the contract has been fully performed by both contracting parties; in the case of banking and insurance contracts with a term exceeding one year, no later than one month after the contract has been concluded.

4) The consumer is not entitled to the right of withdrawal in the event of a mistake if:

a) he already knew or should have known during the contract negotiations that the relevant circumstances would not occur or would occur only to a significantly lesser extent;

b) the exclusion of the right of withdrawal has been specifically negotiated; or

c) the contractor agrees to a reasonable adjustment of the contract.

5) Article 4(4) applies mutatis mutandis to the notice of

withdrawal. Article 6

Consequences of Withdrawal

1) If the consumer withdraws from the contract pursuant to Art. 4 or 5, the entrepreneur must, simultaneously:

a) the entrepreneur must refund all payments received, including statutory interest from the date of receipt, and reimburse the consumer for any necessary and useful expenses incurred in connection with the item;

b) the consumer must return the goods or services received and pay the business a reasonable fee for their use, including compensation for any resulting decrease in the fair market value of the goods or services; the mere fact that the consumer has taken possession of the goods or services shall not in itself be considered a decrease in value.

2) If the return of the services already provided by the business is impossible or impractical, the consumer must reimburse the business for their value to the extent that they have provided the consumer with a clear and predominant benefit.

3) Paragraphs 1 and 2 do not affect claims for damages.

Art. 7

Cost Estimates

1) The consumer shall pay a fee for the preparation of a cost estimate by the contractor within the meaning of § 1159 ABGB only if he has been informed of this payment obligation in advance.

2) If the contract is based on a cost estimate provided by the business, the accuracy of such estimate is deemed guaranteed unless expressly stated otherwise.

Art. 7a

General Information Obligations of the Business

1) Before the consumer is bound by a contract or his declaration of intent, the business must inform him in a clear and comprehensible manner of the following, to the extent that this information does not already follow directly from the circumstances:

a) the essential characteristics of the goods or services to the extent appropriate for the medium and the goods or services;

b) the name or business name and telephone number of the business, as well as the address of its place of business;

c) the total price of the goods or services, including all taxes and duties; however, if the price cannot reasonably be calculated in advance due to the nature of the goods or services, the method of price calculation and, where applicable, any additional freight, delivery, or shipping costs, or, if these costs cannot reasonably be calculated in advance, the possibility that such additional costs may be incurred;

d) where applicable, the terms of payment, delivery, and performance; the period within which the goods will be delivered or the service provided following the business's acceptance of the order; and any procedure established for handling complaints;

e) in addition to the reference to the existence of a statutory warranty for the goods or digital service, where applicable, the existence and conditions of after-sales customer service and commercial warranties;

f) where applicable, the term of the contract or the conditions for terminating open-ended contracts or contracts that automatically renew;

g) where applicable, the functionality of goods with digital elements and of digital services, including applicable technical protection measures; and

h) where applicable—and to the extent that it is material—the compatibility and interoperability of goods with digital elements and of digital services, to the extent that the trader is aware of them or ought reasonably to be aware of them.

2) The information obligations set forth in paragraph 1 do not apply to contracts:

a) concerning everyday transactions that are performed immediately upon conclusion of the contract;

b) that are subject to the Distance and Off-Premises Sales Act;

c) concerning social services, including the provision and rental of social housing, childcare, or support for families or individuals in need of assistance on a permanent or temporary basis, including long-term care;

d) regarding health services pursuant to Art. 3(a) of Directive 2011/24/EU of the European Parliament and of the Council of March 9, 2011 on the application of patients' rights in cross-border healthcare (EEA Legal Compilation: Annex X - 2.01), regardless of whether they are provided by a healthcare facility;

e) on games of chance involving a stake of monetary value, including lotteries, casino games, and betting;

f) on financial services;

g) regarding the establishment, acquisition, or transfer of ownership or other rights to immovable property;

h) the construction of new buildings, major renovations to existing buildings, or the rental of residential property;

i) on package travel within the meaning of Article 3(2) of Directive (EU) 2015/2302 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU, and repealing Directive90/314/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 January 14, 2009, on the protection of consumers in respect of certain aspects of timeshare contracts, long-term holiday product contracts, and resale and exchange contracts (EEA Legal Compilation: Annex XIX - 7b.01);

l) that are concluded before a public official who is legally bound to act with independence and impartiality and who must ensure, through comprehensive legal guidance, that the consumer enters into the contract only after a thorough legal review and with full knowledge of its legal implications;

m) for the delivery of food, beverages, or other household items of daily necessity, which are delivered by the business operator as part of frequent and regular trips to the consumer's residence, place of stay, or workplace;

n) for the transport of persons;

o) concluded through the use of vending machines or automated business premises;

p) concluded with operators of telecommunications facilities using public telephones for their use, or concluded for the use of a single telephone, internet, or fax connection established by a consumer;

q) concerning goods sold as a result of enforcement measures or other judicial measures.

Art. 7b

Prize Notifications

Businesses that send prize notifications or other comparable communications to specific consumers, thereby giving the impression that the consumer has won a specific prize, must award that prize to the consumer; it may also be claimed in court.

Art. 8

Invalid Contractual Provisions

1) In any case, contractual provisions within the meaning of § 879 ABGB are not binding on the consumer if:

a) the business operator stipulates an unreasonably long or insufficiently defined period during which they may accept or reject a contract offer from the consumer or during which the consumer is bound by the contract;

b) a specific act by the consumer is deemed to constitute the making or non-making of a declaration, unless the consumer is specifically informed of the significance of their act at the start of the period provided for this purpose and is given a reasonable period to make an express declaration;

c) A statement by the business that is legally significant to the consumer, which has not been received by the consumer, is deemed to have been received, unless it concerns the validity of a statement sent to the consumer's last known address in the event that the consumer has not notified the business of a change of address;

d) a notification or statement to be made by the consumer to the business operator or a third party that must satisfy a stricter form than the written form or special requirements for receipt;

e) the entrepreneur is entitled, upon request, to a higher fee for his service than that determined at the time of conclusion of the contract, unless the contract also provides for a reduction in remuneration when the agreed conditions for a change in remuneration are met, the circumstances determining the change in remuneration are described in the contract and objectively justified, and their occurrence does not depend on the will of the business operator;

f) the consumer's right to withhold performance under § 1052 of the Austrian Civil Code (ABGB) until the counterperformance has been rendered or secured is excluded or restricted in cases where the business operator fails to perform in accordance with the contractor if the performance of the service is jeopardized by the entrepreneur's poor financial circumstances, which were neither known to nor could have been known to the consumer at the time the contract was concluded, for example by making the right to refuse performance contingent upon the entrepreneur's acknowledgment of defects in his performance;

g) a right of retention to which the consumer is entitled by law is excluded or restricted;

h) the consumer's right to set off their obligations is excluded or restricted in the event of the entrepreneur's insolvency or in respect of counterclaims that are legally related to the consumer's obligation, which have been judicially established or acknowledged by the entrepreneur;

i) an obligation of the business to compensate for personal injury is excluded or limited, or an obligation of the business to compensate for other damages is excluded or limited in the event that the business or a person for whom it is responsible caused the damage intentionally or through gross negligence;

k) the business operator or a body or person under its control is authorized to decide, with binding effect on the consumer, whether the services provided by the business operator comply with the agreement;
l) the consumer is burdened with a burden of proof that is not legally incumbent upon him;
m) the consumer’s rights to an item that the business has taken in for processing expire within an unreasonably short period;
n) the interest payable in the event of the consumer’s default exceeds the interest rate agreed upon for payment in accordance with the contract by more than 5 percentage points per year;
o) the right to assert an error on his part or the absence or cessation of the basis of the transaction is excluded or restricted in advance, for example through an agreement stipulating that the entrepreneur’s representations do not concern the main subject matter or an essential characteristic thereof (Section 871 ABGB);
p) he undertakes to pay collection or enforcement costs after the occurrence of default, provided that these costs are not separately listed and itemized in the agreement or to the extent that these costs were not necessary for the proper collection or enforcement of the claim.
2) Unless the contractor proves that they were negotiated in detail, the same applies to contractual provisions under which:
a) the contractor may withdraw from the contract without objective justification;
b) the entrepreneur is granted the right to transfer his obligations or the entire contract with discharging effect to a third party not named in the contract;
c) the entrepreneur may unilaterally modify or deviate from a performance to be rendered by him, unless the modification or deviation is reasonable for the consumer, particularly because it is minor and objectively justified;
d) the entrepreneur is entitled, upon request, to a higher fee than originally agreed for the service to be provided within two months of the conclusion of the contract;
e) the business owner’s liability for damages to an item that they have accepted for processing is excluded or limited;

f) the consumer's claims under § 908 ABGB are restricted or excluded.

3) A contractual provision contained in general terms and conditions or standard contract forms is invalid if it is worded in an unclear or incomprehensible manner.

Art. 8a

Performance of a Monetary Obligation

1) Unless cash payment is customary under the nature of the contractual relationship—such as in the case of contracts to be performed on a simultaneous basis—the business must provide the consumer with a customary bank account for the fulfillment of the consumer's monetary obligation. This does not apply if a specific alternative method of fulfillment—such as by direct debit or credit card—has been agreed upon.

2) If a consumer's monetary obligation to a business is fulfilled by bank transfer, it is sufficient for the obligation to be deemed fulfilled on time—notwithstanding the first sentence of Section 907a(2) of the Austrian Civil Code (ABGB)—even in the case of a predetermined due date, provided that the consumer issues the transfer order on the due date.

Art. 8b

Costs of telephone contact after conclusion of the contract

If the business operator has set up a telephone line to enable its contractual partners to contact it by telephone in connection with concluded consumer contracts, it may not charge a consumer who makes use of this option any fee for doing so. The right of telecommunications service providers to charge fees for actual communication services remains unaffected by this.

Art. 8c

Additional Payments

1) An agreement whereby a consumer undertakes to make additional payments—such as a fee for an additional service provided by the business—in addition to the fee agreed upon for the main service is only valid if the consumer expressly consents to it. Such consent is not deemed to exist, in particular, if the consumer, in order to avoid making a contractual declaration,

would be required to reject the default setting made by the business, but fails to do so.

2) If the consent required under paragraph 1 is lacking, the business operator must refund any additional payments made by the consumer.

3) The consumer may subsequently validate the agreement by expressly consenting to it within the meaning of paragraph 1.

4) Paragraphs 1 through 3 do not apply to the contracts listed in Art. 7a, paragraph 2, letters c through h, k through m, o, and p.

Art. 9

Deposit and Penalty

If the entrepreneur is entitled to retain or reclaim a deposit (§ 908 ABGB) or the consumer is obligated to pay a penalty (§ 909 ABGB), the judge may moderate the deposit or the penalty in accordance with § 1336(2) ABGB.

Art. 9a

Performance Period for Contracts Concerning Goods

Unless otherwise agreed in the contract, the seller must make the goods available without undue delay, and in any event no later than 30 days after the conclusion of the contract, or—if delivery of the goods has been agreed—deliver them to the consumer.

Art. 9b

Transfer of Risk Upon Shipment of the Goods

If the merchant ships the goods, the risk of loss or damage to the goods passes to the consumer only once the goods are delivered to the consumer or to a third party designated by the consumer who is not the carrier. However, if the consumer has concluded the contract of carriage themselves without utilizing an option proposed by the entrepreneur, the risk passes upon delivery of the goods to the carrier. Unless otherwise agreed, the consumer acquires ownership of the goods at the same time as the risk passes.

Art. 9c

Default

1) If the business has not performed its obligation despite it being due, the consumer may demand performance within a reasonable grace period appropriate to the circumstances. If the business does not perform its obligation within this grace period, the consumer may withdraw from the contract.
2) In the case of a fixed-date transaction, the consumer may immediately withdraw from the contract if performance is not provided on time. A fixed-date transaction exists if it has been agreed, or if it is clearly evident from the circumstances surrounding the conclusion of the contract, that the provision of performance within a specific period or at a specific time is of essential importance to the consumer. The consumer is also entitled to immediate withdrawal if the business operator has declared, or it is clearly evident from the circumstances, that they will not perform the service.
3) If the consumer withdraws from the contract, the business must immediately refund any payments made under the contract.

Art. 9d

Delay in the Provision of Digital Services

1) If the business operator has failed to provide a digital service (Art. 2(1)(a) through (c) and Art. 16 of the Consumer Contract Act) despite it being due, the consumer may demand that the business operator provide the service without setting a deadline. If the business operator fails to provide the digital service immediately upon request or within any expressly agreed grace period, the consumer may withdraw from the contract. Immediate withdrawal is possible under Art. 9c(2).
2) If the consumer withdraws from the contract pursuant to paragraph 1, Articles 24 through 26 of the Consumer Warranty Act shall apply mutatis mutandis to the refund of payments made by the consumer under the contract and to the other obligations of the contracting parties.
3) As soon as the consumer has notified the business of the failure to provide the goods, agreements may also be validly made that deviate from the provisions of the preceding paragraphs to the detriment of the consumer.

Art. 10

Warranty

1) If the entrepreneur is obligated to repair or replace the item (Section 932 ABGB), he must fulfill this obligation:

a) at the place where the item was delivered. If the entrepreneur has transported or shipped the item in accordance with the contract to a location within the country, this location shall take the place of the delivery location; or

b) if the consumer so requests, at the location where the item is usually located, provided that this location is within the country, that the business did not have reason to expect it, and that, given the nature of the item, transporting it to the business would be impractical for the consumer, particularly because the item is bulky, heavy, or has become immovable due to installation.

2) The consumer must make the defective item available to the business for repair or replacement. The business may require the consumer to send the item to it, provided this is feasible for the consumer. However, the business bears the risk of shipment.

3) Repealed

Art. 11

Exclusion and Limitation of Warranty

The consumer’s warranty rights may not be excluded or limited prior to knowledge of the defect. The Consumer Warranty Act must be observed in the purchase of goods and the provision of digital services.

Art. 12

Repealed Art.

13

Contractual Warranties

1) If a business operator undertakes to a consumer to repair, replace, refund the purchase price, or otherwise remedy the situation if the item does not possess the characteristics specified in the warranty statement or in the advertising, or does not meet the requirements stated therein (warranty), the business operator is bound by the commitments in the warranty statement and by the terms of the warranty as published in the advertising. If the terms of the warranty statement are less favorable to the consumer than the warranty information provided in the advertising, the warranty is binding under the terms stated in the advertising, unless the advertising was corrected with the same prominence prior to the conclusion of the contract.

2) If the manufacturer of a product has given the consumer a warranty regarding the durability of the product for a specific period, the consumer has a direct claim against the manufacturer during that period for repair or replacement of the product.
3) The warranty statement must be provided to the consumer on a durable medium no later than upon delivery of the item. It must be worded clearly and comprehensibly. It must refer to the seller's statutory warranty obligations and state that these are not limited by the warranty. In addition, the warranty statement must include the name and address of the warrantor, the item to which the warranty applies, the warranty terms, and the procedure to be followed to claim the warranty.
4) A violation of paragraph 3 by the guarantor does not affect the enforceability of the guarantee. Furthermore, the guarantor is liable to the consumer for any damage caused by the violation.

Art. 14

Scope of Authority and Oral Promises

1) A power of attorney granted by a business operator extends, subject to specific statutory provisions regarding the scope of the power of attorney, in dealings with consumers to all legal acts that such transactions typically entail. A restriction of this power of attorney is effective against the consumer only if the consumer was aware of it.
2) If the consumer was unaware of the limitation of the power of attorney solely due to gross negligence, the business has the right to rescind the contract, without prejudice to the business's right to assert this circumstance under other provisions. The withdrawal must be declared immediately after the business becomes aware of the representative's exceeding of authority and the circumstances indicating the consumer's gross negligence.
3) The legal validity of informal declarations by the business or its representatives may not be contractually excluded to the detriment of the consumer.

Art. 15

Prohibition on Changing Orders

1) A business may only accept a consumer's promissory note as payment for its claims against the consumer if the business is the payee (Art. 1(f) and Art. 75(e) of the Promissory Notes Act) and the promissory note contains the words "not to order" or an equivalent notation. A violation of this provision does not affect the legal validity of the bill of exchange.

2) If paragraph 1 has not been complied with, every consumer who has honored the bill of exchange is entitled to claim payment from the entrepreneur of an amount equal to the recourse sum, unless the entrepreneur proves that the consumer, by assuming or discharging the bill of exchange liability, has been released from an obligation to pay this amount that would have existed even without the bill of exchange.

Art. 16

Prohibition on Assignment of Salary

1) A consumer's wage or salary claim may not be assigned to the employer to secure or satisfy the employer's claims that are not yet due.

2) If the employer has paid amounts to the business operator or a third party on the basis of a wage or salary claim assigned in violation of paragraph 1, with the effect that the employer has been released from the consumer's wage or salary claim, the consumer shall be entitled to reimbursement of that amount from the business operator, unless the business operator proves that the consumer has been released from a debt by the assignment or payment of the wage or salary claim.

Art. 17

Loss of the Right to Defer Payment

If the consumer is to pay his debt in installments and the entrepreneur has reserved the right, in the event of non-payment of partial amounts or ancillary claims, to demand immediate payment of the entire outstanding debt (loss of the right to demand payment in installments), he may exercise this right only if:

a) he has already performed his obligation;

b) at least one payment by the consumer has been overdue for at least six weeks; and

c) the business has unsuccessfully reminded the consumer of the default, warning of the loss of the right to demand payment in installments and setting a grace period of at least two weeks.

Art. 18

Consumer Contracts with a Foreign Element

1) If the parties to a consumer contract with a foreign element have chosen the law of a state that is not a contracting party to the Agreement on the European Economic Area (EEA), this choice of law shall be decisive for the assessment of:

a) the validity and the consequences of the invalidity of a contractual provision that does not define one of the principal obligations of the parties;

b) the consequences of a contractual provision that is unclear and incomprehensibly worded;

c) Repealed

d) the protection afforded in contracts concluded under the Distance and Off-Premises Sales Act and the Distance Financial Services Act;

e) protection in consumer credit agreements and other forms of credit within the meaning of Directive 2008/48/EC;

is irrelevant to the extent that the chosen law is less favorable to the consumer than the law that would apply in the absence of a choice of law. This applies only if, in the absence of a choice of law, the law of a state that is a contracting party to the EEA Agreement would apply.

2) Art. 8 and §§ 864a and 879(3) of the ABGB shall apply for the protection of the consumer, regardless of the law governing the contract, if the contract was concluded in connection with an activity carried out in Liechtenstein by the entrepreneur or persons employed by him for this purpose, aimed at the conclusion of such contracts.

Art. 19

Jurisdiction

1) If the consumer has his domicile or habitual residence in Liechtenstein or is employed in Liechtenstein, an action against him may be brought in accordance with the

Sections 43, 44, 46(2), and 53(1) of the JN establish the jurisdiction of the Princely Regional Court.

2) The lack of domestic jurisdiction must be taken into account ex officio at every stage of the proceedings.

3) Any agreement that excludes a venue provided for by law for a consumer's action against the business operator is legally ineffective vis-à-vis the consumer.

4) Paragraphs 1 through 3 shall not apply, in whole or in part, to the extent that international law or specific statutory provisions expressly provide otherwise.

C. Special Types of Contracts

Art. 20

Contracts for recurring services

1) Contracts under which the business operator undertakes to make repeated deliveries of movable tangible goods, including energy, or to perform repeated services, and the consumer undertakes to make repeated payments, and which have been concluded for an indefinite period or for a period exceeding one year, may be terminated by the consumer, subject to a two-month notice period, at the end of the first year, and thereafter at the end of each six-month period.

2) If the totality of the goods to be delivered constitutes a service that is indivisible by its nature, and the scope and price of which are already determined at the time the contract is concluded, the first termination date may be postponed until the end of the second year. 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 identified individual consumers requires significant expenditure on the part of the business operator, and if the business operator has informed the consumer of this no later than at the time the contract is concluded, termination dates and notice periods that are appropriate to the circumstances and deviate from paragraphs 1 and 2 may be agreed upon.

4) A termination by the consumer that has not been given in a timely manner shall take effect on the next termination date following the expiration of the notice period.

Art. 21

Installment Sales

1) Articles 23 through 30 apply to installment sales in which:

a) the cash price does not exceed 34,000 francs or it is not certain at the time the contract is concluded that it will exceed 34,000 francs; and

b) at least two installment payments are to be made after the contractor has performed the service, apart from a down payment.

2) An installment sale within the meaning of these provisions is a sales contract for a tangible movable item, under which the seller delivers the item to the consumer prior to

full payment and the consumer is required to pay the price in installments.

3) The cash price within the meaning of these provisions is the amount that would be payable upon immediate cash payment; the total amount is the cash price including all interest and other surcharges.

Art. 22

Equivalent Transactions

Articles 23 through 30 shall apply mutatis mutandis, under the conditions set forth in Article 21, to legal transactions other than sales contracts if the parties thereby pursue the same economic purpose as in an installment sale. Art. 23

Third-Party Financing Transactions

If the same economic purpose is pursued by a third party providing the funds for the consideration (lender), and if the consumer is required to pay the amount owed to the lender in installments, Article 22 also applies to the consumer’s relationship with the lender if the contracts with the business operator and the lender form a single economic unit. Such a unit is presumed to exist if the lender and the trader enter into a legal relationship with each other in the context of this transaction or if they maintain an ongoing business relationship with each other regarding such financing. In this case, the consumer may also refuse to satisfy the lender to the extent that the consumer is entitled to raise objections against the trader based on the consumer’s legal relationship with the trader.

Art. 24

Special Case of Third-Party Financing

If, in a sales contract that is neither an installment sale nor falls under Art. 23, the same economic purpose is pursued by the entrepreneur, acting in an economic unit with the contract, inducing the consumer to take out a loan repayable in installments to pay the purchase price and assisting in the preparation of the loan, then Arts. 23 through 30 shall apply mutatis mutandis to the relationship between the trader and the consumer, subject to the following special provisions:

a) insofar as the content of the loan agreement is decisive, the consumer may not invoke any deviation between the loan agreement actually concluded and the one originally proposed;
b) If the consumer is required to make payments to the lender that he would not be obligated to make if the loan agreement were a legal transaction under Article 23, the business operator must release the consumer from the obligation to pay these amounts to the lender or reimburse the consumer for any amounts already paid.

Art. 25

Down Payment

1) The consumer must pay a portion of the cash price no later than upon delivery of the item. The down payment must amount to at least 10% of the cash price or, if the cash price exceeds 350 francs, at least 20% of the cash price. If a movable tangible item is given as a down payment, its fair market value shall be credited. In the cases covered by Articles 23 and 24, the consumer may make the down payment either to the business or to the lender.
2) If the seller delivers the item to the consumer without having received the minimum down payment (para. 1), the seller has no claim to the portion of the purchase price corresponding to the unpaid down payment.

Art. 26

Term

The consumer must pay off the outstanding installment claims within five years at the latest from the delivery of the item. If a longer repayment period has been agreed upon, the merchant has no claim to the portion of the interest and other surcharges that would be payable after the expiration of five years if they were evenly distributed over the entire repayment period.

Art. 27

Default by the Consumer

1) If, in the cases covered by Article 23, the seller has reserved the right to withhold the use of the item from the consumer due to the consumer’s failure to fulfill their obligations and to sell the item on the open market, the exercise of these rights shall not be deemed a withdrawal from the contract if the conditions of Article 17 for forfeiture of the term are met and the consumer is credited, in the event of the sale, with

the entire proceeds, but at least the fair market value of the item at the time of sale, are credited to the consumer.

2) In the cases covered by Art. 23, the obligations to reimburse and preserve applicable to the lenders under Art. 6(1)(a) also include the payments received by the entrepreneur.

Art. 28

Warranty

As long as the purchase price has not yet been paid in full, the claim for warranty due to material defects may be asserted by lawsuit beyond the time limits provided for in § 933 ABGB until the due date of the final installment. The buyer further reserves the right to assert the claim by way of defense if he has notified the seller of the defect by that time.

Art. 29

Installment Agreement

1) The installment sales agreement must be set forth in writing (installment sales contract). The installment sales contract must include:

a) the first and last names (business name), occupation (nature of the business), and usual place of residence (registered office) of the contracting parties;

b) the date and place of the consumer's application for the contract or acceptance of the contract;

c) the subject matter of the installment sale;

d) the cash price;

e) the total consideration and the resulting effective annual interest rate;

f) the amount of the down payment;

g) the number, amount, and due dates of the installment payments;

h) the date of delivery of the item;

i) a statement indicating whether and how many promissory notes have been handed over to secure the outstanding installment claims, and whether other forms of security, including any retention of title, have been agreed upon; and

k) in the case of the first sentence of Article 4(1), the text of Article 4 (Consumer's Right of Withdrawal) including the heading, but excluding the last sentence of paragraph 1.

2) The merchant shall, at his own expense, provide the consumer with a copy immediately after the consumer has signed the installment agreement; the information specified in paragraph 1 must be clearly legible therein.
3) The legal validity of the installment transaction is independent of the execution of the installment agreement.

Art. 30

Installment Transactions in the Trade in Printed Matter

1) Art. 29 applies to installment sales in the trade in printed matter only if the transaction was concluded under circumstances in which the consumer is entitled to withdraw pursuant to Art. 4.
2) In the cases covered by Article 23, the seller and the consumer must draw up separate documents regarding the sales contract, and the lender and the consumer must draw up separate documents regarding their legal transaction. Together, these documents constitute the installment agreement. The document regarding the purchase agreement must contain the information specified in Article 29(1)(a) through (d), (f), (h), and (k); the document regarding the other legal transaction must contain, mutatis mutandis, the information specified in Article 29(1)(a), (c), (g), and (i), as well as the financed amount or the remaining financed amount and the consideration for the granting of the loan. The obligation under Art. 29(2) applies to the business operator and the lender only with respect to the documents they are each required to draw up.
3) In the cases covered by Art. 24, the entrepreneur and the consumer must draw up a document regarding the contract; it shall be deemed an installment agreement. The document must contain the information specified in Art. 29(1)(a), (b), (h), and (k), as well as the subject matter of the contract, the consideration, and the amount corresponding to the down payment, and the amount and term of the intended loan.

Art. 31

Credit Transactions by Spouses and Registered Partners

1) Businesses whose corporate purpose is the granting or brokering of loans must inform spouses who jointly take out a loan as consumers—even if one spouse assumes liability only as a guarantor—or a spouse who, as a consumer, assumes liability for the other spouse's existing loan obligation, by providing a separate document stating that:
a) if the spouses are jointly and severally liable, the full amount of the debt may be demanded from any of the debtors in any order, regardless of which of them received the loan amount;

b) the liability remains in effect even after the dissolution of the marriage;
c) only the court may, in the event of divorce, limit the liability of one of the spouses to a deficiency guarantee pursuant to Art. 86 of the Marriage Act.
2) A registered partner is treated as equivalent to a spouse under paragraph 1. The judicial dissolution of a registered partnership is treated as equivalent to a divorce or the dissolution of a marriage.

Art. 32

Consumer Credit Obligations

1) If a consumer is a joint and several debtor of a credit granted by a business operator referred to in Art. 31, the creditor must also serve any demand for payment or other notice regarding the default of another joint and several debtor on the consumer.
2) If a consumer is a surety or guarantor for a loan granted by a business operator referred to in Article 31 and the principal debtor defaults, the creditor must notify the consumer of this within a reasonable period of time. If the creditor fails to do so, the consumer shall not be liable for interest and costs incurred from the time the creditor becomes aware of the principal debtor's default until the consumer himself defaults.

Art. 33

Consumer as Co-debtor, Surety, or Guarantor

If a consumer joins a debt as a co-debtor, surety, or guarantor (intercession), the creditor must inform the consumer of the debtor's financial situation if the creditor knows or should know that the debtor is unlikely to fulfill the debt, either in whole or in part. If the entrepreneur fails to provide this information, the intercessor shall be liable only if he would have assumed his obligation despite such information.

Art. 34

Right of Mitigation

1) The judge may reduce or even entirely waive the liability of an intercedent (Art. 33) to the extent that, taking all circumstances into account, it is disproportionate to the intercedent's ability to pay, provided that the fact that the consumer is merely an intercedent and the circumstances that gave rise to or caused this disproportion were apparent to the creditor at the time the obligation was established.

2) In making a decision pursuant to paragraph 1, particular consideration shall be given to:
a) the creditor's interest in establishing the assignor's liability;
b) the assignor's fault in the circumstances that gave rise to or brought about the disproportion referred to in paragraph 1;
c) the benefit the intercedent derives from the creditor's performance; and
d) carelessness, duress, inexperience, emotional distress, or the guarantor's dependence on the debtor at the time the obligation was created.

Art. 35
Repealed Art.
36 Repealed

Art. 37
Home Improvement

1) Contracts for the renovation of residential premises must be in writing if the customer is a consumer and they are concluded under circumstances that entitle the customer to withdraw under Art. 4.
2) The contract document must contain:
a) the first and last names (business name), occupation (business activity), and habitual residence (registered office) of the contracting parties;
b) the date and place of the consumer's offer or acceptance of the contract;
c) the subject matter of the contract, specifying the manufacturer and type of goods to be delivered in fulfillment of the contract, provided that such description by manufacturer and type is customary;
d) the amount and due date of the payments to be made;
e) if the consumer's right of withdrawal is excluded pursuant to Art. 5(4)(b), this agreement;
f) a notice regarding the right of withdrawal pursuant to Articles 4 and 5.
3) The business operator must, at its own expense, provide the consumer with a copy of the contract immediately after the consumer has signed it. The information specified in paragraph 2 must be clearly legible in the contract.
4) The legal validity of a contract under paragraph 1 is independent of the execution of the contract document.

5) The provisions of paragraphs 1 through 4 do not apply to contracts for the renovation of residential premises that are subject to the Distance and Off-Premises Sales Act.

Art. 38

Advance-Payment Purchases

The consumer may withdraw from a contract for the delivery of a movable tangible item under which the consumer undertakes to pay the purchase price in advance in installments, provided that the contract has not been fully performed by both parties and provided that the goods are determinable only by declaration of the contracting parties or the price has not been fixed in accordance with the price conditions at the time of conclusion of the contract. Art. 6 applies mutatis mutandis to the restitution of performance already rendered. Art. 39

Contract for Work and Materials

If the work has not been performed and the contractor nevertheless demands the agreed remuneration (Section 1156(1) of the Austrian Civil Code), the contractor must inform the consumer of the reasons why, as a result of the work not being performed, the contractor has neither saved any costs nor acquired anything through alternative use, nor intentionally failed to acquire such benefits.

D. Data Protection

Art. 39a

Processing of Personal Data

1) The entrepreneur may process personal data, including health data and personal data regarding criminal convictions and offenses, concerning consumers that he 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. Class Action Art.

40 *Right to Injunctive*

Relief

1) Any person who, in the course of business, in general terms and conditions on which contracts concluded by him are based, or in forms used in this context—

Anyone who includes terms in contracts that violate a statutory prohibition or are contrary to public policy, or who recommends such terms for commercial transactions, may be sued for an injunction. This prohibition also includes the prohibition against invoking such a term if it has been agreed upon improperly.

2) The risk of such terms being used or recommended ceases to exist if, following a warning from an entity entitled to bring an action under Art. 42, the business operator submits, within a reasonable period, a declaration of discontinuance secured by an appropriate contractual penalty (§ 1336 ABGB).

3) Anyone who uses or recommends general terms and conditions or contract forms must, upon request, provide them to an entity authorized to bring an action under Art. 42 within four weeks, provided that the entity demonstrates that knowledge of the terms and conditions or forms is necessary to protect the interests of consumers.

Art. 41

Action for Injunction

1) Any person engaged in commercial transactions with consumers in connection with door-to-door sales, contracts concluded outside of business premises, the general information obligations of the business operator (Art. 7a), consumer credit relationships, package travel contracts and contracts for the arrangement of linked travel services, timeshare arrangements, distance sales, the inclusion of unfair contract terms, warranties or guarantees in the sale or manufacture of movable tangible goods as well as in the provision of digital services, the charging of telephone costs (Art. 8b) or additional payments (Art. 8c), the performance period (Art. 9a), the passing of risk (Art. 9b), or default (Art. 9c and 9d), in connection with information society services in electronic commerce, investment services, asset management services, payment services, crowdfunding services, the creation and distribution of a Pan-European Personal Pension Product (PEPP), or the issuance of e-money in violation of a statutory requirement or prohibition, in connection with alternative dispute resolution (Art. 18 AStG), online dispute resolution (Art. 14(1) and (2) of Regulation (EU) No. 524/2013), or the disclosure of sustainability information pursuant to Regulation (EU) 2019/2088, or violates a statutory requirement or prohibition under the Directive

If a business violates Directive 2006/123/EC in the provision of services within the internal market and thereby harms the general interests of consumers, an action for injunctive relief may be brought, notwithstanding Article 40(1).

2) Art. 40(2) applies mutatis mutandis.

Art. 42

Right to Sue

1) The right to injunctive relief may be asserted:

a) by professional and trade associations that are authorized under their bylaws to protect the economic interests of their members;

b) by organizations that are dedicated to consumer protection on a national level and in accordance with their bylaws; and

c) by representatives of public law.

2) If the origin of the infringement (Art. 40(1) and Art. 41(1)) is in Liechtenstein, then the claim under paragraph 1 may also be asserted by any entity qualified under Art. 3 of Directive 98/27/EC of the European Parliament and of the Council of May 19, 1998, on injunctions for the protection of consumers' interests (EEA Law Collection: Annex XIX – 7d.01), provided that the interests protected by that entity are affected in that State and the purpose of the entity as stated in the publication justifies the bringing of such an action.

3) The Government or an authority designated by it shall notify the Standing Committee of the EFTA States of:

a) the standing to sue of a qualified entity within the meaning of paragraph 2, upon request;

b) the name and purpose of the qualified entity.

4) The Standing Committee of the EFTA States maintains a register of qualified institutions.

5) Inclusion in the list must be proven when filing a lawsuit.

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

Offenses

1) An entrepreneur, or in the cases specified in Art. 23 also the financier, or a representative acting on behalf of such persons, shall, provided that the act 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, be punished for a misdemeanor with a fine of up to 5,000 francs, in the case of a repeat offense, up to 20,000 Swiss francs by the Office of Economic Affairs if he:

a) fails to:

1. to fully comply with the disclosure requirements under Article 7a, providing accurate information;
2. to make the goods available or deliver them in a timely manner within the meaning of Article 9a;
3. to draw up an installment agreement (Art. 29(1)) or a document as provided for in Art. 30 and 37(1) containing the information prescribed in Art. 29(1), Art. 30(2) and (3), and Art. 37(2), respectively;
4. to provide the consumer, after signing the installment agreement or the contract document, with a copy in which the required information is clearly legible (Art. 29(2) and Art. 37(3));
5. to instruct or inform borrowers or guarantors in accordance with Articles 31 through 33;

a) violates Art. 37(3);
b) violates the prohibition on changing the order (Art. 15);
c) violates the prohibition on the assignment of wages (Art. 16);
d) sends goods to a consumer or provides services without the consumer's request and attaches a demand for payment thereto; or
e) includes incorrect information in the document to be provided to the consumer pursuant to Art. 4(1).

f) Repealed

2) If, in the case of paragraph 1(d), a third party enforces the bill of exchange debt against the consumer or the consumer's guarantor, or if, in the case of paragraph 1(c), c, the entrepreneur or a third party asserts 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 or the amount whose payment has been demanded from the employer, but in any case up to twice that amount.

3) In the cases referred to in paragraph 1(b) and (c), the statute of limitations begins to run, depending on which occurs first, upon the presentation of the bill of exchange or upon the return or destruction of the bill of exchange, or upon the assertion of the assigned wage or salary claim against the employer, or upon the date on which the assignment is rescinded.

4) In the cases referred to in paragraph 1(a)(1) and (2), the following factors shall be taken into particular account when determining the penalty:

a) the nature, severity, scope, and duration of the violation;

b) measures taken by the business operator to mitigate or remedy the damage suffered by the consumer;

c) the trader's previous violations;

d) financial benefits gained by the business operator as a result of the violation or losses avoided, if the relevant data is available;

e) sanctions imposed on the business operator for the same violation in cross-border cases in other EEA Member States, provided that information on such sanctions is available under the mechanism established pursuant to Regulation (EU) 2017/2394;

f) other aggravating or mitigating circumstances.

5) In the cases referred to in paragraph 1(a)(1) and (2), a fine of up to 4% of the undertaking's annual turnover may be imposed if the administrative penalty proceedings are conducted in the context of the imposition of sanctions pursuant to Article 21 of Regulation (EU) 2017/2394. The annual turnover in the EEA member states affected by the violation shall be decisive. If no information on the undertaking's annual turnover is available, fines of up to two million Swiss francs may be imposed.

Art. 49a

Enforcement of a Cease-and-Desist Order

1) If enforcement proceedings for injunctive relief (Art. 251 et seq. EO) are conducted because an entrepreneur continues to use a contractual provision that violates Art. 8 of this Act or § 879(3) ABGB, the following factors must be taken into account in particular when determining the fine:

a) the nature, severity, scope, and duration of the violation;

b) Measures taken by the business to mitigate or remedy the harm caused to the consumer;

c) the trader's previous violations;

d) financial benefits gained by the trader as a result of the violation or losses avoided, if the relevant data is available;

e) sanctions imposed on the trader for the same violation in cross-border cases in other EEA Member States, provided that information on such sanctions is available under the mechanism established by Regulation (EU) 2017/2394;

f) other aggravating or mitigating circumstances.

2) In the cases referred to in paragraph 1, notwithstanding Article 259(1) of the Enforcement Ordinance, fines may amount to up to 4% of the entrepreneur's annual turnover if the enforcement of the injunction is conducted in the context of the imposition of sanctions pursuant to Article 21 of Regulation (EU) 2017/2394. If no information on the operator's annual turnover is available, the fines may reach up to two million Swiss francs.

IVa. Data Protection

Art. 49b

Processing and Transfer of Personal Data

1) The Office of Economic Affairs may process personal data, including health data and personal data regarding criminal convictions and offenses, concerning businesses and consumers, to the extent necessary to fulfill its duties under this Act.

2) The Office of Economic Affairs may transfer data under paragraph 1 to other competent agencies and authorities, as well as to courts and the public prosecutor's office, provided that they require the data to fulfill their statutory duties.

V. Transitional and Final Provisions

Art. 50

Implementing Regulations

The Government shall issue the regulations necessary for the implementation of this Act.

Art. 51

Transitional Provisions

Contracts concluded prior to the effective date of this Act shall be governed by the previous law.

Art. 52

Repeal of Previous Law

The following are repealed:

a) The Act of November 18, 1964, on Installment and Prepayment Contracts, LGBl. 1965 No. 6;

b) The Act of October 22, 1992, on Package Tours, LGBl. 1992 No. 120;

c) Law of October 22, 1992, on Consumer Protection in Door-to-Door Sales and Similar Contracts, LGBl. 1992 No. 113.

Art. 53

Entry into Force

This Act shall enter into force on the date of its promulgation.

IV. Distance and Off-Premises Sales Act

of September 3, 2015

on Contracts Concluded at a Distance and Outside Business Premises (Distance and Off-Premises Sales Act; FAGG)

I hereby approve the following resolution adopted by the State Parliament:

I. General Provisions

Art. 1

Scope

1) This Act applies to distance and off-premises contracts (distance and off-premises transactions) between businesses and consumers (Art. 1 KSchG):

a) under which the consumer is obligated to make a payment; or

b) in which the provision of digital services that are not to be delivered on a physical data carrier is contingent upon the consumer providing personal data, unless the business operator processes such data exclusively for the purpose of providing the digital services or to comply with legal requirements.

2) Subject to Art. 9(4), this does not apply to contracts:

a) that are concluded outside of business premises (Art. 4(a)) and where the consideration to be paid by the consumer does not exceed 60 Swiss francs;

b) relating to social services, including the provision and rental of social housing, childcare, or support for families or individuals in need of permanent or temporary assistance, including long-term care;

c) relating to healthcare services as defined in Art. 3(a) of Directive 2011/24/EU of the European Parliament and of the Council of March 9, 2011 on the application of patients' rights in cross-border healthcare (EEA Law Collection: Annex X - 2.01), regardless of whether they are provided by a healthcare institution, with the exception of the distance sale of medicinal products and medical devices;

d) gambling that requires a monetary stake, including lotteries, casino games, and betting;

e) regarding financial services;

f) regarding the establishment, acquisition, or transfer of ownership or other rights in real property;

g) relating to the construction of new buildings, major alterations to existing buildings, or the letting of residential property;

h) on package travel within the meaning of Article 3(2) of Directive (EU) 2015/2302 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU, and repealing DirectiveDirective 90/314/EEC (OJ L 326, 11.12.2015, p. 1);

i) falling within the scope of Directive 2008/122/EC of the European Parliament and of the Council of January 14, 2009, on the protection of consumers in respect of certain aspects of timeshare contracts, long-term holiday product contracts, and resale and exchange contracts (EEA Legal Compilation: Annex XIX - 7b.01);

k) that are concluded before a public official who is legally bound to act independently and impartially and who must ensure, through comprehensive legal guidance, that the consumer enters into the contract only after a thorough legal review and with full knowledge of its legal implications;

l) for the delivery of food, beverages, or other household items of daily necessity, which are delivered by the business operator as part of frequent and regular trips to the consumer’s residence, place of stay, or workplace;

m) which are concluded using vending machines or automated business premises;

n) concluded with operators of telecommunications facilities using public telephones for their use, or concluded for the use of a single telephone, internet, or fax connection established by a consumer;

o) concerning goods sold as a result of enforcement proceedings or other judicial measures.

3) For contracts for the carriage of persons, only Article 9 shall apply.

4) To the extent that a provision of this Act is irreconcilably inconsistent in substance with another statutory provision serving to implement sector-specific EEA legislation or with EEA legislation directly applicable under domestic law, it shall not apply to contracts covered by the conflicting provision.

Art. 2

Implementation of EEA Legislation

This Act implements Directive 2011/83/EU of the European Parliament and of the Council of October 25, 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 Legal Collection: Annex XIX - 7i.01).

Art. 3

Mandatory Provisions

To the extent that agreements deviate from the provisions of this Act to the detriment of the consumer, they are void.

Art. 4

Definitions

1) For the purposes of this Act, the following definitions apply:

a) "contract concluded outside of business premises": any contract between a business operator and a consumer:

1. that is concluded in the simultaneous physical presence of the business operator and the consumer at a location that is not the business operator’s business premises;

2. for which the consumer has made an offer under the circumstances described in paragraph 1;

3. which is concluded in the business premises of the trader or by means of distance communication immediately after the consumer has been personally and individually addressed at a location other than the trader’s business premises, in the simultaneous physical presence of the trader or the trader’s representative and the consumer; or

4. that is concluded during an outing organized by a business operator or its agent with the intention or result that

the business owner solicits or has others solicit the consumer for the sale of goods or the provision of services and concludes corresponding contracts with the consumer;

b) "distance contract": any contract concluded between a business operator and a consumer without the simultaneous physical presence of the business operator and the consumer within the framework of a distribution or service system organized for distance selling, whereby means of distance communication are used exclusively up to and including the conclusion of the contract;

c) "Business premises": immovable commercial premises in which the trader carries out his business on a permanent basis, or movable commercial premises in which the trader usually carries out his business;

d) "public auction": a method of sale in which the business offers goods or services to consumers who are physically present at the auction or who are given the opportunity to participate, through a transparent procedure conducted by an auctioneer based on competing bids, in which the successful bidder is obligated to purchase the goods or services;

e) "durable medium": any medium that enables the consumer or the business to store information addressed personally to them in such a way that they can access it for a period of time appropriate to the purposes of the information, and which allows the information to be reproduced unchanged;

f) "digital services": digital content or digital services;

g) "digital content": data created and provided in digital form, including data developed in accordance with the consumer’s instructions;

h) "digital service":

1. a service that enables the consumer to create, process, and store data in digital form or to access data in digital form; or

2. a service that enables the sharing of data uploaded or created in digital form by the consumer or other users of the service, or other interaction with such data,

in each case including services developed in accordance with the consumer's instructions;

i) "personal data": personal data as defined in Article 4(1) of Regulation (EU) 2016/679;

k) "Online marketplace": a service that enables consumers, through the use of software—including a website, part of a website, or an application—operated by the business or on behalf of the business, to enter into distance contracts with other businesses or consumers;

l) "Online marketplace provider": any business operator that makes an online marketplace available to consumers;

m) "Compatibility": the ability of goods or digital services to function with the hardware or software with which such goods or digital services are typically used, without the need to modify the goods, the hardware, or the software, or to convert the digital services;

n) "Functionality": the ability of goods or digital services to perform their functions in accordance with their intended purpose;

o) "Interoperability": the ability of goods or digital services to function with hardware or software other than that with which such goods or digital services are typically used;

p) "ancillary contract": a contract under which the consumer acquires goods or services related to a distance or off-premises transaction, and where those goods or services are supplied by the trader or a third party on the basis of an agreement between that third party and the trader.

2) In all other respects, the definitions set forth in Directive 2011/83/EU apply in addition.

3) The terms used in this Act refer to all persons regardless of their gender, unless the terms expressly refer to a specific gender.

II. Information Requirements

Art. 5

Content of the Duty to Inform and Legal Consequences

1) Before the consumer is bound by a contract or their contractual declaration, the business operator must inform them in a clear and comprehensible manner of the following:

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 business name of the business operator, the address of its place of business, as well as its telephone number and email address, through which the consumer can quickly reach the business operator and contact it without undue effort;

c) where applicable:

1. other online means of communication provided by the business operator that ensure the consumer can store any written correspondence with the business operator, including the date and time of such correspondence, on a durable medium, and through which the consumer can quickly reach the business operator and contact them without undue difficulty;

2. the business address, other than the trader's place of business, to which the consumer may direct any complaint; and

3. the name or business name and address of the branch of the person on whose behalf the business operator is acting, as well as any different business address of that person to which the consumer may direct any complaints;

d) the total price of the goods or services, including all taxes and duties; however, if the price cannot reasonably be calculated in advance due to the nature of the goods or services, the method of price calculation and, where applicable, any additional freight, delivery, shipping, or other costs, or, if these costs cannot reasonably be calculated in advance, the possibility that such additional costs may be incurred;

d) where applicable, a statement that the price has been personalized based on automated decision-making;

e) in the case of an open-ended contract or a subscription contract, the total costs incurred for each billing period; if fixed amounts are charged for such a contract, the total monthly costs; if however, the total costs cannot reasonably be calculated in advance, the method of price calculation;

f) the costs of using the means of distance communication used to conclude the contract, unless these are charged at the basic rate;

g) the terms of payment, delivery, and performance; the period within which the goods will be delivered or the service provided following the trader’s confirmation; and any procedure established for handling complaints by the trader;

h) if a right of withdrawal exists, the conditions, time limits, and procedure for exercising this right, including the provision of the model withdrawal form in Annex Part B;

i) where applicable, the consumer’s obligation to bear the costs of returning the goods in the event of withdrawal from the contract pursuant to Article 16, as well as, in the case of distance contracts for goods that, due to their nature, are not typically sent by mail, the amount of the return costs;

k) where applicable, the consumer’s obligation, in the event of withdrawal from the contract pursuant to Article 17, to pay a pro-rata amount for services already rendered;

l) where applicable, the absence of a right of withdrawal under Article 19 or the circumstances under which the consumer loses their right of withdrawal;

m) in addition to the notice regarding the existence of a statutory warranty right for the goods or digital service, where applicable, the existence and conditions of customer service and commercial warranties;

n) where applicable, any relevant codes of conduct under Art. 1a(1)(i) of the Unfair Competition Act (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 contracts that automatically renew;

p) where applicable, the minimum duration of the obligations the consumer assumes under the contract;

q) where applicable, the trader’s right to require the consumer to provide a deposit or other financial security, as well as the conditions thereof;

r) where applicable, the functionality of goods with digital elements and of digital services, including applicable technical protection measures;

s) where applicable—and to the extent that it is material—the compatibility and interoperability of goods with digital elements and of digital services, to the extent that the trader is aware of them or ought reasonably to be aware of them; and

t) where applicable, the possibility of access to an out-of-court complaint and redress procedure to which the trader is subject, and the conditions for such access.

2) In the case of a public auction, the relevant information provided by the auctioneer may be communicated in lieu of the information specified in paragraph 1(b) and (c).

3) The information under paragraph 1(h), (i), and (k) may be provided using the model withdrawal notice in Annex Part A. By providing this information in the form, the entrepreneur's aforementioned information obligations are deemed fulfilled, provided that the entrepreneur has transmitted the form to the consumer with all fields correctly filled out.

4) The information provided to the consumer pursuant to paragraph 1 forms part of the contract. Changes are effective only if they have been expressly agreed upon by the contracting parties.

5) If the merchant has not fulfilled their obligation to provide information regarding additional and other costs under paragraph 1(d) or regarding the costs of returning the goods under paragraph 1(i), the consumer is not required to bear those additional and other costs.

6) The information requirements under paragraph 1 apply without prejudice to other information requirements under statutory provisions based on Directive 2006/123/EC of the European Parliament and of the Council of December 12, 2006, on services in the internal market (EEA Legal Compilation: Annex X - 1.01) or on Directive 2000/31/EC of the European Parliament and of the Council of June 8, 2000, on certain legal aspects of information society services, in particular electronic commerce, in the internal market (EEA Legal Compilation: Annex XI - 5h.01).

Art. 5a

Additional Information Requirements for Contracts Concluded on Online Marketplaces

1) Before the consumer is bound by a distance contract or by his declaration of acceptance on an online marketplace, the provider of the online marketplace shall, without prejudice to Directive 2005/29/EC, inform him clearly and comprehensibly, in a manner adapted to the means of distance communication used, of the following:

a) general information regarding the main parameters for determining the ranking of offers, as defined in Article 2(1)(m) of Directive 2005/29/EC, which are presented to the consumer as a result of their search query on the online marketplace, as well as the relative weighting of these parameters compared to other parameters, and which are made available in a specific area of the online user interface that is immediately and easily accessible from the page on which the offers are displayed;

b) whether the third party offering the goods, services, or digital content is a trader or not, based on that third party's declaration to the operator of the online marketplace;

c) if the third party offering the goods, services, or digital content is not a business operator, that the consumer protection rights enshrined in the consumer protection law of the European Economic Area (EEA) do not apply to the contract;

d) where applicable, how the obligations arising from the contract are divided between the third party offering the goods, services, or digital content and the provider of the online marketplace, whereby this information does not affect the liability that the provider of the online marketplace or the third-party business operator has in relation to the contract under other provisions of EEA law or national law;

e) where the consumer is presented on the online marketplace with the results of a comparison of goods, services, or digital content, regarding the providers included in the comparison;

f) if the operator of an online marketplace intends to resell admission tickets for an event itself, whether and, if so, the amount at which the event organizer has set the price for the purchase of such admission tickets;

g) if a third party intends to resell admission to an event, whether and, if so, the amount at which the organizer has set a price for the purchase of such admission, according to the third party's information.

2) The operator of the online marketplace must inform the consumer, at the earliest possible time before the consumer is bound by a distance contract or their declaration of intent on the online marketplace, and again immediately before the consumer submits their declaration of intent, clearly, and in a prominent manner whether the consumer will conclude the distance contract with the third party offering the goods, services, or digital content, or with the operator of the online marketplace. If contracts on an online marketplace are concluded exclusively with third parties, this information need only be provided once prior to the conclusion of the contract.

Art. 6

Provision of Information for Contracts Concluded Outside of Business Premises

1) For contracts concluded outside of business premises, the information specified 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 business operator must provide the consumer with a copy of the signed contract document or confirmation of the concluded contract on paper or, if the consumer agrees, on another durable medium. Where applicable, the copy or confirmation of the contract must also include a confirmation of the consumer’s consent and acknowledgment pursuant to Art. 19(1)(l).

Art. 7

Simplified Provision of Information for Craftsman Contracts

1) In the case of contracts concluded outside of business premises for repair or maintenance work, where the consumer has expressly requested the services of the contractor to perform such work, the fee payable by the consumer-consumer does not exceed 250 Swiss francs, and both parties fulfill their contractual obligations immediately, the provisions of the following paragraph shall apply to the provision of information, notwithstanding Art. 6(1).

2) The business operator must provide the consumer with the information specified in Article 5(1)(b) and (c), items 1 and 3, as well as information regarding the price or the method of calculating the price, together with a cost estimate of

the total costs on paper or, if the consumer agrees, on another durable medium. Furthermore, the business operator must provide the consumer with the information specified in Art. 5(1)(a), (h), and (l), but may refrain from providing it on paper or another durable medium if the consumer expressly agrees to this. The copy or confirmation to be provided pursuant to Art. 6(2) must also contain the information specified in Art. 5(1). Art. 8

Provision of Information in Distance Contracts

1) In the case of distance contracts, the information referred to in Art. 5(1) must 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 that allows only limited space or time for the presentation of information, the business must provide the consumer, prior to the conclusion of the contract via that means of distance communication, with at least the information specified in Article 5(1)(a), (b), (d), (e), (h), and (o) a, b, d, e, h, and o regarding the essential characteristics of the goods or services, the name of the trader, the total price, the right of withdrawal—with the exception of the model withdrawal form—

, the duration of the contract, and the conditions for terminating open-ended contracts. The other information specified in Art. 5(1), including the model withdrawal form, must be provided to the consumer in an appropriate manner in accordance with paragraph 1.

3) The trader must provide the consumer, within a reasonable period after the conclusion of the contract, but no later than upon delivery of the goods or before the commencement of the provision of services, provide the consumer with a confirmation of the concluded contract on a durable medium containing the information specified in Art. 5(1), unless the entrepreneur has already provided this information to the consumer on a durable medium prior to the conclusion of the contract. Where applicable, the contract confirmation must also include a confirmation of the consumer's consent and acknowledgment pursuant to Art. 19(1)(l).

Art. 9

Special Requirements for Contracts Concluded Electronically

1) If a distance contract concluded electronically, but not exclusively via electronic mail or a comparable individual electronic means of communication, obligates the consumer to make a payment, the business operator must, immediately before the consumer submits his or her declaration of intent, clearly and prominently draw the consumer's attention to the information specified in Art. 5(1)(a), (d), (e), (o), and (p). a, d, e, o, and p.

2) The trader must ensure that the consumer expressly confirms, when placing the order, that the order entails a payment obligation. If the ordering process requires the activation of a button or the use of a similar function, this button or function must be clearly legible and labeled exclusively with the words "order with payment obligation" or a similar, unambiguous formulation that informs the consumer that the order is associated with a payment obligation to the trader. If the trader fails to comply with the obligations under this paragraph, the consumer is not bound by the contract or their declaration of intent.

3) On websites for electronic commerce, it must be clearly stated, at the latest at the start of the ordering process, whether delivery restrictions apply and which payment methods are accepted.

4) Paragraphs 1 through 3 also apply to the contracts referred to in Article 1, paragraph 2, subparagraph (h). The provisions of the second and third sentences of paragraph 2 also apply to the contracts referred to in Article 1, paragraph 2, subparagraphs (b) and (c), provided that such contracts are concluded in the manner specified in paragraph 1.

Art. 10

Special Requirements for Contracts Concluded by Telephone

1) In long-distance telephone conversations with consumers aimed at concluding a distance contract, the business operator must disclose to the consumer at the beginning of the conversation his name or business name, where applicable the name of the person on whose behalf he is acting, and the commercial purpose of the conversation.

2) In the case of a distance contract for a service negotiated during a call initiated by the business, the consumer is not bound until the business provides the consumer with a confirmation of the consumer's declaration of intent on a durable medium and the

consumer subsequently sends the business a written declaration of acceptance of this declaration of intent on a durable medium.
3) Paragraphs 1 and 2 also apply to the contracts referred to in Article 1, paragraph 2, subparagraph (h). Article 11
Commencement of Contract Performance Before the Expiration of the Withdrawal Period
If a distance contract or an off-premises contract obligates the consumer to make a payment and concerns either the provision of a service or the supply of water, gas, or electricity, or the supply of district heating, and if the consumer wishes the trader to begin performance of the contract before the expiration of the withdrawal period under Article 12, the trader must request the consumer to submit a request expressly directed toward this early performance of the contract —in the case of a contract concluded outside of business premises, on a durable medium—and require the consumer to confirm that they have taken note of the loss of their right of withdrawal that occurs upon full performance of the contract.
III. Withdrawal from the Contract
Art. 12
Right of withdrawal and withdrawal period
1) The consumer may withdraw from a distance contract or a contract concluded outside of business premises within 14 days without giving any reason.
2) The withdrawal period begins:
a) for service contracts, on the date the contract is concluded;
b) for sales contracts and other contracts aimed at the purchase of goods for consideration:
1. on the date on which the consumer or a third party designated by the consumer who is not acting as a carrier takes possession of the goods;
2. if the consumer has ordered multiple goods as part of a single order that are delivered separately, on the date on which the consumer or a third party designated by the consumer who is not acting as a carrier takes possession of the last delivered good;

3. in the case of delivery of goods in multiple partial shipments or pieces, on the day on which the consumer or a third party designated by the consumer who is not acting as a carrier takes possession of the last partial shipment or the last piece;
4. in the case of contracts for the regular supply of goods over a specified period, on the day on which the consumer or a third party designated by the consumer, who is not acting as a carrier, takes possession of the first goods delivered;
c) in the case of a contract for the supply of water, gas, or electricity not supplied in a limited volume or in a specific quantity, the supply of district heating, or the supply of digital content not stored on a tangible medium, on the date the contract is concluded.

Art. 13

Failure to Provide Information on the Right of Withdrawal

1) If the business operator has failed to comply with its duty to provide information under Art. 5(1)(h), the withdrawal period provided for in Art. 12 is extended by twelve months.

2) If the business provides the required information within twelve months of the date specified in Article 12(2) as the starting point for the period, the withdrawal period ends 14 days after the consumer receives this information.

Art. 14

Exercise of the Right of Withdrawal

1) The notice of withdrawal is not subject to any specific form. The consumer may use the model withdrawal form in Annex Part B for this purpose. The withdrawal period is deemed to have been observed if the notice of withdrawal is sent within the period.

2) The business may also offer the consumer the option to electronically fill out and submit the model withdrawal form in Appendix Part B or a differently worded withdrawal notice on the business's website. If the consumer submits a notice of withdrawal in this manner, the trader must immediately provide the consumer with confirmation of receipt of the notice of withdrawal on a durable medium.

Art. 15

Obligations of the Business Operator in the Event of the Consumer's Withdrawal from the Contract

1) If the consumer withdraws from the contract pursuant to Article 12(1), the merchant must refund all payments made by the consumer, including delivery costs if applicable, without delay and no later than 14 days after receiving the notice of withdrawal. The business must use the same payment method that the consumer used to make the payment; however, the use of a different payment method is permissible if this has been expressly agreed upon with the consumer and does not result in any costs for the consumer.

2) If the consumer has expressly chosen a different type of delivery than the cheapest standard delivery offered by the business, the consumer is not entitled to reimbursement of the additional costs incurred as a result.

3) In the case of sales contracts and other contracts aimed at the purchase of goods for consideration, the merchant may refuse to refund the payment until the merchant has either received the goods back or the consumer has provided proof of the return of the goods; this does not apply if the merchant has offered to pick up the goods themselves.

4) The business may prevent any further use of the digital service by the consumer, for example—without prejudice to paragraph 7—by blocking the consumer's access to the digital service or the consumer's user account.

5) With regard to the consumer's personal data, the business operator must comply with the obligations under Regulation (EU) 2016/679.

6) The entrepreneur may use content that does not constitute personal data and that was provided or created by the consumer while using the digital service provided by the entrepreneur only if such content:

a) is useful only in connection with the digital service provided by the business;

b) is exclusively related to the consumer's use of the digital service provided by the business;

c) has been aggregated by the business with other data and cannot be disaggregated, or can only be disaggregated with disproportionate effort; or

d) was generated by the consumer in collaboration with others, and other consumers can continue to use the content.

7) Except in the cases specified in paragraph 6(a) through (c), the business must, upon the consumer's request, make available to the consumer all content that does not constitute personal data and that was provided or created by the consumer while using the digital service provided by the business, in such a way that the consumer can retrieve this content free of charge, without hindrance from the business, within a reasonable time and in a commonly used and machine-readable format.

Art. 16

Obligations of the consumer upon withdrawal from the contract

1) If the consumer withdraws from a contract or any other contract aimed at the purchase of goods for consideration pursuant to Art. 12(1), the consumer must return the goods received to the business operator without undue delay, but no later than 14 days from the date of submission of the notice of withdrawal; this does not apply if the business operator has offered to collect the goods themselves. The return deadline is met if the goods are dispatched within the deadline.

2) The consumer is responsible for the direct costs of returning the goods; this does not apply if the merchant has agreed to bear these costs or if the merchant has failed to inform the consumer of the consumer's obligation to bear these costs.

3) In the case of contracts concluded outside of business premises where the goods were delivered to the consumer's residence at the time the contract was concluded, the merchant must collect the goods at their own expense if such goods are not typically sent by mail due to their nature.

4) The consumer is only required to pay the business compensation for a reduction in the market value of the goods if this loss in value is attributable to handling of the goods that was not necessary for the examination of their nature, characteristics, and functionality. The consumer shall in no case be liable for a loss in value of the goods if the trader has not informed the consumer of their right of withdrawal in accordance with Art. 5(1)(h).

5) Apart from the payments specified in this provision and any additional costs under Article 15(2), no other costs may be imposed on the consumer as a result of their withdrawal.

Art. 17

Obligations of the consumer upon withdrawal from a contract for services, energy and water supplies, or digital services

1) If the consumer withdraws from a contract for services or for the energy and water supplies referred to in Art. 11 pursuant to Art. 12(1), after having made a request under Article 11 and the business operator has subsequently begun to perform the contract, the consumer must pay the business operator an amount that, in proportion to the total price agreed upon in the contract, corresponds to the services provided by the business operator up to the time of withdrawal. If the total price is excessive, the proportionate amount to be paid shall be calculated on the basis of the market value of the services rendered.

2) The obligation to pay a pro rata amount under paragraph 1 does not apply if the business operator has failed to fulfill its duty to provide information under Article 5(1)(h) and (k).

3) If the consumer withdraws from a contract for the supply of digital content not stored on a tangible medium pursuant to Article 12(1), the consumer shall not be liable for payment for services already provided by the trader.

4) Apart from the payment specified in paragraph 1, no other costs may be imposed on the consumer as a result of their withdrawal.

5) If the consumer withdraws from the contract pursuant to Art. 12(1), they may no longer use a digital service provided to them or make it available to third parties.

Art. 18

Effects of Withdrawal on Accessory Contracts

If the consumer withdraws from the contract pursuant to Art. 12(1), the withdrawal shall also apply to any ancillary contract. Except for the payments specified in Art. 16 and 17, no other costs may be imposed on the consumer as a result.

Art. 19

Exceptions to the Right of Withdrawal

1) The consumer has no right of withdrawal for distance contracts or contracts concluded outside of business premises regarding:

a) services, if the business has fully performed the service, provided that in cases where the consumer is obligated under the contract to make a payment

, the right of withdrawal shall only lapse if, in addition, the trader has commenced performance of the contract with the consumer's prior express consent and if the consumer:

1. either confirmed, prior to the commencement of the provision of services, that they were aware that they would lose their right of withdrawal upon full performance of the contract; or
2. has expressly requested the business to visit in order to have repair work performed;

b) Goods or services whose price depends on fluctuations in the financial market over which the business has no influence 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 are liable to deteriorate rapidly or whose expiration date would be quickly exceeded;

e) Goods that are delivered sealed and are not suitable for return for reasons of health protection or hygiene, provided that the seal has been removed after delivery;

f) Goods that, due to their nature, have been inseparably mixed with other goods after delivery;

g) Alcoholic beverages whose price was agreed upon at the time of contract conclusion, but which cannot be delivered earlier than 30 days after contract conclusion and whose current value depends on market fluctuations over which the business has no control;

h) Audio or video recordings or computer software delivered in a sealed package, provided that the seal has been broken after delivery;

i) Newspapers, magazines, or periodicals, with the exception of subscription contracts for the delivery of such publications;

k) Services in the areas of accommodation for purposes other than residential, transportation of goods, rental of motor vehicles, as well as the delivery of food and beverages and services provided in connection with leisure activities, provided that a specific time or period is contractually stipulated for the performance of the contract by the entrepreneur;

l) the provision of digital content not to be delivered on a tangible medium, if the entrepreneur has commenced performance of the contract, whereby in cases where the consumer is obligated to make a payment under the contract, the right of withdrawal is waived only if, in addition:

1. the consumer has expressly consented to the commencement of performance before the expiration of the withdrawal period;
2. the consumer has confirmed that they are aware that they lose their right of withdrawal by the premature commencement of the performance of the contract; and
3. the business has provided the consumer with a copy or confirmation in accordance with Art. 6(2) or Art. 8(3).

2) Furthermore, the consumer has no right of withdrawal in the case of contracts for urgent repair or maintenance work where the consumer has expressly requested the business to visit to perform such work. However, the exclusion of the right of withdrawal under this provision does not apply to additional services that the consumer has not expressly requested, or to goods delivered that are not strictly necessary as replacement parts for maintenance or repair.

3) Finally, the consumer has no right of withdrawal for contracts concluded at a public auction.

4) The exceptions under paragraph 1(a)(1), (b), (c), and (e) do not apply to contracts concluded during an unsolicited visit by the business operator to the consumer's home or during an outing as defined in Article 4(a)(4), if:

a) the business visits the consumer even though the consumer has indicated, for example by means of a sticker, that he or she does not wish to receive unsolicited visits from businesses;

b) the unsolicited visit begins between 8:00 p.m. and 7:00 a.m. or takes place on a Sunday or public holiday; or

c) the consumer pays a fee of more than 250 francs in the presence of the business operator on the day the contract is concluded.

IV. Penal Provisions Art.

20 *Penal Provisions*

1) The Office of Economic Affairs shall, unless the act constitutes a criminal offense falling 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 up to 20,000 francs in the event of a repeat offense, on anyone who:

a) includes false information in the pre-contractual information required under Art. 5(1) or fails to fulfill, or fails to fully fulfill, the information obligations under Art. 5(1);

a) includes false information in the additional information required under Article 5a for contracts concluded on online marketplaces, or fails to comply with or fully comply with the information requirements under Article 5a;

b) violates any of the provisions set forth in Art. 6(1), Art. 7(2), and Art. 8(1) and (2) regarding the manner in which information is provided;

c) fails to provide the consumer with a copy of the contract or a confirmation thereof, contrary to Article 6(2) or Article 8(3);

d) fails to fulfill, or fails to fully fulfill, its specific pre-contractual information obligations for contracts concluded electronically pursuant to Article 9(1) and (3);

e) a long-distance call begins without disclosing, at the start of the call, the name (company name) of the business operator, the name of the person on whose behalf the operator is acting (if applicable), and the commercial purpose of the call, as required by Article 10(1);

f) fails to provide the consumer with confirmation of receipt of the notice of withdrawal on a durable medium in accordance with Article 14(2);

g) violates his obligation to refund pursuant to Art. 15(1).

2) In determining the penalty, the following factors shall be taken into account in particular:

a) the nature, severity, scope, and duration of the violation;

b) measures taken by the trader to mitigate or remedy the damage suffered by the consumer;

c) the trader's previous violations;

d) any financial benefits gained by the business operator as a result of the infringement, or losses avoided, where the relevant data is available;

e) sanctions imposed on the operator for the same violation in cross-border cases in other Member States, provided that information on such sanctions is available under the mechanism established pursuant to Regulation (EU) 2017/2394.

3) If administrative penalty proceedings are conducted in connection with the imposition of sanctions pursuant to Article 21 of Regulation (EU) 2017/2394, fines of up to 4% of the business operator's annual turnover may be imposed. If no information regarding the business operator's annual turnover is available, fines of up to two million Swiss francs may be imposed.

IVa. Data Protection

Art. 20a

Processing and Transfer of Personal Data

1) The Office of Economic Affairs may process personal data, including personal data regarding criminal convictions and offenses, concerning businesses and consumers, to the extent necessary to fulfill its duties under this Act.

2) The Office of Economic Affairs may transmit data pursuant to paragraph 1 to other competent bodies and authorities, as well as to courts and the public prosecutor's office, provided that they require the data to fulfill their statutory duties.

V. Transitional and Final Provisions

Art. 21

Repeal of Previous Law

The following are repealed:

a) Law of April 18, 2002, on Consumer Protection in Distance Contracts (Distance Selling Act; FAG), LGBl. 2002 No. 71;

b) Law of October 23, 2002, Amending the Distance Selling Act, LGBl. 2002 No. 167;

c) Law of April 14, 2004, Amending the Law on Consumer Protection in Distance Contracts (Distance Selling Act; FAG), LGBl. 2004 No. 128;

d) Law of December 15, 2004, amending the Distance Selling Act, LGBl. 2005 No. 37;

e) Law of June 30, 2010, amending the Distance Selling Act, LGBl. 2010 No. 237.

Art. 22

Transitional Provisions

Contracts concluded prior to the effective date of this Act shall be governed by the previous law.

Art. 23

Entry into Force

This Act shall enter into force on January 1, 2016, provided that the referendum period expires without being exercised; otherwise, it shall enter into force on the day following its promulgation.

On behalf of the Prince: Signed *Alois*, Hereditary Prince

Signed *Adrian Hasler,* Prince's Chief of Government

Appendix

(Art. 5, paras. 1 and 3; Art. 14)

Information on Exercising the Right of Withdrawal

A. Sample Withdrawal 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].

To exercise your right of withdrawal, you must inform us ([2]) of your decision to withdraw from this contract by means of a clear statement (e.g., a letter sent by mail or an email). You may use the attached model withdrawal form for this purpose, but this is not mandatory. [3] To meet the withdrawal deadline, it is sufficient for you to send your notification of exercising your right of withdrawal before the withdrawal period expires.

Consequences of Withdrawal

If you withdraw from this contract, we will refund to you all payments we have received from you, including delivery costs (with the exception of any additional costs resulting from your choice of a delivery method other than the cheapest standard delivery offered by us), without delay and no later than fourteen days from the day on which we receive notification of your withdrawal from this contract. We will use the same payment method for this refund that you used for the original transaction, unless expressly agreed otherwise with you; in no event will you be charged any fees in connection with this refund. [4]

[5]

[6]

Formatting instructions:

[1.] Insert one of the following text blocks in quotation marks:

a) in the case of a contract for the provision of services or a contract for the supply of water, gas, or electricity—unless they are offered for sale in a limited volume or in a specific quantity—district heating, or digital content not supplied on a tangible medium: "the conclusion of the contract";

b) in the case of a sales contract: "on which you or a third party designated by you, other than the carrier, took possession of the goods";

c) in the case of a contract for multiple goods ordered by the consumer as part of a single order and delivered separately: ", on which you or a third party designated by you, who is not the carrier, took possession of the last good.";

d) in the case of a contract for the delivery of goods in multiple partial shipments or items: "on the date on which you or a third party designated by you, who is not the carrier, took possession of the last partial shipment or the last item";

e) in the case of a contract for the regular delivery of goods over a specified period: ", on which you or a third party designated by you, who is not the carrier, took possession of the first item."

[2.] Enter your name, address, phone number, and email address.

[3.] If you allow the consumer to electronically fill out and submit the notice of withdrawal from the contract on your website, include the following: "You may also electronically fill out and submit the model withdrawal form or another unambiguous statement on our website [insert web address]. If you make use of this option, we will immediately send you (e.g., via email) a confirmation of receipt of such a withdrawal."

[4.] In the case of sales contracts where you have not offered to pick up the goods yourself in the event of withdrawal, include the following: "We may withhold the refund until we have received the goods back or until

"You have provided proof that you have returned the goods, whichever occurs first."

[5.] If the consumer has received goods in connection with the contract:

a) Insert:

- "We will pick up the goods."; or
- "You must return or hand over the goods to us or to [insert here, if applicable, the name and address of the person authorized by you to receive the goods] immediately and in any case no later than fourteen days from the day on which you notify us of your withdrawal from this contract. The deadline is met if you send the goods before the fourteen-day period expires.";

b) Please insert:

- "We will bear the cost of returning the goods.";
- "You are responsible for the direct costs of returning the goods.";
- If, in the case of a distance contract, you do not offer to bear the cost of returning the goods, and the goods cannot normally be returned by mail due to their nature: "You are responsible for the direct costs of returning the goods, amounting to … 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 at a maximum of approximately … francs [insert amount]."; or
- if, in the case of a contract concluded outside of business premises, the goods cannot normally be returned by mail due to their nature and were delivered to the consumer's residence at the time the contract was concluded: "We will pick up the goods at our expense."; and

c) Insert: "You are only liable 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 testing their nature, characteristics, and functioning."

[6.] In the case of a contract for the provision of services or the supply of water, gas, or electricity, if they are not offered for sale in a limited volume or in a specific quantity, or of district heating, insert the following: "If you have requested that the services or supply of water/gas/electricity/district heating [delete as appropriate] be provided during the

"If the withdrawal period has already begun, you must pay us a reasonable amount corresponding to the proportion of the services already provided up to the time you notify us of your exercise of the right of withdrawal with respect to this contract, compared to the total scope of the services provided for in the contract."

B. Sample Withdrawal Form

(If you wish to withdraw from the contract, please fill out this form and return it)

- To [the business must insert its name, address, and email address here]:
- I/we (*) hereby withdraw from the contract concluded by me/us (*) for the purchase of the following goods (*)/the provision of the following service (*)
- Ordered on (*)/received on (*)
- Name of the consumer
- Address of the consumer
- Signature of the consumer(s) (only for paper notifications)
- Date

(*) Delete as appropriate.

V. International Private Law Act

of September 19, 1996

on Private International Law (IPRG)

I hereby approve the following resolution adopted by the State Parliament:

I. General Provisions

Art. 1

Principle of Private International Law

1) Matters with a foreign element shall, in matters of private law, be governed by the legal system designated in this Act or in another statutory provision (referral rule).

2) In the absence of a conflict-of-laws rule, the legal system with which the matter has the closest connection shall apply.

Art. 2

Determination of the Conditions Governing the Choice of Law

The factual and legal requirements relevant for the choice of law must be determined ex officio, unless, pursuant to procedural provisions in a matter subject to choice of law (Art. 20, 29(3), Art. 39(1)), factual submissions by the parties are to be deemed true.

Art. 3

Application of Foreign Law

If foreign law is applicable, it shall be applied ex officio and as it applies within its original scope of application.

Art. 4

Determination of foreign law

1) Foreign law shall be determined ex officio. Permissible means for this purpose include the cooperation of the parties, information from the government, and expert opinions.

2) If, despite diligent efforts, foreign law cannot be determined within a reasonable period of time, Liechtenstein law shall apply.

Art. 5

Reference to substantive provisions; renvoi

1) If foreign law is applicable, its substantive provisions must be applied (legal provisions with the exception of referral provisions). This does not apply if the referral provisions of the foreign law designate Liechtenstein law as applicable; in this case, the substantive provisions of Liechtenstein law must be applied (reverse referral).

2) If a foreign legal system consists of several sub-legal systems, the sub-legal system to which the rules existing within the foreign legal system refer shall be applied. In the absence of such rules, the sub-legal system with which the strongest connection exists shall be applicable.

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. Where necessary, the corresponding provision of Liechtenstein law shall apply in its place.

Art. 7

Amendment of the Articles of Association

Any subsequent change in the conditions determining the applicable legal system shall have no effect on facts that have already occurred.

Art. 8

Form

The form of a legal act shall be assessed 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) their domicile at the place where they reside with the intention of staying there permanently;

b) their habitual residence at the place where they live for a prolonged period, even if this period is limited from the outset.

Art. 10

Nationality of a natural person

1) The personal status of a natural person is governed by the law of the state of which the person is a national. If a person holds Liechtenstein citizenship in addition to foreign nationality, Liechtenstein law shall apply. For other persons with multiple nationalities, the nationality of the state with which the strongest connection exists shall apply.

2) If a person is stateless or if their nationality cannot be determined, their legal status is governed by the law of the state in which they have their habitual residence.

3) The personal status of a person who is a refugee within the meaning of the international conventions applicable to Liechtenstein, or whose ties to their home country have been severed for comparably serious reasons, is governed by the law of the state in which they have their domicile or, in the absence thereof, their habitual residence; a reference of this law to the law of the home country is irrelevant.

Art. 11

Choice of Law

1) In case of doubt, a choice of law by the parties (Art. 20, 29(3), and Art. 39(1)) does not refer to the conflict-of-laws rules of the chosen legal system.

2) A choice of law made only in the course of pending proceedings is relevant only if it has been made expressly.

3) The legal position of third parties is not affected by a subsequent choice of law.

II. Law of Persons

Art. 12

Legal Capacity and Capacity to Act

1) The legal capacity and capacity to act of a natural person shall be determined in accordance with the law applicable to that person’s personal status.

2) A person who has entered into a legal transaction even though he or she was legally incapacitated under his or her personal status may not invoke his or her legal incapacity if he or she would have been legally capable under the law of the State in which the legal transaction was entered into, unless the other party knew or ought to have known of his or her legal incapacity. This provision does not apply to legal transactions under family and inheritance law, nor to those involving real property located in another

State or a right equivalent thereto, this provision shall not apply.

Art. 13

Capacity to Commit a Tort

The capacity to commit a tort of a natural person shall be determined in accordance with the law of the State in which the conduct causing the damage occurred.

Art. 14

Name

1) The use of a natural person's name shall be determined in accordance with that person's personal status, regardless of the basis on which the name was acquired.

2) The protection of a natural person's name shall be determined in accordance with the law of the state in which the act infringing upon the name is committed.

Art. 15

Declaration of Presumed Absence

Liechtenstein law governs the declaration of a person's disappearance by a Liechtenstein court and the effects thereof.

Art. 16

Appointment of a guardian for persons with disabilities, advance medical directive

1) Liechtenstein law governs the appointment of a guardian for a mentally ill or intellectually disabled person by a Liechtenstein court and the effects thereof.

2) Liechtenstein law governs the requirements for the creation and the effects of advance medical directives. Art. 8 remains unaffected.

III. Family Law

A. Matrimonial Law

Art. 17

Form of Marriage

1) The form of a marriage contracted within the country shall be assessed in accordance with domestic formal requirements.

2) The form of a marriage contracted abroad shall be determined in accordance with the personal status law of each of the parties; however, compliance with the formal requirements of the place where the marriage is contracted shall suffice.

Art. 18

Requirements for Marriage

1) The requirements for marriage and for the invalidity of a marriage shall be assessed for each of the fiancés or spouses in accordance with their personal status law.

2) If a marriage has been declared invalid, dissolved, or deemed non-existent by a decision effective under Liechtenstein law, a new marriage may not be prohibited or a new marriage declared invalid solely because the decision is not recognized under the personal status law of one or both fiancés or spouses. This applies mutatis mutandis in the case of a declaration of absence.

Art. 19

Personal Legal Effects of Marriage

1) The personal legal effects of a marriage shall be determined in accordance with the law of the state in which both spouses have their habitual residence; in the absence of such a state, in accordance with the law of the state in which both had their last habitual residence, provided that one of them has retained it.

2) If a marriage was not entered into under the law referred to in paragraph 1 but was entered into under Liechtenstein law, the personal legal effects shall be determined in accordance with Liechtenstein law.

Art. 20

Matrimonial Property Law

1) Matrimonial property law shall be governed by the law chosen in writing by the parties.

2) The spouses may choose between the law of the state in which both have their habitual residence or will have it after the marriage, and one of the national laws of either spouse.

3) In the absence of such a choice of law, matrimonial property law shall be governed by the law applicable to the personal legal effects of the marriage at the time of the marriage.

Art. 21

Legal Separation and Divorce

1) The conditions and effects of legal separation and divorce shall be determined in accordance with the law applicable to the personal legal effects of the marriage at the time of the legal separation or divorce.

2) If, under this law, the marriage cannot be separated or dissolved on the basis of the facts asserted, or if none of the connecting factors

If the provisions of Article 19 apply, the separation or divorce shall be governed by the personal status law of the petitioning spouse as of the date of the separation or divorce.

3) The Liechtenstein court must apply Liechtenstein law if even one of the spouses is a Liechtenstein citizen.

4) The settlement of pension claims arising from recognized foreign decisions regarding the existence of the marriage (Art. 100a AussStrG) vis-à-vis a Liechtenstein occupational pension institution shall be assessed in accordance with Liechtenstein law.

A. Law on Registered Partnerships

Art. 21a

Form of Partnership Registration

1) The form of the registration of the partnership within the country shall be assessed in accordance with domestic formal requirements.

2) The form of the registration of the partnership abroad shall be assessed in accordance with the formal requirements of the place of registration.

Art. 21b

Requirements for the Registration of a Partnership

The requirements for and the annulment of a registered partnership shall be determined in accordance with the law of the state in which it is established.

Art. 21c

Personal Legal Effects of the Registered Partnership

The personal legal effects of a registered partnership shall be determined:

a) under the law of the state in which the registered partners have their common habitual residence; in the absence of such a state, under the law of the state in which both had their last habitual residence, provided that one of them has retained it;

b) otherwise, under Liechtenstein law; this shall also apply to the extent that the law applicable under subparagraph (a) does not regulate the personal legal effects of the registered partnership.

Art. 21d

Matrimonial Property Regime of the Registered Partnership

1) The property regime of a registered partnership shall be governed by the law chosen in writing by the parties.

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 the law of the home country of either partner.

3) In the absence of such a choice of law, the matrimonial property regime shall be governed by the law applicable to the personal effects of the partnership at the time of the partnership's registration.

Art. 21e

Judicial dissolution of the registered partnership

1) The conditions and effects of the judicial dissolution of the registered partnership shall be determined:

a) under the law of the State in which the registered partners have their common habitual residence at the time of dissolution; in the absence of such a residence, under the law of the State in which both had their last habitual residence prior to that, provided that one of them has retained it;

b) in accordance with the personal status law of the plaintiff registered partner at the time of the dissolution of the registered partnership, if the conditions for the application of the law specified in subparagraph (a) are not met or if the registered partnership cannot be dissolved under that law on the basis of the facts asserted;

c) otherwise, Liechtenstein law applies; this law also applies if, under the law applicable pursuant to subparagraph (b), the registered partnership cannot be dissolved on the basis of the facts asserted.

2) The Liechtenstein court must apply Liechtenstein law if even one of the registered partners is a Liechtenstein citizen.

3) Article 21(4) applies mutatis mutandis to the settlement of pension claims in the case of recognized foreign decisions on the dissolution of the registered partnership (Art. 100a in conjunction with Art. 1(5) Aus-sStrG).

B. Child Custody Law

Art. 22

Paternity of the Child by the Mother's Husband

The requirements for the descent of a child from the mother's husband and any challenge thereto shall be assessed in accordance with the personal status law to which the spouses were subject at the time of the child's birth or, if the marriage had previously been dissolved, at the time of dissolution. If the spouses have different personal statutes, the personal statute that is more favorable to the child shall apply. Art. 23

Legitimation through a subsequent marriage

The requirements for the legitimation of a child born out of wedlock through a subsequent marriage shall be determined in accordance with the parents' personal status. If the parents have different personal statuses, the personal status that is more favorable to the legitimation of the child shall prevail.

Art. 24

Repealed Art.

25

Effects of Legitimacy and Recognition

The effects of the child's legitimacy and legal recognition shall be determined in accordance with the law of the state in which the child has his or her habitual residence.

Art. 26

Paternity of a Child Whose Parents Are Not Married and Its Effects

1) The requirements for the establishment and acknowledgment of paternity of a child whose parents are not married to each other shall be determined in accordance with the child's personal status at the time of birth. However, they shall be determined in accordance with a subsequent personal status of the child if the establishment or acknowledgment is permissible under that status but not under the personal status at the time of birth. The law under which paternity has been established or acknowledged shall also govern any challenge thereto.

2) The legal effects of the filiation of a child whose parents are not married to each other shall be determined in accordance with the law of the State in which the child has his or her habitual residence.

3) Claims by the mother against the father with whom she is not married, arising from pregnancy and childbirth, shall be governed by the law of the State in which the mother has her habitual residence.

Art. 27

Adoption

1) The requirements for adoption and the termination of elective filiation shall be determined in accordance with the personal status law of each adoptive parent.

If, under the personal status law of the child, the consent of the child or of a third party with whom the child has a family law relationship is required, that law shall also apply in this respect.

2) The legal effects of adoption shall be determined in accordance with the law of the State in which the adoptive parent has his or her habitual residence; in the case of adoption by a spouse, in accordance with the law governing the personal legal effects of marriage; and, following 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.

C. Guardianship and Custody Law

Art. 28

Order and Effects

Liechtenstein law governs the establishment of a guardianship or curatorship by a Liechtenstein court and its effects.

IV. Inheritance Law

Art. 29

Succession upon death

1) Succession by reason of death shall be determined in accordance with the personal status of the decedent at the time of death.

2) If probate proceedings are conducted by a Liechtenstein court, succession upon death shall be determined in accordance with Liechtenstein law, subject to paragraphs 3 and 4.

3) A foreign decedent may, by will or contract of inheritance, subject his or her succession to the law of his or her home country or to the law of the state of his or her last habitual residence.

4) A German testator residing abroad may, by will or inter vivos contract, subject the succession to the law of his home country or to the law of the country of his last habitual residence.

5) Whether the beneficiary of a reduced statutory share may assert rights against third parties who received assets from the testator during his or her lifetime is to be determined in accordance with the law of the state governing the succession. Furthermore, the assertion of such rights is permissible only if it is also permitted under the law applicable to the transaction in question.

Art. 30

Validity of a Disposition of Property Upon Death

1) Testamentary capacity and the other requirements for the validity of a testamentary disposition, an inheritance contract, or an agreement to renounce an inheritance are met if the validity requirements of one of the following laws are satisfied:
a) one of the testator's national laws at the time of the legal act or at the time of his or her death;
b) the law of the state in which the testator had his habitual residence at the time of the legal act or at the time of his death;
c) Liechtenstein law, provided that the probate proceedings are conducted before a Liechtenstein court.
2) Paragraph 1 applies mutatis mutandis to the revocation or annulment of these legal acts.

V. Property Law

A. Types of property

Art. 31

Principle

The law applicable at the location of the property determines whether the property is 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 situated.

Art. 33

Form

1) Rights in rem, including ownership of real property, as well as contractual obligations relating thereto, must comply with the form prescribed by the law of the place where the property is situated.
2) Public notarial acts and certifications are recognized if they comply with the law of the place where the contract was concluded.

C. Movable property

Art. 34

Acquisition and loss in general

1) The acquisition and loss of rights in rem, including ownership of a movable thing, are governed by the law of the place where the thing is located at the time the relevant event occurs.

2) Changes of location undertaken with the manifest intent to circumvent the law shall not be taken into account.

Art. 35

Acquisition by Adverse Possession

1) Acquisition by adverse possession occurs only if the requirements under the law applicable at the location of the property in question are met.

2) If acquisitive prescription has commenced under another law, the period of acquisitive prescription that has elapsed shall be credited proportionally toward the period of acquisitive prescription.

Art. 36

Effects vis-à-vis Third Parties

To be effective against third parties acting in good faith, ownership and limited rights in rem require the publicity established by law at the location of the thing in question for the protection of good-faith transactions. Art. 37

Content

The content of rights in rem, including possession of movable property, is determined by the law applicable at the location of the property.

Art. 37a

Securities transferable via book-entry

1) The legal nature and content of rights in rem in securities transferable via book-entry systems (Art. 2(1)(a) g of Directive 2002/47/EC of the European Parliament and of the Council of June 6, 2002, on financial collateral) as well as the acquisition of rights in rem thereto, including possession, shall be assessed in accordance with the substantive rules of the state in which the relevant account (Art. 2(1)(h) h of Directive 2002/47/EC).

2) Furthermore, the law referred to in paragraph 1 shall determine

a) whether the ownership or other rights in rem in securities transferable through a securities clearing and settlement system are superseded by the ownership or other rights in rem of a third party, are subordinate to such rights, or whether a bona fide acquisition has occurred;

b) whether and what steps are required for the realization of securities transferable via a securities clearing and settlement system following the occurrence of an event triggering realization or termination (Art. 2(1)(l) of Directive 2002/47/EC).

VI. Intellectual Property Rights

Art. 38

Intellectual Property Rights

1) The creation, content, and extinction of intellectual property rights shall be determined in accordance with the law of the state in which an act of use or infringement is committed.

2) For intellectual property rights related to an employee's activities within the scope of their employment relationship, the conflict-of-laws rule applicable to the employment relationship (Art. 48) governs the relationship between the employer and the employee.

3) If the employee habitually performs his or her work in the Principality of Liechtenstein or if the employing branch is located there, Liechtenstein law applies. A choice of law must always be observed.

Art. 38a

Copyright Contracts

1) Contracts concerning copyrights are to be assessed in accordance with the law applicable to obligations (Art. 39 et seq.); a choice of law must always be observed.

2) Contracts concerning the collective management of rights in Liechtenstein are always subject to Liechtenstein law.

VII. Law of
Obligations Art.
39 *General Rules*

1) Obligations are to be governed by the law expressly or impliedly chosen by the parties (Art. 11); an implied choice is deemed to exist if it follows from the circumstances that the parties have accepted a particular legal system as governing.

2) Unless a choice of law has been made or is irrelevant under this Act, Articles 40 through 53 shall apply.

Art. 40

Contracts between Parties

Bilateral contracts under which one party owes the other at least predominantly money shall be governed by the law of the State in which the other party has its habitual residence. If that party enters into the contract as a business operator, the place of business within which the contract is concluded shall be decisive instead of the habitual residence.

Art. 41

Unilateral Contracts and Legal Transactions

Unilateral contracts and unilateral legal acts giving rise to an obligation shall be governed by the law of the state in which the obligor has his habitual residence or, in the case of Art. 40, sentence 2, his place of business. Art. 42

Banking Transactions and Insurance Contracts

1) Banking transactions are governed by the law of the state 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 acting as agent applies.

2) Insurance contracts are governed by the Act on International Insurance Contract Law.

Art. 43

Stock exchange transactions and similar contracts

Stock exchange transactions and contracts concluded at markets and fairs shall be governed by the law of the state in which the stock exchange or market is located or the fair takes place.

Art. 44

Sales by Auction

Sales by auction shall be governed by the law of the State in which the auction takes place.

Art. 45

Consumer Contracts

1) Contracts in which the law of the State in which a party has its habitual residence affords that party, as a consumer, special protection under private law shall be governed by that law if they were concluded in connection with an activity carried out in that State by the trader or a person acting on the trader's behalf for the purpose of concluding such contracts.

2) A choice of law to the detriment of the consumer shall be disregarded insofar as it concerns mandatory provisions of the law referred to in paragraph 1. If this is the law of a Member State of the EEA Agreement, this includes, in particular, provisions corresponding to consumer protection rules within the meaning of Annex XIX to the EEA Agreement.

3) Section 9 of the Timeshare Act remains reserved.
4) The Act on International Insurance Contract Law applies to insurance contracts.

Art. 46

Contracts for the Use of Immovable Property

Contracts concerning the use of immovable property or structures thereon shall be governed by the law of the State in which the property is situated.

Art. 47

Contracts concerning intellectual property rights

1) Contracts concerning intellectual property rights shall be governed by the law of the state to which the intellectual property right is transferred or granted. If the contract relates to several states, the law of the state in which the acquirer (licensee) has his habitual residence (his place of business, Art. 40, sentence 2) shall apply.
2) For contracts concerning intellectual property rights that are connected with an employee’s activities within the scope of their employment relationship, the conflict-of-laws rule applicable to the employment relationship (Art. 48) shall apply.

Art. 48

Employment Contracts

1) Employment contracts shall be governed by the law of the State in which the employee habitually performs his work. This law shall also apply if the employee is posted to a place of work in another State.
2) If the employee habitually performs his work in more than one State or has no habitual place of work, the law of the State in which the employer has his habitual residence (his place of business, Art. 40, sentence 2) shall apply.
3) A choice of law is only relevant if it has been expressly made. However, insofar as the mandatory provisions of the laws referred to in paragraphs 1 and 2 are concerned, even an express choice of law is irrelevant if it has been made to the detriment of the employee.

Art. 49

Contingent Legal Transactions

A legal transaction whose effects conceptually depend on an existing obligation shall be assessed in accordance with the substantive rules of the state whose substantive rules govern the obligation. This applies in particular to legal transactions whose purpose is to secure or modify an obligation. Art. 42(1) remains unaffected.

Art. 50

Unjust Enrichment

Claims for unjust enrichment must be assessed according to the law of the state in which the enrichment occurred. However, if the unjust enrichment is based on a performance rendered pursuant to a legal relationship, the substantive rules of the state whose substantive rules are applicable to the legal relationship shall apply; this applies mutatis mutandis to a claim for reimbursement of expenses that another party would have had to incur.

Art. 51

Agency without Authority

Agency without authority shall be governed by the law of the state in which it was performed; however, if it is intrinsically connected to 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 state in which the conduct causing the damage occurred. However, if the parties have a closer connection to the law of one and the same other state, that law shall apply.

2) Claims for damages and other claims arising from unfair competition shall be governed by the law of the State in whose market the competition has an impact.

Art. 53

Voluntary Agency

1) The requirements and effects of voluntary agency in the relationship between the principal and the agent vis-à-vis a third party shall be determined by the law designated by the principal in a manner recognizable to the third party.

2) If the applicable law has not been specified, the law of the state in which the agent is to act in accordance with the principal's intention, as discernible to the third party, shall apply; if the agent has been appointed for several transactions, the law of the state in which the agent is to act on a regular basis in accordance with the principal's intention, as discernible to the third party, shall apply.
3) If the connecting factor provided for in paragraph 2 also fails, the law of the state in which the agent acts shall apply.

VIII. Transitional and Final Provisions

Art. 54

Repeal of Previous Law

The following are repealed:

a) in the Law on Persons and Companies of January 20, 1926 (PGR), LGBl. 1926 No. 4:
- Articles 8, 23(1), 24, 30, 31, 42, 45(1), 53, and 57(4);
- § 70(4) through (6) of the Final Provisions;
- in Article 14(1), the words "in accordance with the law of the home country";
- in Art. 14(3), the words "under Liechtenstein law" and "under Liechtenstein or foreign law";
- in Art. 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 June 1, 1811 (ABGB), ASW;

c) Articles 9 through 18 of the Property Act of December 31, 1922 (SR), LGBl. 1923 No. 4;

d) in the Act of December 4, 1911, concerning the administration of the estates of foreigners, LGBl. 1911 No. 6:
- Art. 2, para. 2, and Art. 9, para. 2;
- in Art. 1(2), the words “in accordance with local laws”;
- in Art. 1(3), the words “the administration shall be conducted in accordance with Liechtenstein law without regard to any foreign inheritance dispute, and Liechtenstein law shall also apply to a will executed abroad”;
- in Article 3, the words “in accordance with Liechtenstein law”;
- in Art. 4, the words "under Liechtenstein law". Art. 55

Preservation of Existing Law

This Act preserves, in particular, Articles 9(3), 37, 49, 595, 613, 679, 778, 793, 828, 833, 931, 932a, § 170, 943, and 1044 of the Law on Persons and Companies, LGBl. 1926 No. 4, Art. 75 of the Legal Security Ordinance, LGBl. 1923 No. 8, as well as Art. 80(2) of the Road Traffic Act, LGBl. 1978 No. 18, are not affected.

Art. 56

Entry into force

This Act shall enter into force on January 1, 1997.

VI. Marriage Act

of December 13, 1973

I hereby approve the following resolution adopted by the State Parliament:

1. Part

General Provisions

Art. 1

Nature of Marriage

Marriage is the full and undivided partnership of two people established by contract.

Art. 2

Freedom to Marry

Any person may enter into marriage provided that no legal impediment stands in the way of the intended union.

Art. 3

Religious marriage

1) A religious marriage may be contracted only in accordance with the regulations issued by the respective religious community.

2) The religious wedding ceremony may only be performed after the marriage certificate has been presented.

3) In all other respects, a religious marriage remains unaffected by the provisions of this Act.

Art. 3a

Definitions

The terms used in this Act to refer to persons shall be understood to include all persons regardless of their gender, unless the terms expressly refer to a specific gender.

2. Section

The Law of Marriage

1. Section:

Engagement

Art. 4

Engagement

Engagement consists of the promise by two persons of marriageable age to marry one another.

Art. 5

Exclusion of an Action to Compel Marriage

1) An engagement does not give rise to an enforceable claim to enter into marriage.

2) A contractual penalty stipulated in the event of a breach of engagement cannot be enforced.

Art. 6

Consequences of Breach of Engagement

1) If one fiancé breaks the engagement without good cause, or if the engagement is dissolved by him or the other fiancé for a reason attributable to him, he must provide reasonable compensation to the other fiancé, the other fiancé’s parents, or third parties who acted in lieu of the parents, for the arrangements made in good faith with a view to the marriage.

2) If, as a result of the breach of engagement, one fiancé suffers serious harm to his or her personal circumstances through no fault of his or her own, the court may award him or her a monetary sum as compensation (Section 1293 et seq. of the Austrian Civil Code (ABGB)) if the other fiancé is at fault.

3) This claim is non-transferable and passes to the heirs only if it has been acknowledged or asserted in court at the time of the claimant’s death.

Art. 7

Reimbursement of Gifts

1) Gifts exchanged between fiancés may be reclaimed upon termination of the engagement. If they are no longer in existence, the amount of the enrichment must be returned.

2) If the engagement is dissolved by the death of one of the fiancés, any claim for restitution is excluded.

Art. 8

Statute of Limitations

Claims arising from the engagement are barred by the statute of limitations one year after the termination.

2. Section

Capacity to Marry and Impediments to Marriage

I. Capacity to Marry

Art. 9

Age of Marriage

1) To enter into marriage, the bride and groom must be at least 18 years of age.

2) However, in exceptional cases, where serious considerations justify it, the court may, with the consent of the legal representative, declare one of the parties of marriageable age.

Art. 10

Capacity to Contract

1) To enter into marriage, the bride and groom must be of sound mind.

2) Repealed

Art. 11

Consent of the Legal Representative

1) Minors may enter into marriage only with the consent of their legal representative.

2) If the legal representative refuses consent without valid grounds, the court may substitute it upon application by one of the parties requiring consent.

II. Impediments to Marriage Art. 12

Impediments to Marriage

Impediments to marriage are:

a) blood relationship and adoption;

b) an existing marriage or registered partnership with a third party.

Art. 13

Blood Relationship and Adoption

1) A marriage may not be contracted between blood relatives in the direct line, between full or half-siblings, or between an uncle and a niece or an aunt and a nephew, whether they are related by marriage or by blood.

2) A marriage may not be contracted between an adopted child and the adoptive parent.

Art. 14

Existing marriage or registered partnership; missing person

1) A marriage may not be contracted as long as a previous marriage or a registered partnership with a third party exists.
2) If one spouse has been declared missing, the other spouse may enter into a new marriage only if the previous marriage has been dissolved by a court.

3. Section

Publication and Marriage Ceremony

I. Publication Art.
15 *Application for Publication*

To obtain the publication, the bride and groom must register their intention to marry with the civil registrar, who will arrange for the publication to be posted on the authority's website.

Art. 16
Form of the Application for Publication

The notification must be made by the bride and groom in person or by means of a written declaration in which the signatures are officially certified.

Art. 17
Rejection of the Application for Publication

1) The banns shall be refused if:
a) the application is not properly filed;
b) one of the bride and groom is not eligible for marriage;
c) there is a manifest legal impediment to marriage; or
d) one of the parties clearly does not intend to establish a life partnership but rather seeks to circumvent the provisions governing the admission and residence of foreign nationals.
2) The registrar shall interview the bride and groom in the cases specified in paragraph 1(d) and may obtain information from other authorities or third parties.

Art. 18
Right to Object

1) During the publication period, any interested party may file an objection to the marriage, citing the lack of legal capacity to marry on the part of one of the bride and groom or a statutory impediment to marriage.
2) The objection must be filed in writing with the registrar.

3) An objection that concerns neither a lack of capacity to marry nor a legal impediment to marriage shall be rejected by the registrar.

Art. 19

Notification of the objection

1) If an objection has been filed, the registrar must immediately notify the couple of this after the publication period has expired.

2) If the objection is not accepted by one of the parties to the marriage, the objector must be notified of this without delay.

Art. 20

Decision on the objection

If the objector wishes to maintain the objection, he or she must file a lawsuit with the court to prohibit the marriage.

Art. 21

Time Limit

1) The time limit for filing an objection, for refusing to acknowledge the marriage, and for filing a lawsuit to prohibit the marriage is 14 days in each case.

2) It begins on the day the announcement is made, the objection is communicated to the bride and groom, or the refusal of recognition is notified to the objector.

II. Marriage Ceremony

Art. 22

Prerequisite

The registrar may perform the marriage ceremony only if no objection has been filed or if any objection that has been filed has not been brought before the court or has been dismissed. If the registrar does not perform the ceremony personally, he or she shall issue a certificate of marriage, which is valid for six months.

Art. 23

Refusal to Perform the Marriage Ceremony

1) The registrar must refuse to perform the marriage ceremony as soon as there is a reason for which the publication must be refused.

2) After six months, the publication loses its effect. Art. 24

Marriage without Publication

If, due to a serious illness of one of the parties, there is a risk that the marriage could no longer be solemnized if the publication periods are observed, the government may authorize the registrar to perform the marriage ceremony by shortening the periods or without publication.

Art. 25

Public Nature of the Marriage Ceremony

1) The marriage ceremony shall take place publicly in the wedding venue in the p two adult witnesses.

2) Outside the marriage venue, the marriage ceremony is permissible only if a medical certificate establishes that one of the spouses is prevented from appearing at the office due to illness.

Art. 26

Form of the Wedding Ceremony

1) The registrar asks each of the bride and groom individually whether they wish to enter into marriage with one another.

2) After the couple answers "yes" to this question, the registrar declares that, by virtue of this mutual consent, the marriage is legally concluded.

Art. 27

Regulation

The government shall issue further regulations by ordinance concerning the announcement, the marriage ceremony, and the maintenance of marriage registers.

4. Section

Invalidity of Marriage

I. Grounds for Invalidity

Art. 28

General Principle

A marriage is void only in the cases specified in Articles 29 through 38.

Art. 29

Blood Relationship and Adoption

A marriage is void if it was entered into despite the existence of an impediment to marriage based on consanguinity or adoption (Art. 13).

Art. 30

Existing Marriage or Registered Partnership

A marriage is void if it was entered into despite the existence of a prior marriage or registered partnership with a third party (Art. 14). Art. 31

Sexual incapacity

A marriage is void if one of the spouses is unable to consummate the marriage with the other spouse due to a permanent physical or mental incapacity that already existed at the time the marriage was contracted.

Art. 32

Defect of form

1) A marriage is invalid if the ceremony before the registrar did not take place in the form prescribed by Article 26.

2) However, the marriage shall be deemed valid from the outset if the spouses have lived together as husband and wife for five years after the marriage or, if one of them has died previously, until that person's death, but for at least three years, unless an action for annulment has been filed by the end of the five-year period or at the time of the death of one spouse.

Art. 33

Lack of Capacity to Contract Marriage

A marriage is invalid if, at the time of the marriage, one of the spouses lacks capacity for legal acts for a permanent or temporary reason.

Art. 34

Lack of consent by the legal representative

1) A marriage is void if a spouse who is a minor has entered into the marriage without the consent of the legal representative.

2) However, the marriage is to be regarded as valid from the outset if the spouse has attained majority or the legal representative has subsequently given consent.

Art. 35

Error as to the Identity of the Other Spouse

A marriage is void if one spouse was mistaken as to the identity of the other spouse at the time of the marriage. All other errors on the part of the spouses, as well as their mistaken expectations regarding the presumed or agreed-upon conditions, do not render the marriage void.

Art. 36

Fraud

1) A marriage is void if one spouse was induced to enter into the marriage by fraudulent misrepresentation regarding circumstances that, had they been known and properly assessed in light of the nature of marriage, would have prevented the spouse from entering into the marriage.
2) However, the marriage shall be deemed valid from the outset if, upon discovering the fraud, the spouse has indicated that he or she wishes to continue the marriage.

Art. 37
Justified Fear
1) A marriage is invalid if a spouse was induced to enter into the marriage under the influence of a well-founded fear, the existence of which is to be assessed based on the magnitude and probability of the danger and on the physical and mental constitution of the threatened spouse.
2) However, the marriage shall be deemed valid from the outset if, after the cessation of the well-founded coercive situation, the spouse has indicated that he or she wishes to continue the marriage.
Art. 38
Marriage for the Purpose of Citizenship
1) A marriage is invalid if one spouse intended not to establish a life partnership but to circumvent the provisions governing the acquisition of citizenship.
2) However, the marriage shall be deemed valid from the outset if the spouses have lived together as husband and wife for five years following the marriage, or, if one of them has died earlier, until his or her death, but for at least three years, unless an action for annulment has been filed by the time the five-year period expires or at the time of the death of one spouse.
Art. 38a
Circumvention of the Provisions on Admission and Residence of Foreigners
The marriage is void if one of the spouses does not intend to establish a marital relationship but rather to circumvent the provisions regarding the admission and residence of foreigners.

II. Annulment

Art. 39
Effect of Annulment

1) The nullity of the marriage takes effect only after the court has declared it null and void by judgment.
2) Until such a judgment is rendered, the marriage has the effects of a
valid marriage. Art. 40
Procedure
1) Subject to paragraph 2, proceedings for annulment shall be initiated ex officio.
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 of 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 are nevertheless considered legitimate, regardless of whether their parents acted in good or bad faith.
2) The same provisions 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 void, the spouses shall resume the name they bore prior to the marriage. In all other respects, the provisions of Art. 66 shall apply mutatis mutandis.
2) For the determination of maintenance claims following the annulment of a marriage, the provisions of Art. 67 et seq. shall apply mutatis mutandis. In assessing any maintenance on an equitable basis, it must also be taken into account whether the ground that led to the annulment of the marriage was known to a spouse at the time of entering into the marriage or should have been known to them.
3) Unless otherwise provided for in the marriage contract, the provisions of Articles 73 et seq. apply to the division of property between the spouses following the annulment of the marriage.
4) The provisions of Articles 89b through 89f apply to the division of occupational pension benefits acquired during the marriage.
5. Section
The Effects of Marriage
Art. 43

Marital Union; Rights and Duties of the Spouses

1) By the marriage ceremony, the spouses are united in marital partnership.

2) They mutually undertake to safeguard the welfare of the union through harmonious cooperation and to care for the children together.

3) They owe each other fidelity and support.

Art. 43a

Legal Relationship Between Spouses and Their Children

The relevant provisions of the Swiss Civil Code apply to the legal relationship between spouses and their children; these provisions apply mutatis mutandis to same-sex spouses and their children.

Art. 44

Family name

1) At the time of the marriage ceremony, the spouses shall declare to the registrar, in a public or notarized document, which of their surnames they will use as their common surname. The spouse whose family name does not become the common family name may declare that they will place their previous family name before or after the common family name, separated by a hyphen. If this spouse already bears a double surname, they may use only one of these surnames, at their discretion.

2) If the spouses do not choose a common surname, each spouse retains their previous surname.

Art. 45

Marital Residence

The spouses shall jointly determine the marital residence.

Art. 46

Support of the Family; General Provisions

1) The spouses shall jointly provide for the proper support of the family, each according to their means.

2) They shall agree on the contribution each of them makes, namely through financial contributions, managing the household, caring for the children, or assisting in the other's profession or trade.

3) In doing so, they shall take into account the needs of the marital partnership and their personal circumstances.

Art. 46a

Compensation for Contribution to the Other Spouse's Earnings

If one spouse contributes to the other's earnings, he or she is entitled to appropriate compensation for such contribution. The amount of the claim depends on the nature and duration of the services; the spouses' overall living circumstances, particularly the maintenance payments provided, must be taken into account appropriately.

Art. 46b

Claims for Compensation

Claims for compensation for a spouse's contribution to the other spouse's acquisition of property (Art. 46a) are inheritable, transferable inter vivos or by reason of death, and subject to attachment, provided they have been acknowledged by contract or settlement or asserted in court.

Art. 46c

Exclusion of Claims for Compensation

Art. 46a does not affect a spouse's contractual claims against the other spouse arising from joint or cooperative participation in the acquisition. Such claims preclude a claim under Art. 46a; however, in the case of an employment relationship, the spouse retains the claim under Art. 46a to the extent that it exceeds the claims arising from the employment relationship.

Art. 47

Amount at the Spouse's Disposal

1) The spouse who manages the household, cares for the children, or assists the other spouse in their profession or business is entitled to receive a reasonable amount at regular intervals from the other spouse for their own use.

2) In determining the amount, the eligible spouse's own income and reasonable provisions for the family, profession, or business must be taken into account.

Art. 48

Representation of the Marital Union

1) During their cohabitation, each spouse represents the marital partnership for the family's day-to-day needs.

2) With regard to the family's other needs, a spouse may represent the marital community only:
1. if he or she has been authorized to do so by the other spouse or by the court; or
2. if the interests of the marital partnership do not permit a delay in the transaction and the other spouse is unable to consent due to illness, absence, or similar reasons.
3) Each spouse is personally liable for his or her actions and, to the extent that such actions do not, to the knowledge of third parties, exceed his or her authority to act on behalf of the other spouse, is also jointly and severally liable for the other spouse.

Art. 49
Occupation and Trade of the Spouses
In choosing and pursuing a profession or trade, a spouse shall take into consideration the other spouse and the welfare of the marital partnership.
Art. 49a
Legal Transactions of the Spouses; General Provisions
Each spouse may enter into legal transactions with the other spouse or with third parties, unless the law provides otherwise.
Art. 49b
Family residence
1) A spouse may terminate a lease, sell the family home or apartment, or restrict the family's rights to the living quarters through other legal transactions only with the express written consent of the other spouse.
2) If the spouse is unable to obtain this consent or if it is refused without good cause, he or she may bring the matter before the court.
Art. 49c
Duty to Provide Information
1) Each spouse may request information from the other regarding their income, assets, or debts.
2) At his or her request, the judge may order the other spouse or third parties to provide the necessary information and to produce the necessary documents.

3) The duty of third parties to provide information and produce documents is limited by the provisions of civil procedure regarding the inadmissibility and justified refusal to testify, unless the information concerns merely salary details.

Art. 49d

Judicial measures; general provisions

1) If a spouse fails to fulfill their obligations toward the family, or if the spouses disagree on a matter of importance to the marital relationship, they may jointly or individually petition the court for mediation.

2) The court reminds the spouses of their obligations and attempts to reconcile them; with their consent, it may call in experts or refer them to a marriage or family counseling center.

3) If necessary, the court shall, at the request of a spouse, take the measures provided for by law.

4) Maintenance payments under Articles 46 and 47 shall, at the request of one spouse, be determined for the future in the form of a monthly allowance if the other spouse neglects his or her obligation to pay.

Art. 49e

Revocation of 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 spouse, withdraw the authority to represent the marital community in whole or in part.

2) The spouse making the request may only notify third parties of the revocation by personal communication.

3) With respect to third parties acting in good faith, the revocation is effective only if it has been published by order of the court.

Art. 49f

Restrictions on the Power of Disposition

1) To the extent necessary to safeguard the family's economic foundation or to fulfill a financial obligation arising from the marital community, the court may, at the request of one spouse, make the disposition subject to the other spouse's consent.

2) If the court prohibits a spouse from disposing of a piece of real property, it shall have this noted in the land register ex officio.

Art. 49g

Change in Circumstances

If circumstances change significantly, the court shall, at the request of a spouse, adjust the measures or revoke them if the basis for them has ceased to exist. Art. 49h

Procedure

1) The court shall issue the orders necessary for the protection of marriage and family in accordance with the preceding provisions, including the claim for compensation under Art. 46a et seq., in non-contentious proceedings. Excluded from this are maintenance payments and other monetary claims. These must be asserted through ordinary legal channels.

2) Once a petition for legal separation has been filed, civil proceedings are the only available recourse for the duration of the proceedings and, following a final legal separation or divorce, for any claims arising from the foregoing provisions.

Part 3

Divorce and Separation

1. Section

Divorce

I. Divorce by Mutual Consent

Art. 50

Comprehensive Agreement

1) If the spouses jointly file for divorce and submit a complete agreement in accordance with paragraph 2 regarding the ancillary consequences of the divorce, together with the necessary supporting documents, the court shall, as a rule, hear them separately and jointly; it shall satisfy itself that the petition for divorce and the agreement are based on free will and careful consideration and that the agreement may be approved.

2) If the conditions set forth in paragraph 1 are met, the court shall grant the divorce by order and approve the agreement regarding spousal support, the allocation of the marital home, the division of household goods, the division of property acquired during the marriage, and the division of the vested benefits from the occupational pension plan. The court shall also review and approve the agreement regarding ancillary matters concerning maintenance, custody, and—in the case of joint custody—the care of the children, as well as personal contact between a parent and the children in accordance with the

Provisions of the ABGB. However, the spouses may declare that they wish to maintain the existing arrangement regarding custody without filing any motions; they may also declare that they have reached an agreement regarding the care of the children in cases of joint custody or regarding personal contact between a parent and the children, and that they will not file any motions under Art. 51 in this regard.

3) If an agreement pursuant to paragraph 2 is incomplete or not eligible for approval, the judge shall attempt to bring about an agreement between the spouses regarding the missing or deficient points. If an agreement is not possible, the further proceedings shall be conducted in accordance with Art. 51 or 54.

Art. 51

Partial Agreement

1) If the spouses jointly petition for divorce but do not submit a complete agreement regarding the ancillary consequences of the divorce, and if the spouses declare that the court should decide on 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 regarding the petition for divorce and the ancillary consequences of the divorce on which they have agreed, as well as regarding their joint declaration that the remaining ancillary consequences are to be determined by the court, as in the case of a comprehensive agreement.

3) Each spouse shall file motions regarding the ancillary consequences of the divorce on which they have not agreed.

Art. 52

Effect of the Divorce Decree; Principal Consequence of the Divorce

Once the divorce decree becomes final, the bond of marriage is dissolved. Art. 53

Timing of the Petition for Divorce

A petition for divorce by mutual consent may not be filed until one year has elapsed since the marriage.

Art. 54

Change to divorce by petition

1) If the court determines that the requirements for a divorce by mutual consent are not met or are no longer met, it shall set a deadline for each spouse to replace the petition for divorce with a complaint.

2) If both spouses allow the deadline to pass without filing a petition, the court shall dismiss the original joint petition for divorce.

3) The spouses' right to file a new joint petition for divorce or a petition for divorce is not affected by the dismissal under paragraph 2.

II. Divorce by Action

A. After Living Apart

Art. 55

3 years of separation

A spouse may file for divorce if the spouses have lived apart for at least three years at the time the action becomes pending or upon conversion to divorce by petition.

B. Unreasonablenes

s Art. 56

Principle

Before the three-year period expires, a spouse may file for divorce if, for serious reasons primarily attributable to the other spouse, it would be unreasonable to expect the marriage to continue.

Art. 57

Attempt at Reconciliation

Upon receipt of a petition for divorce based on Art. 56, the court shall conduct an attempt at reconciliation, which shall be repeated once if there is a prospect of reconciliation. The spouses must appear in person and without representatives at the attempts at reconciliation.

Art. 58

Suspension of Proceedings

If, following the conclusion of the reconciliation proceedings in the course of the divorce proceedings under Art. 56, the court concludes that there is a possibility of reconciliation between the spouses, the court may suspend the proceedings for a reasonable period of time. The grounds for suspension under the Civil Procedure Code (ZPO) remain unaffected.

C. Common Provisions Art. 59

Consent to the Divorce Action; Counterclaim

If one spouse files for divorce on the grounds of separation or on the grounds that the marriage has become intolerable, and the other spouse expressly consents or files a counterclaim seeking divorce themselves, the further proceedings shall be conducted in accordance with the provisions governing divorce by mutual consent under the conditions set forth therein. Once the change in proceedings has taken place, a return to the original proceedings under Art. 54 is precluded.

Art. 60

Provisional Measures

1) Once the case is pending, either spouse may dissolve the joint household for the duration of the proceedings.

2) During the proceedings, the court may, upon application, issue a provisional order to provide a spouse and the children with adequate support or take other precautionary measures if the welfare of a spouse or that of the children so requires. The provisions regarding measures to protect the marital union apply mutatis mutandis.

3) This provision applies mutatis mutandis to proceedings for divorce by mutual consent.

Art. 61

Ex officio investigation

The court shall examine ex officio whether the grounds for divorce—namely, three years of separation or the impossibility of continuing the marriage—are present and whether the petition for divorce can be granted.

Art. 62

Divorce Judgment; Principal Consequence of the Divorce

1) Divorce upon petition is granted by judgment.

2) The court must grant the divorce if, based on the conduct of the proceedings, it has objectively and according to its free conviction determined that:

a) the requirement of three years of separation has been met pursuant to Art. 55;

b) pursuant to Art. 56, the continuation of the marriage is unreasonable;

c) there is mutual consent to divorce within the meaning of Art. 59, and the remaining requirements under the provisions governing divorce by mutual consent are met.

3) Once the divorce decree becomes final, the bond of marriage is dissolved.

2. Section:

Separation of

Marriage, Art. 63

Requirements and Procedure

1) The spouses may request separation jointly or individually.

2) Separation is granted under the same conditions and following the same procedure as divorce.

3) The right to request a divorce is not affected by the legal separation. Art. 64

Judgment or Order of Separation; Principal Consequence of Separation

The judgment or order of separation terminates the obligation of marital cohabitation and marital fidelity upon becoming final. The marital bond remains in force.

Art. 65

Resumption of marital cohabitation

1) The judgment or order of separation loses its effect if the separated spouses resume marital cohabitation and notify the court thereof by means of a joint written declaration.

2) The provisions regarding the division of property acquired during the marriage remain unaffected by the lapse of the separation judgment or order. However, the provisions concerning all other ancillary consequences of the separation lapse upon notification pursuant to paragraph 1.

3. Section

Consequences of Divorce and Separation

I. Right to a Name

Art. 66

Reassumption of a Former Name

1) Unless otherwise provided below, divorced or separated spouses retain their previous married surname (Art. 44).

2) However, a spouse whose surname was changed upon marriage has the right, once the divorce judgment or order has become final, to declare to the civil registry office that they are reassuming their original surname or the surname they bore prior to the marriage.

3) The surnames of the children are not affected by the name changes referred to in paragraph 2 above.

II. Regulation of Incidental Consequences

Art. 67

General Principle

1) Regardless of the type of divorce or separation, the spouses may enter into agreements regarding spousal support, the allocation of the marital home, the division of household goods, the division of the increase in assets accrued during the marriage, the division of termination benefits from occupational pension plans, as well as regarding the support, care, and upbringing of the children and contact between them and the children. Such agreements require the court's approval.
2) If the spouses have not reached an agreement on the ancillary consequences, or if the agreement submitted has not been approved by the court, the court shall issue a ruling in accordance with the principles set forth in the following titles.
3) The special provisions of this Act, in particular the provisions on divorce by mutual consent and Art. 89a, remain reserved.

III. Alimony

Art. 68

Calculation of Maintenance

1) If it cannot reasonably be expected that one spouse will provide for their own maintenance—including adequate retirement provisions, their share of the marital property, and the continuing effects of marital agreements—the other spouse must make an appropriate contribution.
2) In determining whether a contribution is required, and if so, in what amount and for how long, the following factors must be taken into account in particular:
a) the division of responsibilities during the marriage;
b) the duration of the marriage;
c) the social 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 for the children still to be provided by the spouses;

g) the vocational training and employment prospects of the spouses, as well as the estimated costs of the eligible person's vocational reintegration;
h) the entitlements under old-age and survivors' insurance and under occupational or other private or state pension plans.
3) If the payment of spousal support determined in accordance with paragraph 2 would jeopardize the spouse's own livelihood, taking into account his or her other obligations, he or she need only pay an amount that is equitable in light of the needs and financial circumstances of both divorced or separated spouses.

4) A contribution may, in exceptional cases, be denied or reduced if it would be manifestly unreasonable because the entitled person:
a) has grossly violated their duty to contribute to the family's support;
b) has wilfully brought about their own need;
c) has committed a serious criminal offense against the obligated person or a person closely related to them.

Art. 69

Form of Maintenance

1) Maintenance shall be provided in the form of a monetary allowance, payable monthly in advance.
2) Instead of the annuity, the entitled person may demand a lump-sum payment if there is a compelling reason and the obligated person is not unduly burdened thereby.

Art. 70

Change in Circumstances

1) If a significant and permanent change in income or financial circumstances has occurred, the court may, upon petition, increase, reduce, terminate, or suspend the allowance for a specified period.
2) However, the entitled person may demand an increase in the alimony only as long as she is responsible for the care of minor children, or if, at the time of divorce or separation, no alimony sufficient to cover reasonable support could be established, but the financial circumstances of the obligated person have improved accordingly.
3) Furthermore, in justified exceptional cases, the court may order an increase in maintenance regardless of paragraph 2 if this is due to:

a) a special and unavoidable need on the part of the person entitled to support, such as in the case of serious illness, severe disability, or advanced age, or
b) special contributions made during the marriage and
c) post-marital solidarity appears justified in relation to the duration of the marriage and the income and financial circumstances of the person obligated to pay maintenance permit it, without that person having to accept unreasonable restrictions as a result of the increase in maintenance.
4) The spouses may, in the agreement, exclude any modification of the maintenance allowance set forth therein, either in whole or in part.
5) The annuity may, by agreement or by court decision, be indexed to the national consumer price index or an equivalent successor index.
Art. 71
Forfeiture
The recipient forfeits the right to maintenance if, after the divorce or separation, he or she commits a serious offense against the obligor.
Art. 72
Extinction and Suspension
1) The right to maintenance expires upon the death of the entitled party. It continues to exist thereafter only to the extent that it is directed toward performance or compensation for non-performance for the past, or relates to contributions due at the time of the entitled party’s death.
2) Upon the death of the obligor, the maintenance obligation passes to the heirs as a liability of the estate, subject to paragraph 3. The obligee must, however, accept a reduction of the maintenance allowance to an amount that is equitable, taking into account the circumstances of the heirs and the estate’s ability to generate income.
3) A maintenance payment reduced pursuant to Art. 68, para. 4, ceases upon the death of the obligor.
4) If the person entitled to maintenance enters into a de facto cohabitation, the maintenance obligation is suspended for the duration thereof. Upon the remarriage of the entitled person, the maintenance obligation ceases. Apart from these cases of suspension and cessation of the maintenance obligation, the latter takes precedence over the maintenance obligations of other persons.

IV. Division of the increase in assets accrued during the marriage

Art. 73

Subject of the Division

1) If a marriage is annulled, divorced, or separated, the increase in assets accrued during the marriage shall be divided between the spouses.

2) Any increase in assets accrued after the dissolution of the marital partnership shall not be taken into account in the division of assets.

Art. 74

Assets Subject to Division

1) The estate subject to division includes any increase in assets accrued by the spouses during the marriage until the dissolution of the marital relationship that does not fall under the exceptions listed in this Act.

2) Repealed

Art. 75

Excluded assets; own assets

1) Assets that are not subject to division include those that

a) were brought into the marriage by a spouse, acquired by reason of death, or gifted to him or her by a third party, or

b) are intended solely for the personal use of a spouse or directly for the practice of his or her profession, or

c) claims for compensation for pain and suffering or other highly personal claims.

2) The marital home and the household goods on which a spouse relies to meet his or her basic needs must be included in the division even if they were brought into the marriage by a spouse, acquired by reason of death, or gifted to him or her by a third party.

3) The assets referred to in paragraph 1 constitute the separate property of the respective spouse.

Art. 76

Income from Separate Property

Income from separate property shall be included in the increase in assets accrued during the marriage if and to the extent that it was designated for this purpose by the entitled spouse or used for acquisitions serving the needs of the spouses.

Art. 77

Replacement purchases from separate property

Replacement acquisitions from separate property shall be included in the division only if and to the extent that they were designated for this purpose by the entitled spouse or serve the ongoing use of both spouses.

Principles of Division

Art. 78

a) Equity

1) The division must be carried out in accordance with equity. In doing so, particular consideration must be given to the nature and extent of each spouse's contribution to the creation of the marital property. Contributions in this context include the provision of support, participation in the acquisition of assets (to the extent that it has not already been compensated for in another manner), the management of the joint household, the care and upbringing of joint children, and any other form of spousal support.

2) In the context of the division, debts incurred to acquire the assets subject to division or to cover the costs of the marital household, and which remain outstanding and unpaid at the time of division, shall also be taken into account at the court's discretion.

3) The discretionary decision to be made regarding the division must, in particular, also take into account the welfare and interests of the children.

Art. 79

b) Consideration of Areas of Life

The division shall be carried out in such a way that the spheres of life of the divorced or separated spouses interfere with one another as little as possible in the future. Businesses, companies, enterprises, and the like shall remain under the control of the spouse who previously owned or managed them.

Art. 80

Court Orders

1) In dividing the marital property acquired during the marriage, the court may order the transfer of ownership of tangible movable property or ausufruct right thereto, and the transfer of ownership or other rights in immovable property from one spouse to the other, as well as the establishment of rights in rem or contractual legal relationships in favor of one spouse with respect to the immovable property of the other.

2) To the extent that assets subject to division are owned by a third party, the court may order the transfer of rights and obligations relating to such assets only with the owner's consent.

Art. 81

Marital Residence

1) With respect to the marital home, if it is used by one or both spouses by virtue of ownership or another real right, the court may order the transfer of ownership or the real right from one spouse to the other or the establishment of a contractual legal relationship in favor of one spouse.

2) If the marital home, which is owned by one spouse and is excluded 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 ordered to establish this continued use, in addition to a contractual legal relationship.

3) Otherwise, the court may order, regardless of any provision in a contract or articles of association, that one spouse succeed the other in the legal relationship underlying the use of the marital home or continue the previously joint legal relationship alone.

Art. 82

Marital Residence Based on an Employment Relationship

1) If the marital home is used on the basis of an employment relationship or if the legal relationship regarding it is established in connection with an employment relationship, the court may issue an order regarding the use of such a home only with the consent of the employer or the legal entity responsible for allocating the service residence, if

a) the allocation of the residence, because it primarily serves the fulfillment of employment duties, could infringe upon the employer's substantial interests, or

b) the residence is used free of charge or for a merely nominal fee that is significantly below the local market rate, or

c) the residence is provided by the employer as part of the compensation for the services rendered.

2) If the marital home is awarded pursuant to paragraph 1 to the spouse who is not an employee, the court shall set a reasonable fee for its use. This spouse's right of use shall exist only as long as he or she does not remarry and may not be transferred or assigned by him or her to other persons.

Art. 83
Real Property
1) The transfer of ownership of immovable property or the creation of rights in rem thereto may be ordered only if a fair settlement cannot be achieved in any other way.
2) The same applies to companies, businesses, partnerships, and similar entities, unless the ownership interests can be easily divided.
Art. 84
Compensation for Disadvantages
1) If a spouse, without the express or implied consent of the other, at the earliest two years prior to the filing of an action for annulment of the marriage, a petition, or an action for divorce or legal separation, or, if the marital relationship was dissolved prior to the filing of the action, at least two years prior to such dissolution, reduced marital property or marital savings in a manner inconsistent with the arrangement of the spouses' living conditions during the marital relationship, the value of the missing amount shall be included in the division.
2) If a movable item that served the use of both spouses during the marital relationship belongs to a business and that business remains the property of only one spouse even after the division, the court shall take this into appropriate account in favor of the other spouse when dividing the marital property.
Art. 85
Debts
With regard to the debts to be included in the division, the court shall determine which spouse is obligated to pay them in the internal relationship between the spouses. Art. 86
Payment of Credit Obligations
1) If the court decides (Art. 85) or the spouses agree (Art. 89a) which of the two is obligated, in their internal relationship, to pay credit obligations for which both are liable, the court must rule, with effect for the creditor, that the spouse who is obligated to pay in their internal relationship shall be the principal debtor, and the other shall be the secondary guarantor.
2) The secondary guarantor under paragraph 1 may—subject to § 1356 ABGB—be held liable only for the amount that cannot be recovered from the principal debtor within a reasonable period

, even though the creditor has initiated

a) seizure of movable property or wages and

b) enforcement against real property of the principal debtor known to the creditor that obviously provides coverage for the claim, as well as

c) realized any collateral available to the creditor.

3) If the enforcement order must be obtained abroad or if the aforementioned enforcement measures must be carried out abroad, the measures against the principal debtor listed in paragraph 2 are not required to the extent that they are not possible or not reasonable for the creditor.

4) Furthermore, a secondary guarantor who has been duly served with the legal proceedings against the principal debtor (Section 21 of the Code of Civil Procedure) may only raise defenses against the creditor that are not based on his own person to the extent that the principal debtor could also raise them.

Art. 87

Implementation of the Division

In its decision, the court must also issue the orders necessary for its implementation and determine the specific circumstances, particularly with regard to timing, for its fulfillment. If expenses are incurred in implementing the decision, the court shall decide, at its discretion, which spouse is to bear them.

Art. 88

Compensation Payment

1) To the extent that a fair division of the relevant assets cannot be physically achieved in accordance with the preceding provisions, the court shall order one spouse to make a compensatory payment to the other. The court’s discretion under the principle of equity shall also apply in this regard.

2) The court may order a deferral of the equalization payment or its payment in installments, preferably against security, if this is economically necessary for the party obligated to pay and reasonable for the party entitled to the payment.

Art. 89

Transfer of the Right to Division

The entitlement arising from the division of the marital property increase is inheritable, transferable inter vivos or by reason of death, and subject to attachment, to the extent that it has been recognized by contract or settlement or is the subject of pending proceedings for annulment of marriage, divorce, or legal separation.
Art. 89a
Contracts
1) A waiver of the division of marital property acquired during the marriage cannot be made in advance.
2) This does not apply to agreements between the spouses:
a) regarding the exclusion of assets that form part of a business or represent shares in a business, unless the latter are merely investments; or
b) regarding the exclusion of income or replacement acquisitions from assets that, pursuant to Art. 75(1) or Art. 89a(2)(a), are not to be taken into account in the calculation of accrued gains, even if these agreements go beyond the provisions of Art. 76.
3) In connection with pending proceedings for annulment of marriage, divorce, or legal separation, 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 annulment of marriage, an action for divorce or separation, and in the case of divorce or separation by mutual consent, they require court approval.
V. Division of occupational pension entitlements
Art. 89b
Division of termination benefits
1) If one or both spouses are members of an occupational pension plan and no pension event has occurred for either spouse, then in the event of divorce, each spouse is entitled to half of the other spouse's termination benefits, calculated in accordance with the relevant laws governing occupational pension plans, which were accrued during the marriage up to the dissolution of the marital partnership.
2) If the spouses have mutual claims against each other, only the difference is to be divided.
Art. 89c

Waiver and Exclusion

1) A spouse may waive his or her claim in whole or in part as part of a divorce settlement if adequate old-age and disability pension coverage is otherwise ensured.

2) The court may refuse to grant the division of property in whole or in part if, given the financial or economic circumstances following the divorce, such a division would be manifestly unfair.

Art. 89d

Compensation

1) If a pensionable event has already occurred for one or both spouses, or if, for other reasons, claims arising from occupational pension plans acquired during the marriage cannot be divided, appropriate compensation is owed.

2) The court may require the debtor to provide security for the compensation if the circumstances so warrant.

Art. 89e

Procedure in the Event 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 a confirmation from the relevant occupational pension institutions regarding the feasibility of the agreed arrangement and the amount of the assets relevant for calculating the termination benefits to be divided, the agreement shall, upon approval by the court, also become binding on the occupational pension institutions.

2) The court shall serve the occupational pension funds with the final decision regarding the matters affecting them, including the necessary information for the transfer of the agreed amount.

Art. 89f

Procedure in the Event 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 marital partnership. Upon request, the occupational pension institutions must provide the court with information regarding the claims of the insured spouses.

2) As soon as the decision pursuant to paragraph 1 becomes final, the court shall, ex officio, forward it to the competent occupational pension institutions. Based on the divorce judgment or decree, the determined division ratio, and the date of dissolution of the marital relationship, these institutions shall determine the amount of the termination benefits acquired during the marriage for the purpose of the division to be carried out.

VI. Child Custody

Art. 89g

Consequences Concerning the Child

With regard to the regulation of child support, the care and upbringing of the children, and contact between parents and children, the provisions of the General Civil Code shall apply.

Art. 89h

Best Interests of the Child

In deciding on the ancillary consequences of divorce and separation, the judge must, as a matter of principle, take the best interests of the child into account.

Articles 89i
through 89s
Repealed

Part 4

Transitional and Final Provisions

Art. 90

Change in Legal Terms

Legal separation under the previous statutory provisions shall be deemed a divorce under the provisions of this Act. Legal separation from bed and board under the previous statutory provisions shall be deemed a legal separation under the provisions of this Act.

Art. 91

Consequences of Divorce

If, prior to the entry into force of this Act, the consequences of divorce were noted in the court records by the court pursuant to § 105 ABGB or were settled pursuant to § 108 and § 117 ABGB, these shall continue to apply even after a divorce under the new law (Art. 73 et seq.).

Art. 92

Marriages dissolved by legal separation; divorce under the new law

1) Any spouse whose marriage has been dissolved by a court judgment pursuant to Sections 107 and 109 of the Austrian Civil Code (ABGB) may, as of the effective date of this Act, file for divorce under the new law, provided that all other statutory requirements are met. If the dissolution of the marital union has not yet lasted five years, the right to object may be asserted under Article 76.

2) Any spouse whose marriage was dissolved by a court order of separation under Sections 103 and 105 of the ABGB may, upon the entry into force of this Act, file 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 Concluded Under the Old Law

The validity of a marriage entered into before the effective date of this Act is governed by the previous statutory provisions.

Art. 94

Pending Proceedings

This Act applies to divorce and separation proceedings pending at the time this Act enters into force.

Art. 95

Terminology

Where laws and ordinances refer to divorce, this shall be understood to mean separation within the meaning of this Act, and where they refer to separation, this shall be understood to mean divorce within the meaning of this Act.

Art. 96

Repeal of Previous Provisions

Provisions concerning matters regulated by this Act shall cease to be effective upon the entry into force of this Act.

Art. 97

Repealed Provisions

Upon the entry into force of this Act, the following provisions, in particular, are repealed:

a) Sections 44 through 136 (Part 2), Sections 153, 160, and 1266, sentence 1, of the ABGB;

b) - Princely Ordinance of October 14, 1804, concerning the introduction of political consent to marriage;
- Court Decree of September 23, 1817, JGS No. 1372, regarding Sections 86 and 87 of the ABGB;
- Court Decree of August 10, 1821, JGS No. 1789, regarding § 136 ABGB;
- Court Decree of June 17, 1825, JGS No. 2112, regarding § 96 ABGB;
- Court Decree of December 22, 1826, JGS No. 2242, regarding § 78 ABGB;
- Court Decree of July 17, 1835, JGS No. 61, regarding § 119 ABGB;
- Imperial Decree of June 27, 1837, JGS No. 208, regarding § 94 ABGB;
- Court Decree of May 4, 1841, JGS No. 531, regarding § 1264 ABGB.
c) Art. 12(2) PGR and § 3(1), (2), (3), (4), (5), and (6) of the Final Section of the PGR.

Art. 98

Amendment of Previous Provisions

Section 142 of the ABGB is replaced by the following new version:

1) In the event of a divorce, the court must determine the custody and upbringing of the children. Taking into account the specific circumstances of the case and with due regard to the interests of the children, as well as the occupation, character, and personal qualities of the spouses, the court must decide whether all or which children are to be placed in the care of the father or the mother. Notwithstanding this, the other spouse retains the right to have personal contact with the child. The court may specify the details of such contact. The costs of raising the children shall be borne by the father.

2) If circumstances change, the court may, regardless of its previous orders, issue new orders necessary in the best interests of the children.

Art. 99

Regulatory Authority

The government shall issue the regulations necessary for the implementation of this Act.

Art. 100

Entry into Force

This Act is declared non-urgent and shall enter into force on June 1, 1974.

VII. Attorney Act

of November 8, 2013

I hereby approve the following resolution adopted by the State Parliament:

I. General Provisions

Art. 1

Subject Matter and Purpose

1) This law governs admission to the legal profession and the practice of law in Liechtenstein.

2) In particular, it implements:

a) Council Directive 77/249/EEC of March 22, 1977, to facilitate the effective exercise of the freedom to provide services by lawyers (EEA Legal Compilation: Annex VII - 2.01);

b) Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate the permanent practice of the profession of lawyer in a Member State other than that in which the qualification was obtained (EEA Legal Compilation: Annex VII - 2a.01);

c) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (EEA Law Collection: Annex VII - 1.01);

d) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

Art. 2

Definitions

The designations of persons, professions, and functions used in this Act apply to persons of both the female and male genders.

II. Liechtenstein Attorney

A. Admission to the Legal Profession

Art. 3

Requirements for Practicing Law

1) Any person who meets the requirements set forth in paragraph 2 and is registered in the list of Liechtenstein attorneys (Attorney List) may practice law.

2) The requirements under paragraph 1 are:

a) legal capacity;

b) Good character;

c) Liechtenstein citizenship or citizenship of another contracting state of the Agreement on the European Economic Area (EEA contracting state) or of a state deemed equivalent under an intergovernmental agreement;

d) successful completion of the bar exam or aptitude test, or three years of effective and regular practice pursuant to Art. 74 et seq.;

e) in the case of passing the bar exam, practical experience pursuant to Art. 4 and completion of training pursuant to Art. 5;

f) a domestic office location pursuant to Art. 10; and

g) taking out liability insurance pursuant to Art. 26.

3) The evidence demonstrating fulfillment of the requirements under paragraph 2(a), (b), and (g) must not be more than three months old at the time of submission.

4) The documents listed in Annex VII of Directive 2005/36/EC are equivalent to the evidence referred to in paragraph 2.

Art. 4

Practical training

1) The practical training required to practice as a lawyer must last two years.

2) The practical training consists of legal practice and must be completed over:

a) twelve months with a Liechtenstein attorney; and

b) six months with:

1. a Liechtenstein court;

2. the Liechtenstein Public Prosecutor’s Office;

3. a Liechtenstein attorney; or

4. an administrative authority of the country, provided that the legal work is relevant to the practice of law; and

c) the remaining period with:

1. a lawyer;
2. a court or a public prosecutor’s office; or
3. an administrative authority or a company, provided that the legal work is relevant to the practice of the legal profession.

3) In the cases referred to in paragraph 2(c), legal professional activities completed abroad shall be credited for no more than half of the time spent.

4) Practical experience may be counted at the earliest from the successful completion of the studies referred to in Art. 5.

Art. 5

Proof of Education

1) To practice as a lawyer, it is required that a course of study in Austrian or Swiss law at a university has been completed with a Master’s degree, a Licentiate, a Magister of Laws, or an equivalent diploma.

2) As part of the program described in paragraph 1, students must demonstrate that they have acquired adequate knowledge in the following areas:

a) Austrian or Swiss civil law and civil procedure;

b) Austrian or Swiss criminal law and criminal procedure law;

c) Austrian or Swiss constitutional law, including fundamental and human rights, and Austrian or Swiss administrative law, including administrative procedural law.

3) If a law degree obtained at a university in an EWRA contracting state is based on a program of study that does not include either Austrian or Swiss law, such a degree shall be deemed equivalent to a degree under paragraph 1 if the skills imparted during the program correspond to those of a program of study under paragraph 1; The Liechtenstein Bar Association shall decide on equivalence.

4) If there is any doubt as to the equivalence of a degree program within the meaning of paragraph 3, the Bar Association may obtain an expert opinion at the applicant’s expense.

Art. 6

Bar Examination

1) Admission to the bar examination is granted to anyone who meets the requirements under Art. 3(2)(a), (b), (c), and (e).

2) Registration for the bar exam may take place no earlier than one month before the completion of the practical training required under Article 3(2)(e). The Bar Association decides on admission.

3) The bar exam must be taken before the Bar Exam Commission. The Commission determines the location and time of the exam.

4) The bar exam consists of one written examination each in civil, criminal, administrative, and constitutional law, as well as an oral examination in these and other areas of law relevant to the practice of law.

5) If the written bar exam is not passed, it may be retaken no sooner than one year later. If the second written exam is also not passed, a final retake may take place no sooner than three years after the first exam.

6) If the oral bar exam is not passed, it may be retaken at the next exam date. If the second oral exam is also not passed, a second and final retake of the entire bar exam may take place no sooner than three years after the first exam.

7) If the bar exam is passed, the Examination Commission issues a certificate of confirmation.

8) The government shall regulate the details by
ordinance. Art. 7

Registration in the Bar Register

1) Anyone who demonstrates fulfillment of the requirements under Art. 3 shall be entered in the bar register by the Bar Association upon application.

2) The Bar Association must conduct the necessary investigations and, if registration is to be denied, hear the applicant beforehand.

3) A confirmation of registration on the list of attorneys must be issued to the applicant.

4) Any person who meets the requirements under Art. 3(2)(a) through (e) for registration on the list of attorneys but does not practice the profession of attorney shall be entered on the list of Liechtenstein attorneys eligible for registration.

The legal consequences associated with registration in the list of attorneys shall not apply to the persons concerned until they commence practice.

B. Rights and Obligations

Art. 8

Scope of the Right of Representation

1) A lawyer has the exclusive authority:

a) to provide professional legal advice; and

b) to represent clients in a professional capacity in all judicial and extrajudicial matters, as well as in all public and private matters.

2) A lawyer's authority to represent a client extends to all courts and administrative authorities. Before all courts and administrative authorities, a reference to the power of attorney serves as proof thereof.

3) The statutory powers of legal agents, trustees, and patent attorneys are not affected by the foregoing provisions.

Art. 9

Professional Title

Only those who are registered in the list of attorneys (Art. 7, para. 1) are entitled to use the professional title "attorney." Articles 61, 80, and 86 remain reserved.

Art. 10

Obligation to Maintain a Law Office

1) A lawyer is required to maintain a law office with its seat in Switzerland.

2) The office must actually and permanently meet the spatial, personnel, and organizational requirements for the practice of the legal profession.

3) If the attorney fails to comply with the obligation under paragraphs 1 and 2 despite a request to do so, the Bar Association shall prohibit the attorney from practicing law until proof of compliance with this obligation is provided.

Art. 11

Personal Responsibility

A lawyer is required to practice law independently, in his or her own name, and on his or her own responsibility.

Art. 12

Professional Integrity

A lawyer is obligated to uphold the honor and reputation of the profession through integrity and honorability in his or her conduct.

Art. 13

Incompatible Activities

The practice of the legal profession is incompatible with the pursuit of activities that are contrary to the reputation of the profession.

Art. 14

Duties of Representation

A lawyer is obligated to conduct the representation entrusted to him in accordance with the law and to represent his client's rights faithfully and conscientiously against any person. He is authorized to present openly everything he deems useful for the representation of his client in accordance with the law, and to employ his client's means of attack and defense in any manner that does not conflict with his power of attorney, his conscience, or the law.

Art. 15

Confidentiality

1) The attorney is bound to maintain confidentiality regarding matters entrusted to him and facts otherwise learned in his professional capacity, the confidentiality of which is in the interest of his client. In judicial and other administrative proceedings, he has the right to such confidentiality in accordance with the provisions of procedural law.

2) The attorney's right to confidentiality may not be circumvented by judicial or other official measures, in particular by questioning the attorney's staff or by ordering the production of documents, images
, audio, or data carriers, or by seizing them; specific provisions defining the scope of this prohibition remain unaffected.

3) The attorney's right to confidentiality under paragraph 2 also extends to all correspondence between the attorney and his or her client, regardless of where such correspondence, which is protected by professional secrecy, is located or in whose custody it is held.

4) If a lawyer performs activities subject to the Duty of Care Act, he must, upon request, make available to the supervisory bodies and the FIU unit all

information and documents, provide copies, and furnish information that they require to fulfill their duties. Art. 16

Duties to Report and Provide Information

1) The attorney must immediately notify the Bar Association in writing of any change in the conditions set forth in Art. 3(2).

2) Upon request, the Bar Association must be provided with all information and documents and given all details it requires to perform its duties.

Art. 17

Conflict of Interest

1) A lawyer is obligated to refuse representation or even the mere provision of advice if he has represented the opposing party in the same or a related matter. Likewise, he may not serve or advise both parties in the same case.

2) If the attorney has acted as a mediator, he or she is not permitted to provide unilateral advice or representation to one of the parties in this or a related matter against other parties who participated in the mediation.

Art. 18

Performance of the Mandate

1) The attorney is obligated to handle the matter entrusted to him for as long as the engagement continues. He is liable for failure to perform.

2) The attorney is entitled to terminate his representation of the client; in such a case, he is required to continue representing the client for 14 days from the date of service of the notice of termination, to the extent necessary to protect the client from legal disadvantages.

3) This obligation does not apply if the client revokes the mandate.

Art. 19

Documents and Files

1) Once representation has ceased, the attorney is obligated, upon request, to hand over to the client the original documents and files belonging to the client; however, if the attorney’s fees have not been paid, the attorney is entitled to make and retain

at the client's expense and to retain them.
2) The attorney is not obligated to hand over draft documents, letters addressed to him by the client, and other case files, nor evidence of payments made by the client that have not yet been reimbursed to him. However, he must provide the client with copies of these upon request and at the client's expense.
3) The obligation under paragraph 2 and the duty to retain the files expire ten years after the date on which the representation ceased.
4) Records may be stored in writing, electronically, or by comparable means, provided they can be made legible at any time. Records stored electronically or by comparable means have the same evidentiary value as those that are legible without the use of auxiliary means.

Art. 20

Power of Attorney

The attorney is not obligated to return the power of attorney to the client; however, the client is entitled to indicate the revocation of the power of attorney on the document itself.

Art. 21

Substitution

1) The attorney is entitled, in the event of being unable to perform his or her duties, to substitute another attorney, subject to legal liability.
2) In cases of prolonged inability to act or extended absence, the substitution must be reported to the Bar Association, which shall also notify the courts and administrative authorities.

Art. 22

Trainees Authorized to Substitute and Represent

1) If the involvement of a lawyer is required by law, the lawyer may be represented before all courts and administrative authorities by a trainee lawyer employed by him who is authorized to act as a substitute, under his responsibility (trainee lawyer authorized to act as a substitute).
2) If the involvement of a lawyer is not required by law, the lawyer may be represented before all courts and administrative authorities by a trainee employed by him who is not authorized to act as a substitute

, under his or her responsibility (trainee attorney authorized to represent).

3) The attorney shall ensure that the trainee receives comprehensive training in accordance with the professional profile of an attorney and shall assign tasks to the trainee accordingly.

Art. 23

Fees

1) The attorney has the right to freely agree on a fee.

2) The fee shall be determined based on the nature and scope of the work, the difficulty of the case, and the amount in dispute.

3) The attorney may not claim the disputed claim or the subject matter of the dispute, in whole or in part, as a fee, nor may he allow it to be assigned or pledged.

Art. 24

Duty to Deduct and Settle Accounts

The attorney is entitled to deduct from the payments received on behalf of his client the sum of his expenses and his fees, to the extent that they are not covered by advances received; however, he is obligated to immediately settle this with his client.

Art. 25

Lien on a Claim for Reimbursement of Costs

1) If a party is awarded costs or reaches a settlement regarding costs in proceedings before a court, an administrative authority, or an arbitral tribunal, the attorney who most recently represented the party has a lien on the party's claim for reimbursement of costs based on his or her entitlement to reimbursement of out-of-pocket expenses and to compensation for representation in those proceedings.

2) The party is not entitled to set off its claim for reimbursement of costs against its other claims or liabilities toward anyone, nor to dispose of such claim at the expense of the attorney holding the lien.

3) The party obligated to reimburse costs may only validly pay the costs to the party if the attorney holding the lien has expressly waived payment to him.

Art. 26

Liability Insurance

1) Every attorney is required to obtain liability insurance to cover claims for damages arising against him or her from his or her professional activities. He or she must maintain this insurance coverage for the duration of his or her professional practice and provide proof thereof to the Bar Association upon request.
2) If the attorney fails to comply with the obligation under paragraph 1 despite being requested to do so, the Bar Association shall prohibit him from practicing law until he provides proof of compliance with this obligation.
3) The minimum coverage must be 1 million Swiss francs per year.
4) The liability insurance coverage must provide for extended liability coverage of at least three years in cases where the license to practice is revoked or suspended. The deductible may not exceed 10% of the sum insured per claim.
5) The "Special Conditions" of the insurance contract must contain the following text: "The policyholder instructs the insurer to notify the Liechtenstein Bar Association of any suspension or termination of insurance coverage."

Art. 27

Advertising

1) A lawyer may provide information about his or her services and personal background, provided that the information is factually accurate, directly related to the practice of law, and justified by the interests of those seeking legal assistance. He or she may not promote either his or her services or personal background in a manner that constitutes advertising.
2) A lawyer may neither cause nor tolerate third parties to engage in advertising on his behalf that is prohibited to him personally.

C. Legal Aid and Court-Appointed Defense

Art. 28

Appointment of a Lawyer

1) If the court has decided to appoint a lawyer or if the grant of legal aid includes such an appointment, the party is entitled to have a lawyer appointed by the Bar Association.
2) The Board of the Bar Association must follow fixed rules when making such an appointment; these rules must ensure the most equitable possible distribution of work among the lawyers belonging to the Bar Association.

Art. 29

Acceptance of the Mandate and Grounds for Recusal

1) The attorney appointed pursuant to Art. 28 shall assume the representation or defense of the party in accordance with the appointment order and shall perform such duties with the same diligence as an attorney freely chosen.

2) He has the right to refuse to accept the mandate for good cause or to request early dismissal as the attorney appointed pursuant to Article 28. Good cause includes, in particular:

a) Conflict of interest;

b) a profound breakdown of the relationship of trust, if this is asserted by both the party and the appointed attorney.

3) The Executive Board of the Bar Association shall decide on the existence of a compelling reason pursuant to paragraph 2.

Art. 30

Claim for remuneration against the party

1) The attorney appointed pursuant to Art. 28 shall have a claim for remuneration against the party he represents or defends, subject to further procedural provisions, only to the extent that the losing opponent reimburses the party's costs.

2) The party is not permitted to waive a claim for reimbursement of costs under paragraph 1, or otherwise dispose of it, or set it off against other claims. In all other respects, Art. 25 applies mutatis mutandis.

Art. 31

Claim for Remuneration Against the State

1) A lawyer appointed pursuant to Art. 28 who, under procedural rules, would otherwise have no claim to remuneration is entitled to remuneration from the State for his services, provided that the services were necessary for the appropriate pursuit of legal action, in accordance with the applicable provisions of the Lawyers' Fee Schedule, subject to the following exceptions:

a) up to a value in dispute of 50,000 Swiss francs, the full costs shall be reimbursed in accordance with the applicable fee schedule;

b) for a value in dispute exceeding 50,000 Swiss francs, the full costs corresponding to a value in dispute of 50,000 Swiss francs are reimbursed in accordance with the applicable fee schedule, as well as the costs for the portion of the value in dispute exceeding 50,000 Swiss francs, reduced by 40%.

If the amount in dispute exceeds 300,000 Swiss francs, the calculation of the reimbursement claim is based on an amount in dispute of 300,000 Swiss francs;

c) In proceedings concerning matrimonial, partnership, and family law, including related interim proceedings and any associated claims of a financial nature, the calculation of the entitlement to remuneration or compensation is based on a maximum assessment basis of 50,000 Swiss francs;

d) In criminal proceedings, the following are reimbursed:

1. For indictments:

aa) for misdemeanors: 150 francs;

bb) for misdemeanors: 375 francs;

cc) for felonies: 750 francs;

2. for motions to introduce evidence and for all other submissions, insofar as they do not fall under Section 3 or under Tariff Item 1 of the tariff legislation for attorneys and legal agents, the remuneration set forth in Section 1; however, in the case of very brief motions, half;

3.

aa) for notices of appeal: one-quarter of the fee set forth in paragraph 1;

bb) for complaints, with the exception of cost complaints, for objections, for motions for reinstatement, and for motions for retrial: twice the fee set forth in Section 1;

cc) for briefs in appeals and for briefs in cassation proceedings, as well as for counter-briefs thereto: three times the fee set forth in paragraph 1;

dd) for appeals regarding costs: the remuneration set forth in Schedule Item 2 of the Fee Schedule for Attorneys and Legal Agents, but never exceeding the remuneration set for indictments; the value of the matter shall be calculated in accordance with Section 12 of the Act on the Fee Schedule for Attorneys and Legal Agents;

4. for main hearings or for participation in a court inspection or in any other taking of evidence outside the main hearing, as well as in a judicial seizure: for the first half-hour and for each additional half-hour, even if only partially used, one-third of the fee set for indictments, and from the sixth half-hour onward, even if only partially used, one-half of the fee set for indictments;

5. for proceedings in the court of second instance: for the first half-hour, twice the amount; for each additional half-hour, even if only partially used, the amount set for prosecutions; and from the sixth half-hour onward, even if only partially used, half the amount set for prosecutions;
6. for the representation of private parties and victims who have been granted legal aid: half the remuneration specified in paragraphs 1 through 5.

2) The claim for remuneration shall also include reimbursement of necessary out-of-pocket expenses. Internal out-of-pocket expenses, in particular copying costs, postage, and telephone charges, are included in the flat rate and are not reimbursed separately. Necessary external out-of-pocket expenses, in particular fees for land registry or commercial register extracts, photocopies at the court, and translation costs, are reimbursed separately; these out-of-pocket expenses must be listed individually in the bill of costs and supported by appropriate documentation.

3) In civil and criminal matters, the trial court of first instance decides on the amount of remuneration and reimbursement of out-of-pocket expenses. The billing period runs from October 1 to September 30 of the following year. Interim billing is permitted in justified cases. The application for a determination of costs for a billing period must be submitted no later than four weeks after the end of the billing period, failing which the claim is forfeited. The decision on the determination of costs is not binding on the party receiving legal aid or the accused (defendant). The applicable rules of procedure govern the cost determination proceedings.

4) In proceedings before the State Court, the court decides on the amount of remuneration and reimbursement of out-of-pocket expenses. The billing period runs from

October 1 through September 30 of the following year. Interim settlements are permitted in justified cases. The application for a determination of costs for a billing period must be submitted no later than four weeks after the end of the billing period; failure to do so will result in forfeiture of the claim. The decision on the determination of costs is not binding on the party receiving legal aid.

5) Paragraphs 1 through 4 apply mutatis mutandis to the remuneration of the public defender’s services, insofar as his claim for remuneration against the person he represents proves to be wholly or partially uncollectible. The claim is deemed uncollectible if, under the expected circumstances, success in enforcement proceedings is not to be expected.

6) In administrative proceedings that cannot be brought before the ordinary courts, the attorney appointed pursuant to Art. 28 has a claim for remuneration against the Bar Association in accordance with paragraph 1. The Board of the Bar Association shall decide on the amount of the remuneration and the reimbursement of out-of-pocket expenses. The billing period runs from October 1 to September 30 of the following year. Interim settlements are permissible in justified cases. The application for determination of costs for a billing period must be submitted no later than four weeks after the end of the billing period, failing which the claim shall be forfeited. The decision on the determination of costs is not binding on the party receiving legal aid. The state must grant the Bar Association the appropriate advances to cover these remuneration claims. The Bar Association must prepare an annual statement of accounts.

D. Law Firms

Art. 32

Purpose

1) Attorneys may form a partnership with other attorneys to practice law jointly, provided that the purpose of the partnership is limited to the professional provision of legal advice and representation of clients in legal matters, including the necessary ancillary activities and the management of the partnership's assets.

2) Unless otherwise provided below, the provisions of this Act concerning attorneys shall apply mutatis mutandis to law firms.

Art. 33

Legal Form and Name

1) The legal forms available to the partners for the association are the simple partnership, the general partnership, the limited partnership, the stock corporation, and the limited liability company. Law firms in the form of a stock corporation may issue only registered shares.

2) The firm's status as a law firm must be made apparent to the outside world through appropriate measures. In addition to an indication that the firm provides legal services, the firm name must include the surname of at least one partner of the law firm. Any additional designations

or the names of other persons who are not partners in the law firm may not be included in the firm name. If a partner leaves the law firm, his or her name may continue to be used in the firm name with his or her consent.

3) The participation of law firms in other law firms, as well as the merger of several law firms into a corporate group, is not permitted.

Art. 34

Registration in the List of Law Firms

1) Law firms must be registered with the Bar Association for entry in the list of law firms. Art. 7, paras. 2 and 3 apply mutatis mutandis.

2) The Bar Association reviews the partnership agreements, articles of association, and other agreements between the partners to ensure they comply with legal requirements and refuses to enter the law firm in the register of law firms if these requirements are not met.

3) To the extent that entry in the Commercial Register is required for the law firm to acquire legal personality, the documents necessary for registration and those required under this Act must be submitted to the Bar Association prior to filing. The Bar Association shall issue a certificate to the Office of Justice confirming that the legal requirements have been met and that the firm will be entered in the list of law firms following its entry in the Commercial Register. Without this certificate, the firm may not be entered in the Commercial Register.

4) The law firm shall be entered in the list of law firms if proof is provided that:

a) the firm meets the requirements under Articles 32 through 36; and

b) the firm is not in liquidation and no insolvency proceedings are pending with respect to its assets.

5) Registered law firms must notify the Bar Association of any changes to the documents required for registration or to the composition of their partners. If such changes conflict with legal requirements, the firm shall be removed from the list of law firms following a prior hearing, unless it

statutory requirements within a period set by the Bar Association.

Art. 35

Liability Insurance

1) The law firm is required to provide proof of liability insurance that covers the law firm as well as all attorneys practicing within it, and whose coverage corresponds to the nature and extent of the risks associated with the firm's activities.

2) The sum insured shall be:

a) for a simple partnership, a general partnership, and a limited partnership, at least 1 million Swiss francs per partner. If such a partnership has more than five partners, the sum insured shall be at least 5 million Swiss francs;

b) for affiliated entities, at least 5 million Swiss francs.

3) In all other respects, Art. 26, paras. 2, 4, and 5 apply mutatis mutandis.

Art. 36

Partners

1) Only attorneys-at-law who are registered in the bar register may be partners in a law firm.

2) Partnership interests, shares, or capital contributions may not be held on behalf of third parties, and third parties may not participate in the profits of the law firm.

3) Partners may only authorize other partners to exercise partner rights.

4) Partners may only be members of a law firm for the purpose of practicing law.

Art. 37

Management

If management or administration is delegated to a third party, that person must be a lawyer and be registered in the list of lawyers.

Art. 38

Representation of the Law Firm

1) In the course of handling a case, each attorney must be authorized to represent the law firm or all partners on their own.

2) If a law firm with legal personality represents parties before courts or administrative authorities in the course of its professional practice, its representative must be registered as a lawyer in the register of lawyers.
3) Article 42 applies mutatis mutandis to the representation of the law firm by attorneys employed by the firm, and Article 43 applies mutatis mutandis to the representation of the law firm by legal trainees.
Art. 39
Independence in the Practice of Law
1) The partners of the law firm and the law firm itself must ensure that the attorneys working in the firm can practice their profession independently to the extent that they handle a specific case under their sole responsibility.
2) This is without prejudice to the right of partners to issue instructions to employees of the firm who are themselves attorneys and are engaged as assistants in the handling of a mandate.
3) General agreements among the partners regarding the practice of law within the firm, specifically those concerning a particular business policy and the associated acceptance or rejection of certain mandates, are permissible.
Art. 40
Professional and Ethical Duties
1) Attorneys who are members of a law firm remain subject to disciplinary liability for the fulfillment of their professional and ethical duties.
2) Disciplinary liability for the fulfillment of professional and ethical duties may not be restricted or waived by the partnership agreement, by resolutions of the partners or the management, or by management measures.
Art. 41
Liquidation
Only a lawyer who is registered in the bar register may be appointed as the liquidator of a law firm.
E. Attorneys in an employment relationship
Art. 42
Employment Relationship and Professional Duties

1) As employees, attorneys may only enter into an employment relationship—the scope of which includes activities that fall within the authorized duties of an attorney—with another attorney or a law firm.

2) The personal responsibility of a lawyer in the practice of law while employed must be upheld in accordance with the provisions of Article 11.

3) The professional and ethical rights and duties of a lawyer also apply to lawyers in an employment relationship. They are personally liable under disciplinary law for the fulfillment of their professional and ethical duties; this liability may neither be restricted nor waived.

4) In the course of handling a case, every lawyer employed by a firm is authorized solely to represent the employing lawyer or the employing law firm in accordance with Article 8.

F. Trainee

Lawyers Art. 43

Principle

1) A trainee within the meaning of Art. 22 may practice if they meet the requirements of para. 2 and are entered in the list of trainees. Art. 7, paras. 1–3 apply mutatis mutandis.

2) The requirements under paragraph 1 are:

a) for a trainee attorney authorized to act as a substitute:

1. successful completion of the Liechtenstein bar exam or an equivalent foreign bar exam; or

2. fulfillment of the requirements under Art. 3(2)(a) and (b) and Art. 5, as well as at least twelve months of practical experience with a Liechtenstein attorney or a Liechtenstein court;

b) for the trainee attorney authorized to represent clients: fulfillment of the requirements under Art. 3(2)(a) and (b) and Art. 5.

3) The scope and extent of the trainee’s right of representation are governed by Articles 8 and 22.

4) The Bar Association shall issue identification documents to trainee attorneys employed by a lawyer, which clearly indicate their authority to act as a substitute or their power of representation.

Art. 44

Professional Rights and Duties

Trainee attorneys are subject to the provisions governing the professional rights and duties of attorneys, to the extent that these apply to them.

Art. 45

Disciplinary Authority

Disciplinary authority over trainees is exercised by the Disciplinary Court in accordance with the provisions of Art. 46 et seq.

G. Disciplinary Law

1. General Provisions

Art. 46

Disciplinary Offenses

1) A lawyer who culpably violates the duties of his or her profession or who, through his or her professional conduct, damages the honor or reputation of the legal profession commits a disciplinary offense.

2) A lawyer commits a disciplinary offense through non-professional conduct if such conduct is likely to significantly impair his or her trustworthiness. Art. 47

Statute of Limitations

1) The statute of limitations precludes the prosecution of a lawyer for a disciplinary offense if:

a) no disciplinary proceedings have been initiated within one year of the High Court becoming aware of the facts underlying a disciplinary offense, or no final disciplinary proceedings have been reopened to his detriment;

b) no final decision has been rendered within five years of the conclusion of disciplinary proceedings.

2) The running of the time limits referred to in paragraph 1 is suspended if criminal proceedings are pending or preliminary criminal investigations are being conducted regarding the facts underlying the disciplinary offense, for the duration of such proceedings.

3) If a disciplinary offense also constitutes a criminal offense and the criminal statute of limitations is longer than the period specified in paragraph 1(b), the criminal statute of limitations shall apply in its place.

4) If the attorney commits a similar disciplinary offense again within the statute of limitations period, the statute of limitations under paragraph 1 shall not apply until the statute of limitations period for this disciplinary offense has also expired.

Art. 48

Disciplinary Penalties

1) The following disciplinary sanctions may be imposed:

a) written reprimand;

b) Fines of up to 50,000 Swiss francs;

c) Suspension from the practice of law for up to one year;

d) Disbarment.

2) The disciplinary penalty of prohibition from practicing law may be suspended in whole or in part, subject to a probationary period of at least one year and no more than three years, if it is reasonable to assume that the threat of such a penalty will be sufficient to deter the accused from committing further disciplinary offenses.

3) In addition to the disciplinary penalty of prohibition from practicing law, whether imposed unconditionally or suspended in full, a fine may also be imposed.

4) As an ancillary penalty, taking into account the nature of the disciplinary offense, a prohibition on employing articled clerks may be imposed.

5) When imposing a disciplinary penalty, particular consideration must be given to the degree of culpability and the resulting disadvantages, especially for the public seeking legal assistance; when determining the amount of the fine, consideration must also be given to the individual's income and financial circumstances.

2. Jurisdiction

Art. 49

Disciplinary Court

1) Disciplinary authority over attorneys is exercised by the High Court as the disciplinary court.

2) The Disciplinary Court may delegate the conduct of the disciplinary investigation to a legally qualified judge of the District Court as an investigating judge.

3) Art. 44 of the Judicial Service Act applies mutatis mutandis to the appointment of the investigating judge.

3. Disciplinary Proceedings

Art. 50

Principle

1) Disciplinary proceedings against attorneys are initiated ex officio or upon complaint.

2) When criminal proceedings are initiated against a lawyer for a felony or misdemeanor, the criminal authorities must immediately notify the disciplinary court.

3) A disciplinary offense shall not be prosecuted if the lawyer’s fault is minor and his or her conduct has had no or only insignificant consequences.

4) Sections 305 and 306(1) of the Code of Criminal Procedure apply mutatis mutandis to the reimbursement of costs.

5) In disciplinary proceedings against attorneys, only the defendant and the Bar Association have party status with the right to file motions and appeals.

Art. 51

Disciplinary Investigation

1) A disciplinary investigation may be initiated only by order of the disciplinary court (order to initiate proceedings).

2) The points of accusation must be specifically identified in the order to initiate proceedings.

3) In the disciplinary investigation, the allegation of a breach of duty against the accused must be examined, and the facts of the case must be clarified to the extent necessary to either dismiss the disciplinary proceedings or refer the matter to an oral hearing.

4) If the facts of the case have been sufficiently clarified, the disciplinary court may refuse to initiate the disciplinary investigation or, after hearing the accused, may immediately decide to refer the matter to an oral hearing instead of initiating the disciplinary investigation (referral order).

5) The disciplinary proceedings are initiated by a decision to commence a disciplinary investigation or to immediately refer the matter to an oral hearing.

6) No ordinary appeal is admissible against decisions under paragraphs 1 and 4.

Art. 52

Interrogations and Determination of the Facts

1) If a decision has been made to initiate a disciplinary investigation, the files shall be forwarded to the investigating judge.

2) The investigating judge shall hear the accused and, if necessary, witnesses and experts, and shall, ex officio, investigate all circumstances necessary for the full clarification of the facts. The refusal of the accused to comply with a summons or to comment on the charges shall have no effect on the proceedings.

3) The provisions of the Code of Criminal Procedure shall apply to the examination of the accused, the witnesses, and the experts.

Art. 53

Access to Files and Supplementing the Disciplinary Investigation

1) The investigating judge shall grant the accused and his or her defense counsel access to the files in accordance with the provisions of the Code of Criminal Procedure.

2) If the accused requests a supplement to the disciplinary investigation, the investigating judge shall order it. If the investigating judge has reservations about granting such a request, he shall seek the decision of the disciplinary court.

3) The disciplinary court may order the supplementation of the disciplinary investigation ex officio.

4) Upon completion or supplementation of the disciplinary investigation, the investigating judge shall forward the files to the disciplinary court.

Art. 54

Order to Dismiss and Refer

1) If the disciplinary court finds that there are no grounds for continuing the disciplinary proceedings, it shall dismiss the proceedings by order.

2) In the opposite case, the disciplinary court must order that the matter be referred for an oral hearing (order of referral).

3) The referral order must specify the charges.

4) The orders under paragraphs 1 and 2 shall be served on the accused.

5) No ordinary appeal is admissible against the referral order under paragraph 2.

Art. 55

Oral Hearing

1) The accused, his or her defense counsel, and the Bar Association shall be summoned to the oral hearing.
2) The provisions of Title 14 of the Code of Criminal Procedure shall apply mutatis mutandis to the conduct of the hearing.
3) The oral hearing shall commence with the reading of the referral order.
Art. 56
Content and Pronouncement of the Judgment
1) The decision of the disciplinary court must either acquit the defendant of the offense charged or find him guilty. If a guilty verdict is rendered and a disciplinary penalty is imposed, the decision must simultaneously include the imposition of the disciplinary penalty.
2) The judgment, together with the grounds for the decision, must be announced immediately after the conclusion of the oral proceedings and served on the accused within two weeks.
4. Interim Measures
Art. 57
Interim measures
1) The Disciplinary Court may order provisional measures against a lawyer if
a) the lawyer has been convicted by a court of a felony or misdemeanor with a final judgment, or
b) the disciplinary penalty of disbarment has been imposed, or
c) criminal proceedings have been initiated against the attorney in connection with his or her professional activities
and the provisional measure is necessary, in view of the nature and gravity of the disciplinary offense with which the attorney is charged, to prevent serious harm, particularly to the interests of the public seeking legal assistance or to the reputation of the legal profession.
2) Before a decision is made on a provisional measure, the lawyer concerned and the bar association must be given the opportunity to comment.

3) Interim measures include, in particular:

a) supervision of the management of the law firm by the board of the bar association;

b) the withdrawal of the right to represent clients before certain or all courts or administrative authorities;

c) a provisional ban on the employment of articled clerks;

d) in the cases referred to in paragraph 1(a) and (b), a provisional prohibition on the practice of law.

4) Interim measures shall be revoked, modified, or replaced by another measure if it becomes apparent that the conditions for their imposition do not exist or no longer exist, or if the circumstances have changed significantly.

5) Provisional measures shall cease to have effect upon the final conclusion of the disciplinary proceedings.

H. Termination and Suspension of the Practice of Law

Art. 58

Termination and Suspension

1) The license to practice law is revoked upon:

a) death;

b) Loss of legal capacity;

c) the final opening of bankruptcy proceedings until their final dismissal and the final decision not to open insolvency proceedings due to a lack of assets sufficient to cover costs;

d) Loss of citizenship pursuant to Art. 3(2)(c);

e) voluntary relinquishment;

f) Disciplinary finding;

g) a supervisory measure pursuant to Art. 28(1)(i) of the Due Diligence Act.

2) The right to practice law is suspended:

a) in the event of a prohibition on practicing law as part of disciplinary proceedings; or

b) due to a prohibition on practicing the profession for failure to maintain a domestic office location or liability insurance;

c) by a supervisory measure pursuant to Art. 28(1)(h) of the Due Diligence Act.

2a) The authority to manage and represent a law firm is suspended by a supervisory measure pursuant to Art. 28(1)(k) of the Due Diligence Act.
3) In the cases referred to in paragraphs 1 through 2a, a temporary substitute must be appointed for the attorney. Such a substitute shall also be appointed in the event of a lawyer's illness or absence for the duration of the impediment if the lawyer has not or could not designate a substitute pursuant to Art. 21; in this case, the temporary substitute shall assume the role of a substitute pursuant to Art. 21. The appointment of the temporary substitute shall be made by the Bar Association.
4) In the cases referred to in paragraph 1, removal from the bar register shall take place upon application or ex officio. If all legal requirements are met, re-registration in the bar register is possible.
5) In the cases referred to in paragraphs 2 and 2a, the attorney remains registered in the bar register and thus continues to be a member of the bar association; however, he or she is temporarily prohibited from practicing law.

III. Establishment of Lawyers from the European Economic Area

A. Establishment under the professional title of the country of origin

Art. 59

General Principle

1) Nationals of an EEA contracting state who are authorized to practice law in their home country under one of the professional titles listed in the annex to this Act, may establish themselves in this country to practice as lawyers if they are entered, upon application, in the list of established European lawyers (established European lawyers).
2) In addition to the professional rules applicable in their home country, established European lawyers are subject to the same professional and ethical rules as domestic lawyers with respect to all activities they perform in this country.
3) Nationals of other states may also establish themselves in Switzerland within the meaning of paragraphs 1 and 2 to practice as attorneys, provided that a corresponding treaty has been concluded with those states. Article 65 is excluded from this provision.

Art. 60

Registration in the List of Established European Lawyers

1) The Bar Association shall decide on the application for entry in the list of established European lawyers. The applicant must provide the following evidence:

a) a certificate from the competent authority in the home country confirming membership in the profession. The Bar Association may require that the certificate be no more than three months old at the time of submission;

b) evidence of compliance with the requirements under Art. 3(2)(a) through (c), (f), and (g).

2) The application and the accompanying documents, insofar as they originate from the applicant, must be submitted in German. Other documents must be submitted with an officially certified translation if they are not written in German.

3) The Bar Association shall conduct the necessary investigations and, if registration is to be refused, shall hear the applicant beforehand.

4) A confirmation of the registration must be issued to the applicant. Art. 61

Professional Title

1) Any person who is entered in the list of established European lawyers and who practices as a lawyer in this country must use the professional title that he or she is entitled to use in the home country under the law applicable there, in the language or one of the languages of the home country. Furthermore, they must indicate the professional organization to which they belong in their home country or the court with which they are admitted in accordance with the regulations of their home country, as well as the home country.

2) The term "European lawyer" used in this Act may not be used either as a professional title or in advertising (Art. 27). Art. 62

Professional Status

Unless expressly provided otherwise, the established European lawyer shall have the same professional status as a lawyer registered in the bar register and shall be authorized to perform the same professional activities (NEW).

1) The established European lawyer is authorized to perform the same professional activities as a lawyer registered in the bar register, unless otherwise provided.

2) The established European lawyer has the status of a lawyer registered in the bar register. However, he or she is not authorized:

a) be elected to a body of the Bar Association;

b) to train legal clerks;

c) to be appointed as a legal aid attorney, legal aid defense counsel, or court-appointed defense counsel.

(Art. 62(2) RAG is to be repealed in its entirety.)

Art. 63

Settlement Attorney

1) In proceedings where a party must be represented by an attorney or a defense counsel must be appointed, a European attorney-at-law may act as a party's representative or defense counsel only in consultation with an attorney listed in the bar register (consulting attorney). It is the responsibility of the coordinating lawyer to ensure that the established European lawyer complies with the requirements of the proper administration of justice when representing or defending the party. No contractual relationship is established between the coordinating lawyer and the party, unless the parties have agreed otherwise.

2) The agreement must be evidenced in writing to the court or administrative authority at the time of the first procedural act. Any revocation of the agreement must be communicated in writing to the court or administrative authority. It shall have effect only for the future. Procedural acts for which proof of the agreement is not available at the time they are performed shall be deemed not to have been performed by a lawyer. Both the establishment and any revocation of the agreement must be notified in writing by the agreed-upon lawyer to the Bar Association.

Art. 64

Supervision and Disciplinary Authority

1) The established European lawyer is subject to the supervision of the Bar Association (Art. 91 et seq.) and the disciplinary authority of the High Court (Art. 46 et seq.).

2) Before disciplinary proceedings are initiated, the competent authority of the home country shall be notified thereof, with all relevant details provided, and kept informed of the progress of the proceedings. The competent authorities shall cooperate during the disciplinary proceedings. In appeal proceedings, the competent authority of the home country shall be given the opportunity to comment.

3) The suspension or revocation of the authorization to practice in the home country shall result in the immediate provisional or permanent prohibition of the person concerned from practicing as an established European lawyer in Switzerland.

Art. 65

Law Firm in the Home State

1) If established European lawyers in the home country belong to an association for the joint practice of the profession, they must notify the Bar Association thereof. They must specify the name of the association and its legal form. The Bar Association may require them to provide further relevant information regarding the association in question.

2) European lawyers who are established in Switzerland may use the name of a partnership for the joint practice of law to which they belong in their home country in their professional dealings, and may also practice law through a branch office of that partnership. This is subject to the analogous application of the provisions governing law firms under Art. 32 et seq.

Art. 66

Termination or Suspension of Authorization

Article 58 applies mutatis mutandis to the termination or suspension of the authorization to practice as an established European lawyer.

Art. 67

Cooperation with the competent authorities in other states

1) The competent domestic authorities shall cooperate closely with the competent authorities of the home states. They shall provide administrative assistance in accordance with the principle of reciprocity and after ensuring the confidential treatment of the information exchanged, in order to facilitate the application of the provisions of this Act and

Directive 98/5/EC and to prevent the provisions from being misused to circumvent the law, where applicable.

2) In particular, the Bar Association shall notify the competent authority in the home country of entries into and deletions from the list of non-admitted European lawyers.

B. Integration following the completion of the aptitude test or after three years of service

1. Integration through the aptitude test

Art. 68

Requirements

1) Nationals of an EEA Contracting State who have obtained a diploma certifying that the holder meets the professional requirements necessary for direct access to a profession listed in the Annex to this Act shall, upon application, be entered in the register of attorneys if they have successfully passed the aptitude examination.

2) A diploma based on training that did not take place predominantly in the EEA entitles the holder to establish a practice within the meaning of paragraph 1 if:

a) the holder has actually and lawfully practiced a profession listed in the annex to this Act for at least three years; and

b) the EEA State that recognized the diploma certifies the practice of the profession within the meaning of subparagraph (a).

3) Nationals of other countries shall also be entered in the list of attorneys upon application, in accordance with paragraphs 1 and 2, provided they have successfully passed the qualifying examination and a corresponding treaty agreement has been concluded with those countries.

Art. 69

Aptitude Examination

1) The aptitude examination is a state examination that exclusively assesses the applicant’s professional knowledge and is intended to evaluate their ability to practice as a lawyer in Switzerland.

2) The aptitude examination must take into account the fact that the applicant holds a professional qualification to practice law in an EFTA contracting state.

Art. 70

Admission to the Aptitude Examination

1) The Bar Association decides on admission to the aptitude examination.

2) Admission to the aptitude examination shall be denied if the applicant does not meet the statutory requirements or fails to submit the necessary documents and declarations.

Art. 71

Exam Subjects and Exam Content

1) The examination subjects include the required course in civil law, two elective courses, and the professional law governing attorneys. The applicant selects one elective course from each of the two elective groups:

a) Administrative Law or Constitutional Law;

b) areas of civil law not covered by the required subject, administrative law, or criminal law.

2) The applicant may not select the same elective subject from both groups of electives.

3) The examination content comprises the areas of the compulsory subject and the two elective subjects to be specified in more detail by regulation, as well as the relevant procedural law, including the fundamentals of the law governing the organization of the courts, enforcement law, and insolvency law.

Art. 72

Written and Oral Examination

1) The aptitude examination consists of a written and an oral part. It is taken in German.

2) The written examination consists of two papers. One paper relates to the required subject, the other to the elective subject chosen by the applicant.

3) The applicant is admitted to the oral examination only if both written papers meet the requirements; otherwise, the examination is considered failed.

4) The oral examination covers the professional law governing attorneys as well as the elective subject in which the applicant did not submit a written assignment.

Art. 73

Conduct and Evaluation of the Qualifying Examination

1) The Examination Commission for Attorneys is responsible for administering the aptitude examination.

2) The Examination Commission decides, based on the overall impression of the performance in the written and oral examinations, whether the applicant possesses the knowledge required under Art. 69.
3) Art. 6(2) and (5) through (7) as well as Art. 96 apply mutatis mutandis to the conduct of the aptitude examination.

2. Integration after three years of practice

Art. 74

Requirements

1) Any person who provides evidence of at least three years of effective and regular practice as an established European lawyer in Liechtenstein in the field of Liechtenstein law, including EEA or Community law, in accordance with Art. 75, shall be entered in the list of lawyers upon application.
2) Effective and regular practice means the actual practice of the profession without interruption. The practice must be carried out independently.
3) Interruptions due to events of daily life are not taken into account. Interruptions of up to three weeks' duration are generally considered interruptions of daily life.
4) In assessing the interruption within the meaning of paragraph 3, all circumstances of the individual case must be considered, and the reason, duration, and frequency of the interruption must be taken into account.

Art. 75

Proof of three years of effective and regular activity

1) The applicant shall submit an application for registration on the list of attorneys to the Bar Association and shall include all relevant information and documents. The applicant must provide evidence of the number and type of legal matters handled under Liechtenstein law, as well as the duration of such practice.
2) To demonstrate the legal matters handled under Liechtenstein law, the applicant must submit case lists containing details on case numbers, subject matter, time period, nature and scope of the work, as well as the status of the case. In addition, anonymized work samples must be submitted.
3) The Bar Association forwards the submitted documents to the Examination Commission for Attorneys. The Commission decides on the proof of three years of effective and regular practice in Liechtenstein law.

4) The applicant may be requested by the Examination Commission to explain their information and documents orally or in writing and to submit further written materials and documents to clarify and specify the required evidence.
5) Article 60(2) applies mutatis mutandis to the applicant's information and documents.

3. Integration in the case of shorter practice in Liechtenstein law

Art. 76

Principle

1) Any person who has practiced effectively and regularly as a European lawyer in Liechtenstein for at least three years, but who has not practiced Liechtenstein law throughout the entire period, shall be entered in the list of lawyers upon application if he or she provides the evidence required under paragraphs 2 and 3.
2) The applicant must provide the evidence required under Art. 75(2). In addition, the applicant must provide all information and submit all documents that are suitable as evidence of his or her knowledge and professional experience in Liechtenstein law.
3) In making its decision, the Bar Examination Commission shall take into account the nature and scope of the professional activity, as well as all knowledge and professional experience in Liechtenstein law, and further, participation in courses and seminars on Liechtenstein law, including the professional and ethical rules governing attorneys.

Art. 77

Interview

1) If the Bar Examination Commission is satisfied that the application for registration on the list of attorneys could be granted based on the information and documents provided, it shall invite the applicant to a personal interview. In all other cases, the applicant is not entitled to an interview.
2) The interview shall assess whether the applicant has effectively and regularly practiced as a non-established European lawyer in the field of Liechtenstein, EEA, or Community law and whether he is capable of continuing to practice in this capacity. The content of the interview shall relate to the applicant's professional practice and his other experience in Liechtenstein law.

3) The interview shall also provide reliable information as to whether the applicant has a sufficient command of the German language.

IV. Exercise of the freedom to provide services

Art. 78

Admission

1) Nationals of an EEA member state who are authorized to practice law in their home country under one of the professional titles listed in the annex to this Act are authorized to practice law temporarily across borders within Germany (European lawyers providing services).

2) The activities referred to in Art. 8 are considered professional practice.

3) If the cross-border practice of the profession ceases to be temporary, the requirements for the establishment of lawyers from the EEA pursuant to Art. 59 et seq. shall apply to the continued practice of the profession.

4) Nationals of other states may also temporarily practice law in a cross-border capacity within the country within the meaning of paragraphs 1 through 3, provided that a corresponding treaty agreement has been concluded with those states.

Art. 79

Registration in the Bar Register; Office Location

The European lawyer providing services is neither obligated nor entitled to be entered in the register of lawyers in this country or to establish a domestic office.

Art. 80

Professional title

A European lawyer providing services who practices law in this country is entitled to use the professional title that he or she is authorized to use in the country of establishment (home country) under the law in force there, in the language or one of the languages of the home country, and to indicate the professional organization to which he belongs in the home country or the court before which he is admitted in accordance with the regulations of the home country, as well as the home country. Art. 61(2) applies.

Art. 81

Consulting Lawyer

In proceedings in which a party must be represented by a lawyer or a defense counsel must be engaged, the European lawyer providing services must engage a local lawyer in accordance with Art. 63. This does not apply if the European lawyer providing services has successfully passed the aptitude examination (Art. 68 et seq.).

Art. 82

Authorized Agent

1) For service of process in judicial and administrative proceedings, the European lawyer providing services must, as soon as he or she becomes active in proceedings before courts or administrative authorities, designate a lawyer registered in the list of lawyers as an agent for service of process; the designation must be made to the court or administrative authority. Service of process intended for the European lawyer providing services shall be effected upon the agent for service.

2) If no authorized representative has been designated, the lawyer of record shall be deemed the authorized representative in the proceedings referred to in Art. 81. In all other cases, service on the European lawyer providing services shall be effected by deposit with the court or administrative authority.

Art. 83

Supervision

1) The European lawyer providing services is supervised by the Bar Association.

2) Before commencing practice in Germany, a European lawyer providing services must notify the Bar Association of his or her intention to do so and provide proof of his or her status as a lawyer.

3) Repealed

4) Repealed

5) The Executive Board of the Bar Association is responsible for:

a) advise and instruct the European lawyer providing services on matters relating to the professional duties of a lawyer;

b) monitoring the fulfillment of the obligations incumbent upon such persons;

c) prohibit the provision of services and, where appropriate, notify the courts or administrative authorities thereof if the requirements under paragraph 2 are not met or are no longer met;

d) to inform the competent authority of the home country of decisions made regarding such persons.

Art. 84

Professional Duties

The European lawyer providing services is subject to the professional duties incumbent upon lawyers under this Act.

Art. 85

Disciplinary Authority

Disciplinary authority over the European lawyer providing services is exercised by the disciplinary court in accordance with the provisions of Art. 46 et seq.

Art. 86

Individual Representation

1) Lawyers who are neither nationals of an EEA member state nor treated as such under intergovernmental agreements may, upon application, be admitted by the Bar Association on a case-by-case basis to act as representatives or defense counsel for a party before Liechtenstein courts or administrative authorities, provided there are particularly compelling reasons for doing so.

2) Before commencing practice in Liechtenstein, the attorney must demonstrate to the Bar Association:

a) compliance with the requirements under Art. 3(2)(a) and (b) and Art. 83(2);

b) the written mandate or, where applicable, power of attorney from the client or principal.

3) Admission must be demonstrated to courts or administrative authorities.

4) Articles 79 through 85 apply mutatis mutandis to attorneys who have been admitted to the bar.

V. Organization and Implementation

A. General Provisions

Art. 87

Bodies

The following are entrusted with the implementation of this Act:

a) the Bar Association;

b) the Bar Examination Commission;
c) the Disciplinary Court;
d) the courts.

Art. 88

Processing of Personal Data

1) The bodies entrusted with the implementation of this Act may process personal data, including personal data regarding criminal convictions and offenses of persons subject to this Act, to the extent necessary to fulfill their duties under this Act.

2) The obligations to provide information and notification under Articles 14 and 34 of Regulation (EU) 2016/679, as well as the data subject's right of access under Article 15 of Regulation (EU) 2016/679 do not apply to the extent that compliance with them would disclose information that must be kept confidential due to the overriding legitimate interests of the Bar Association or third parties. Art. 33(2) and Art. 34(2) of the Data Protection Act apply mutatis mutandis.

3) The bodies entrusted with the implementation of this Act shall take all technical and organizational measures necessary to protect data pursuant to paragraph 1.

4) Subject to overriding legitimate reasons, data under paragraph 1 shall be retained at least until the expiration of ten years after it is no longer necessary for the performance of the tasks referred to in paragraph 1, and shall be deleted thereafter.

5) The government may regulate the details by ordinance.

Art. 89

Official secrecy

1) The bodies responsible for implementing this Act, as well as any other persons they may engage, are subject to official secrecy for an indefinite period with respect to confidential information that comes to their knowledge in the course of their official duties.

2) Information subject to official secrecy may not be disclosed. Criminal law provisions and special statutory provisions remain reserved.

Art. 90

Fees

1) Fees are determined in accordance with the fee schedule of the Bar Association.

2) The schedule of fees requires the approval of the Government to be legally effective and must be published in the Official Gazette.

B. Liechtenstein Bar Association

Art. 91

Composition, Legal Form, and Legal Status

1) The Liechtenstein Bar Association (Bar Association) is composed of all attorneys registered in the list of attorneys and in the list of established European attorneys.

2) The Bar Association is an independent public-law corporation. It is subject to the general supervision of the Government. Within its own sphere of activity, the Government's supervision is limited to verifying the legality of the Bar Association's administrative management.

3) In disciplinary proceedings under Art. 46 et seq., the Bar Association has the status of a party with unrestricted party rights.

Art. 92

Duties

1) The Bar Association shall safeguard, promote, and represent the professional and economic interests of the attorneys who are members thereof. In doing so, the Bar Association is particularly responsible for safeguarding the honor, reputation, and independence of the legal profession, as well as for safeguarding the rights and monitoring the duties of its members.

2) The Bar Association conducts its affairs, unless expressly assigned to the Plenary Assembly, through its Executive Board and the SPG Supervisory Commission.

3) The Bar Association is responsible, insofar as it concerns persons subject to the duty of care under Art. 3(1)(m) SPG, for:

a) supervising the enforcement of the Due Diligence Act (SPG); and

b) supervision pursuant to the Act on the Enforcement of International Sanctions (ISG).

Art. 93

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 Executive Board;

b) the election of an audit firm;

b) the election of the SPG Supervisory Commission;

c) the adoption of the Bar Association's rules of procedure; the rules of procedure require government approval;

d) the determination of the annual dues of the Bar Association members to cover administrative costs;

e) the approval of the budget for revenues and expenditures;

f) approval of the annual financial statements;

g) the adoption of professional guidelines;

h) the issuance of fee guidelines; and

i) the adoption of training guidelines.

2) Membership dues shall be set at the same rate for all Chamber members.

3) Unless the rules of procedure contain stricter provisions, the plenary assembly has a quorum if at least one-quarter of the members of the Bar Association are present; it passes its resolutions by a simple majority. For resolutions on the rules of procedure, the presence of at least half of the members of the Bar Association and a two-thirds majority are mandatory.

4) The Rules of Procedure of the Bar Association require the approval of the government to be legally effective.

Art. 94

Executive Board

1) The Executive Board of the Bar Association consists of five members who are registered on the list of attorneys.

2) The President, the Vice President, and the other members of the Executive Board are elected from among the members of the Bar by an absolute majority of the votes of those present. The term of office is three years. Re-election is permitted.

3) The scope of the Executive Board's responsibilities includes, in particular:

a) decisions on applications under Articles 6, 7, 34, 43, 60, 70, 75, 83, and 86;

b) maintaining the lists required by this Act, in particular the list of attorneys, the list of law firms, the list of attorneys eligible for registration, the list of articled clerks, and the list of established European attorneys; these lists shall be published on the Bar Association's website;

c) communication with authorities and third parties;

d) the assessment and collection of annual dues from Bar Association members;

e) the issuance of expert opinions on the appropriateness of fees and compensation for legal services, as well as the requested amicable settlement of any disputes arising therefrom;
f) the mediation of disputes between Bar members;
g) the appointment of a lawyer pursuant to Article 28, as well as the determination of remuneration and advances pursuant to Article 31(6);
h) deciding on the existence of good cause pursuant to Article 29(3);
i) professional oversight;
k) the appointment of a temporary substitute (Art. 57(3));
l) supervision of the activities of European lawyers established in the country (Art. 64) and of European lawyers providing services (Art. 83);
m) the exercise of the Bar Association's rights as a party in disciplinary proceedings;
n) supervising the management of the law firm pursuant to Art. 57(3)(a);
o) the preparation of business and the convening of the plenary assembly;
p) exercising the rights of a party in appeal proceedings;
q) the implementation of the resolutions of the plenary assembly;
r) submitting legislative proposals and expert opinions on draft legislation;
s) the nomination of a member of the Bar Examination Commission (Art. 96);
t) organizing training and continuing education events or collaborating with other entities that organize such events;
u) cooperation with foreign bar associations;
v) deciding on appeals against decisions pursuant to paragraph 4;
w) deciding on motions by the SPG Supervisory Commission and taking supervisory measures pursuant to Art. 28 SPG and Art. 5b ISG, as well as imposing fines pursuant to Art. 31 SPG and Art. 11(1a) ISG;
x) the election of ad hoc members of the SPG Supervisory Commission;
y) the adoption of the schedule of fees; subject to Art. 90, para. 2;
z) the appointment of the data protection officer.

4) The Executive Board may delegate certain matters to the President, individual members of the Executive Board, or individual members of the Bar Association for independent handling, in particular with regard to the matters listed in paragraph 3, letters c, f, g, and k.

Art. 95

Assessment of Contributions and Fees

A final assessment of contributions and fees constitutes an enforcement order within the meaning of the Enforcement Code.

C. Examination Commission for Attorneys

Art. 96

Examination Commission

1) The Examination Commission for Attorneys-at-Law shall be appointed by the Government for a term of four years. It shall consist of five members and an equal number of alternate members. It shall include one member of the State Court, two members of the Supreme Court, one member of the High Court, and one attorney-at-law nominated by the Bar Association. The Government shall appoint the chairperson.

2) The members of the Examination Commission shall be independent in the performance of their duties and bound to confidentiality.

VI. Cooperation

Art. 97

Cooperation between the courts and the Financial Market Authority with the Bar Association

1) The courts shall, without being requested, transmit to the Bar Association all decisions of a disciplinary, criminal, or administrative nature that the Bar Association requires for the performance of its duties under this Act and the Due Diligence Act.

2) The Bar Association and the Financial Market Authority shall, without being requested, provide each other with all information and documents necessary for the performance of their supervisory duties under the Due Diligence Act. Information pursuant to Art. 17(2) SPG is reserved.

Art. 98

Cooperation with Competent Authorities of EWRA Contracting States

1) The Bar Association shall provide administrative assistance to the competent authority of another EEA State to facilitate the application of Directive 2005/36/EC.

2) The Bar Association shall inform the competent authority of another EWRA contracting state of the existence of disciplinary, criminal, or administrative sanctions.
3) The Bar Association may, in compliance with data protection regulations, exchange the information referred to in paragraphs 1 and 2 with the competent authorities of another EEA Contracting State if:
a) sovereignty, security, public order, or other essential national interests are not compromised or violated;
b) the recipients or persons employed by or commissioned by the competent authority of the EWRA contracting state are subject to an equivalent duty of confidentiality;
c) it is ensured that the disclosed information is used solely for professional purposes; and
d) the information is disclosed only for those purposes to which the Bar Association has expressly consented.
4) In all other respects, the provisions of the Due Diligence Act apply to the cooperation between the Bar Association and the competent authority of another EWRA contracting state within the scope of Directive (EU) 2015/849.

VII. Appeals

A. Administrative proceedings

Art. 99

Appeals against decisions of the Bar Association, the Bar Examination Commission, and the Government

1) An appeal against decisions and orders within the meaning of Article 94(4) may be filed with the Executive Board of the Bar Association within 14 days of service.
2) An appeal may be filed with the Government against decisions and orders of the Executive Board of the Bar Association within 14 days of service; appeals against those under Art. 94(3)(w) may be filed with the Administrative Court. The election of ad hoc members of the SPG Supervisory Commission under Art. 94(3)(x) may not be challenged.
3) An appeal may be filed with the Government against decisions and orders of the Bar Examination Commission within 14 days of service.

4) An appeal against decisions and orders of the Government may be filed with the Administrative Court within 14 days of service.

B. Disciplinary Proceedings

Art. 100

Appeals against decisions of the Disciplinary Court

1) An appeal may be filed with the Supreme Court against a decision to dismiss a case, an order or refusal of interim measures, or any final decision of the Disciplinary Court within 14 days of service.

2) The provisions of §§ 238 et seq. of the Code of Criminal Procedure apply mutatis mutandis to the appeal proceedings.

Art. 101

Suspensive Effect

Appeals against the ordering or refusal of a provisional measure (Art. 57) shall have no suspensive effect.

VIII. Penal Provisions

Art. 102

Misdemeanor

Any person who unlawfully uses the title "lawyer," "legal agent," or "law firm," or any of the professional titles listed in the appendix to this Act, shall be punished by the District Court with a fine of up to 50,000 francs or, if unable to pay, with imprisonment for up to six months.

Art. 103

Offense

Any person who, without authorization, carries out on a commercial basis an activity reserved by this Act for attorneys or legal agents shall be punished by the District Court for a misdemeanor with a prison sentence of up to three months or a fine of up to 180 daily rates.

IX. Transitional and Final Provisions

Art. 104

Implementing Regulations

1) The government shall issue the regulations necessary for the implementation of this Act.

2) It may, by ordinance, adapt the professional titles listed in the annex to this Act to changed circumstances.

Art. 105

Repeal of Previous Laws

The following are repealed:

a) Law of December 9, 1992, on Attorneys-at-Law (Attorneys-at-Law Act; RAG), LGBl. 1993 No. 41;

b) The Act of December 16, 1994, Amending the Act on Attorneys-at-Law, LGBl. 1995 No. 22;

c) Law of March 23, 1995, amending the Law of December 9, 1992, on Attorneys-at-Law, LGBl. 1995 No. 105;

d) Law of December 7, 1995, amending the Law on Attorneys-at-Law, LGBl. 1996 No. 18;

e) Law of April 16, 1997, amending the Law on Attorneys, LGBl. 1997 No. 116;

f) Law of June 19, 1997, amending the Law on Attorneys, LGBl. 1997 No. 151;

g) Law of December 16, 1999, amending the Law on Attorneys, LGBl. 2000 No. 53;

h) Act of June 20, 2002, amending the Act on Attorneys-at-Law, LGBl. 2002 No. 109;

i) Law of November 22, 2002, amending the Law on Attorneys, LGBl. 2003 No. 21;

k) Law of June 18, 2004, amending the Law on Attorneys, LGBl. 2004 No. 184;

l) Law of November 25, 2005, amending the Law on Attorneys, LGBl. 2005 No. 283;

m) Law of April 26, 2007, amending the Law on Attorneys, LGBl. 2007 No. 155;

n) Law of May 23, 2007, amending the Law on Attorneys, LGBl. 2007 No. 177;

o) Act of May 23, 2007, Amending the Act on Attorneys-at-Law, LGBl. 2007 No. 195;

p) Law of May 29, 2008, amending the Law on Attorneys, LGBl. 2008 No. 192;
q) Law of October 23, 2008, amending the Law on Attorneys, LGBl. 2008 No. 361;
r) Law of October 22, 2009, Amending the Lawyers Act, LGBl. 2009 No. 327;
s) Law of October 20, 2010, Amending the Attorney Act, LGBl. 2010 No. 390;
t) Law of March 16, 2011, Amending the Lawyers Act, LGBl. 2011 No. 362.

Art. 106

Lists of Attorneys

The persons and companies entered in the lists specified below with the FMA upon the entry into force of this Act shall be entered ex officio in the corresponding lists maintained by the Bar Association:

a) List of Attorneys;
b) List of Liechtenstein attorneys eligible for registration;
c) List of established European lawyers;
d) List of law firms;
e) List of law firms and their partners;
f) List of branch offices of law firms;
g) List of branch offices of law firms and their partners;
h) List of articled clerks at law firms;
i) List of articled clerks at law firms;
k) List of legal agents. Art.

107

Previous Scope of Professional Practice

Persons entered in the list of attorneys upon the entry into force of the Act of December 9, 1992, on Attorneys, LGBl. 1993 No. 41, as well as legal agents (Art. 108), remain authorized to engage in the following activities on a professional basis without special authorization:

a) Financial consulting;
b) Business consulting;
c) Bookkeeping.

Art. 108

Legal Agents

1) Any person may practice as a legal agent who:

a) was registered as a legal agent with the government prior to February 27, 1958, and was still practicing that profession when the Law of December 9, 1992, on Attorneys-at-Law came into force; or

b) had received authorization from the government to practice as a legal agent prior to the entry into force of the Act of December 9, 1992, on Attorneys-at-Law.

2) Legal agents licensed under paragraph 1 may use the professional title "legal agent" or another professional or business designation authorized by the government prior to the entry into force of the Act of
December 9, 1992, on Attorneys-at-Law.

3) Legal agents are authorized to provide professional legal advice and to represent parties professionally before courts and administrative authorities. In proceedings where the representation by a lawyer is mandatory, legal agents are treated as equivalent to lawyers, except before the State Court.

4) With regard to the other rights and obligations of legal representatives, Articles 9, 12 through 21, and 23 through 27 apply mutatis mutandis.

5) Disciplinary authority over legal agents is exercised by the High Court as the disciplinary court in accordance with the provisions of Articles 46 et seq.

6) The Bar Association maintains a list of legal agents. This list is publicly accessible on the Bar Association's website and is regularly updated.

Art. 109

Liability Insurance

Existing liability insurance policies must be brought into compliance with the requirements of Art. 26 and 35 within six months of this Act taking effect. Art. 110

Pending Proceedings before the FMA

Proceedings pending before the FMA at the time this Act enters into force shall be governed by the law in effect prior to that time.

Art. 111

Pending disciplinary proceedings

The provisions of this Act shall apply to disciplinary proceedings pending before the Higher Regional Court or the Supreme Court at the time this Act enters into force, provided that a decision on whether to initiate or discontinue such proceedings has not yet been made. Otherwise, the previous law shall apply.

Art. 112

Entry into Force

This Act shall enter into force on January 1, 2014, provided that the referendum period has not been exercised; otherwise, it shall enter into force on the day following its promulgation.

On behalf of the Prince: signed *Alois*, Hereditary Prince

signed *Adrian Hasler*, Prince's Chief of Government

Appendix

(Art. 59, 68, 78, and 102)

Authorized professional titles for licensed attorneys

Belgium:	Avocat/Advocaat/Rechtsanwalt
Bulgaria:	Адвокат
Denmark:	Advokat
Germany:	Rechtsanwalt
Estonia:	Attorney
Finland:	Asianajaja/Advokat
France:	Avocat
Greece:	Lawyer
Ireland:	Barrister/Solicitor
Iceland:	Lögmaður
Italy:	Avvocato
Latvia:	Attorney-at-Law
Lithuania:	Advokatas
Luxembourg:	Avocat
Malta:	Lawyer/Legal Counsel

Netherlands:	Advocaat
Norway:	Lawyer
Austria:	Lawyer
Poland:	Attorney/Legal Advisor
Portugal:	Lawyer
Romania:	Avocat
Sweden:	Lawyer
Switzerland:	Avocat/Advokat/Rechtsanwalt/Anwalt/ Advocate/Advoc ate/Avvocato
Slovakia:	Lawyer/Commercial Lawyer
Slovenia:	Lawyer
Spain:	Abogdo/Advocat/Avogado/Abokatu
Czech Re public:	Advokát
Hungary:	Ügyvéd
United Kingdom:	Advocate/Barrister/Solicitor
Cyprus:	Lawyer

VIII. Law of October 22, 1992, against Unfair Competition

I hereby approve the following resolution adopted by the State Parliament:

I. General Provisions

Art. 1

Purpose

1) The purpose of this Act is to ensure fair and undistorted competition in the interest of all parties concerned.

2) It also serves to implement and enforce the following EEA legal provisions:

a) Directive 2005/29/EC on unfair business-to-consumer commercial practices in the internal market;

b) Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use, and disclosure;

c) Regulation (EU) 2018/302 on measures against unjustified geo-blocking and other forms of discrimination based on the nationality, place of residence, or place of establishment of the customer within the internal market.

3) The current version of the EEA legislation referred to in this Act is set forth in the publication of the decisions of the EEA Joint Committee in the Liechtenstein Federal Law Gazette pursuant to Art. 3(k) of the Publication Act.

Art. 1a

Definitions and Terms

1) For the purposes of this Act, the following definitions apply:

a) "business practice": any conduct, including an omission, directly related to the promotion, sale, or delivery of goods, works, or services;

b) "Supplier": any natural or legal person who offers goods, works, or services for sale;

c) "Purchaser" or "Customer": potential buyers at all levels of trade;

d) "Competitor": any natural or legal person who competes with one or more other undertakings as a supplier or purchaser of goods, works, or services;

e) "Consumer": any natural person acting for purposes that cannot be attributed to their commercial, craft, or professional activities;

f) "average consumer": any natural person who is reasonably well-informed and reasonably observant and circumspect;

g) "Significant influence on the consumer's economic behavior": the use of a commercial practice to appreciably impair the consumer's ability to make an informed decision and thereby induce the consumer to make a commercial decision that he or she would not otherwise have made;

h) "unfair influence on a consumer": the exploitation of a position of power vis-à-vis the consumer to exert pressure—even without the use or threat of physical force—thereby significantly impairing the consumer's ability to make an informed decision;

i) "Code of Conduct": an agreement or set of rules that is not mandated by the laws or administrative regulations of a Member State of the European Economic Area (EEA) and that defines the conduct of undertakings which commit to complying with this code in relation to one or more specific business practices or economic sectors;

k) "business decision": any decision by a consumer regarding whether, how, and under what conditions they intend to make a purchase, make a payment in full or in part, retain or surrender goods, works, or services, or exercise a contractual right in connection with goods, works, or services, regardless of whether the consumer decides to act or to refrain from acting;

l) "professional diligence": the standard of expertise and care that a trader can reasonably be expected to apply in accordance with fair market practices in their field of activity;

m) "Sales promotion contest": a contest:

1. that is organized as part of a time-limited sales promotion campaign;
2. in which the participant commits to purchasing a good or service at a market-based price;
3. in which neither the organizer nor any third party derives a profit from the game itself; and
4. in which the participant's chances of winning do not depend on the method of submitting an entry or on actual or perceived proof of purchase;

n) "Trade secret": information that:

1. is secret because it is not generally known or readily accessible, either in its entirety or in the precise arrangement and composition of its components, to persons in the circles that customarily deal with this type of information;
2. has commercial value because it is secret; and
3. is subject to reasonable measures of secrecy appropriate to the circumstances by the person who exercises lawful control over such information;

o) "Trade secret holder": any natural or legal person who has lawful control over a trade secret;

p) "Infringer": any natural or legal person who unlawfully acquires, uses, or discloses trade secrets;

q) "Infringing products": products whose design, features, functionality, manufacturing process, or marketing are based to a significant extent on trade secrets that have been unlawfully acquired, used, or disclosed;

r) "Products": any goods or services, including real estate, digital services, and digital content, rights, and obligations;

s) "Ranking": the relative prominence of products as presented, organized, or communicated by the entrepreneur, regardless of the technical means used for the presentation, organization, or communication;

t) "Online marketplace": a service that enables consumers, through the use of software—including a website, a part of a website, or an application—operated by or on behalf of the trader, to conclude distance contracts with other traders or consumers.

2) In addition, the definitions set forth in Directive 2005/29/EC and Regulation (EU) 2018/302 apply.

3) The terms used in this Act refer to persons of both the female and male genders.

II. Provisions of Civil and Procedural Law

A. Unlawfulness of Unfair Competition

1. Principle

Art. 2

Principle

1) The following is unfair and unlawful:

a) any conduct or business practice that is deceptive or otherwise violates the principle of good faith and that influences the relationship between competitors or between suppliers and customers;

b) Any business practice that violates the requirements of professional diligence and, with respect to the relevant goods, works, or services, is likely to significantly influence the economic behavior of the average consumer whom it reaches or to whom it is directed.

2) If a commercial practice is directed at a group of consumers, the average consumer is the average member of that group. If it is foreseeable to the supplier that his commercial practice significantly influences the economic behavior of only a clearly identifiable group of consumers who, due to mental or physical infirmities, age, or credulity, are particularly vulnerable, the commercial practice shall be assessed from the perspective of an average member of that group.

3) The business practices listed in the Annex to this Act are always unfair if they are directed against consumers.

4) This is without prejudice to the special provisions on the protection of trade secrets in cases of unlawful acquisition, unlawful use, or unlawful disclosure.

2. Unfair influence on competition Art. 3

Unfair advertising and sales methods and other unlawful conduct

In particular, it is unfair for anyone

a) discredits others, their goods, works, services, their prices, or their business relationships through inaccurate, misleading, or unnecessarily offensive statements;

b) makes false or misleading statements about himself, his company, his business name, his goods, works, or services, their prices, the quantity in stock, the nature of the sales event, or his business affairs; or in a similar manner gives an unfair advantage to third parties in competition;

c) uses inaccurate titles or professional designations that are likely to give the impression of special distinctions or abilities;

d) takes measures likely to cause confusion with the goods, works, services, or business operations of another;

e) compares itself, its goods, works, services, or their prices with those of others, their goods, works, services, or their prices in an inaccurate, misleading, unnecessarily disparaging, or disparaging manner, or in a manner that unfairly favors third parties in competition;

f) repeatedly offers selected goods, works, or services below cost price, highlights these offers in advertising, and thereby deceives customers regarding its own or competitors' financial capacity; Deception is presumed if the selling price is below the cost price of comparable purchases of similar goods, works, or services; if the defendant proves the actual cost price, this shall be decisive for the assessment;

g) deceives the customer regarding the actual value of the offer by providing freebies;

h) impaired the customer's freedom of choice through particularly aggressive advertising or sales methods;

i) conceals the nature, quantity, intended use, benefits, or hazards of goods, works, or services, thereby misleading the customer;

k) in public announcements regarding a hire purchase or a legal transaction equivalent thereto, fails to clearly identify its business name, provide clear information regarding the cash price and the total purchase price, or specify the installment surcharge in Swiss francs and as an annual percentage rate;

l) fails, in public announcements regarding a consumer credit, to clearly identify its business name or to provide clear information regarding the net amount of the credit, the total cost of the credit, and the effective annual interest rate;

m) in the course of a business activity, offers or concludes an installment purchase, a prepayment purchase, or a consumer credit agreement and, in doing so, uses contract forms that contain incomplete or incorrect information regarding the subject matter of the contract, the price, the payment terms, the contract term, the customer's right of withdrawal or termination, or the customer's right to early repayment of the remaining debt;

n) advertises entries in directories—such as business, telephone, trademark, or similar registries—in the course of business using payment slips, invoices, correction offers, or similar materials, or directly offers such entries in this manner, without clearly and unambiguously indicating, including through graphic means, that this constitutes merely an offer to enter into a contract.

Art. 3a

Unfair promotional contests

In particular, it is unfair for anyone organizing sales promotion contests to fail to include the following in the advertising:

a) the identity (name, address, registered office) of the organizer and the sponsor;

b) The number, type, and value of all prizes;

c) The submission address and deadline;

d) Any geographic or personal restrictions, such as location or age;

e) any requirement to provide proof of purchase;

f) All costs associated with participation;

g) The date and method of determining the winners, announcing the winners, and awarding the prizes;

h) all other terms and conditions of participation. Art. 4

Inducement to Breach or Termination of Contract

In particular, it is unfair for anyone who:

a) Induces customers to breach a contract in order to conclude a contract with them themselves;

b) Repealed

c) Induces employees, agents, or other auxiliaries to betray or spy on the trade secrets of their employer or principal;

d) induces a buyer or borrower who has entered into an installment purchase agreement, a prepayment purchase agreement, or a consumer credit agreement to rescind the agreement, or induces a buyer who has entered into a prepayment purchase agreement to terminate it, in order to enter into such an agreement with the buyer himself.

Art. 5

Exploitation of Another's Work

In particular, it is unfair for anyone who

a) unauthorizedly exploits work entrusted to them, such as offers, calculations, or plans;

b) exploits the work product of a third party, such as offers, calculations, or plans, even though they must know that it was provided to them or made available to them without authorization;

c) adopts and exploits another person's market-ready work product as such, without incurring reasonable effort of their own, through technical reproduction methods.

Art. 6 Repealed

Art. 7

Failure to Comply with Working Conditions

In particular, it is unfair for a person to fail to comply with working conditions that are imposed on competitors by law or contract, or that are customary in the profession or locality.

Art. 8

Use of Unfair Terms

1) In particular, it is unfair for a party to use pre-formulated general terms and conditions that, in a misleading manner to the detriment of a contracting party:

a) deviate significantly from the directly or analogously applicable legal framework; or

b) provide for a distribution of rights and obligations that is significantly inconsistent with the nature of the contract.

2) The special provisions of the Consumer Protection Act remain reserved.

Art. 8a

Use of grossly disadvantageous contractual provisions or engagement in such business practices

In particular, a business operator acts unfairly in commercial transactions if, without objective justification, they use grossly disadvantageous contractual terms within the meaning of Section 336e of the Commercial Code or engage in grossly disadvantageous business practices within that meaning.

3. Misleading and Aggressive Business Practices Toward Consumers, Art. 8b

Misleading Conduct

1) In particular, a person acts unfairly if they:

a) makes incorrect or otherwise misleading statements regarding:

1. the existence or nature of goods, works, or services;

2. the essential characteristics of goods, works, or services, such as availability, benefits, risks, design, composition, accessories, customer service and complaint procedures, methods and timing of manufacture or provision, delivery, fitness for purpose, use, quantity, quality, geographical or commercial origin, or the results to be expected from use, or the results and essential characteristics of tests or examinations to which the goods, works, or services have been subjected;

3. the scope of the company's obligations, the motives behind the business conduct, the nature of the distribution method, statements or symbols of any kind related to direct or indirect sponsorship or referring to an authorization of the supplier or its goods, works, or services;

4. the price, the method of price calculation, or the existence of a special price advantage;

5. the necessity of a service, a replacement part, an exchange, or a repair;

6. the person, characteristics, or rights of the provider or its representative, such as its identity, assets, qualifications, status, licenses, memberships, or affiliations, as well as industrial or commercial property rights, intellectual property rights, or its awards and honors;

7. the consumer's rights under warranties and guarantees, or the risks to which the consumer may be exposed;

b) in the marketing of goods, works, or services, including comparative advertising, creates a likelihood of confusion with the goods, works, services, or business operations of a competitor;

c) invokes obligations it has undertaken under a code of conduct and fails to comply with those obligations;

d) markets a product that is considered identical to a product marketed in other EEA Member States, even though these products differ significantly in their composition or characteristics, unless this is justified by legitimate and objective factors.

2) In the cases referred to in paragraph 1, it is sufficient if the misleading information is likely to cause an average consumer to make a commercial decision that he would not otherwise have made.

Art. 8c

Misleading Omission

1) In particular, it is unfair for a person to omit material information, taking into account the limitations of the communication medium, that the average consumer needs to make an informed business decision, and which is thus likely to cause an average consumer to make a business decision that he or she would not otherwise have made.

2) In any event, the information requirements set forth in EEA law regarding commercial communications, including advertising and marketing, shall be deemed essential information within the meaning of paragraph 1.

3) When assessing whether a statement is misleading, it must be considered whether the means of communication used in the course of business is subject to spatial or temporal restrictions and whether, in such a case, the omitted information is otherwise communicated.

4) When goods, works, or services are offered for sale to consumers, the following information is considered material within the meaning of paragraph 1:

a) the essential characteristics of the goods, works, or services to the extent appropriate to them and the medium;

b) the name and physical address of the supplier and, where applicable, of the company on whose behalf the supplier is acting;

c) the price, including all taxes and duties, or, if this cannot reasonably be calculated in advance, the method of calculation;
d) where applicable, freight, delivery, and shipping costs, or, if these cannot reasonably be calculated in advance, the fact that such additional costs may be incurred;
e) the terms of payment, delivery, and performance, if they deviate from the requirements of professional diligence;
f) where applicable, the existence of a right of withdrawal;
g) When offering products on online marketplaces, the information provided by the operator of an online marketplace regarding whether a third party offering products on that online marketplace is a business operator or not, based on the declaration made by that third party to the operator of the online marketplace.

5) When consumers are given the opportunity to search for products offered by various businesses or consumers using a keyword, a phrase, or another input, the following applies regardless of where legal transactions are ultimately concluded: general information concerning the main parameters for determining the ranking of the products suggested to the consumer in the search results, as well as the relative weighting of these parameters compared to other parameters, shall be considered material within the meaning of paragraph 1. This information must be made available in an area of the online user interface that is immediately and easily accessible from the page on which the search results are displayed.
6) If a business makes consumer reviews of products available, information regarding whether and how the business ensures that the published reviews come from consumers who have actually used or purchased the products is considered material within the meaning of paragraph 1.
Art. 8d
Aggressive commercial practices
1) In particular, it is unfair for a person to actually or likely impair the consumer’s freedom of choice or conduct in the marketing of goods, works, or services through harassment, coercion, the use of physical force, or other improper influence, provided that such conduct

is likely to cause the average consumer to make a business decision that he or she would not otherwise have made.
2) In determining whether an aggressive business practice exists, consideration must also be given to burdensome or disproportionate non-contractual obstacles with which the supplier attempts to prevent the consumer from exercising their contractual rights—in particular the right to terminate the contract or to switch to other goods, works, or services or to another supplier.
B. Right to Sue Art. 9
Principle
1) Any person whose clientele, credit, or professional reputation, business operations, or other economic interests are threatened or harmed by unfair competition may apply to the court to
a) prohibit an impending infringement;
b) to remedy an existing infringement;
c) to establish the unlawfulness of an infringement if it continues to cause disruption.
2) In particular, he may demand that a correction or the judgment be communicated to third parties or published.
3) He may also sue for damages and compensation for non-pecuniary harm, as well as for the surrender of profits in accordance with the provisions of the Swiss Civil Code.
4) The risk of the use of grossly disadvantageous contractual terms or the exercise of such business practices (Art. 8a) no longer exists if, following a warning by an association entitled to bring an action pursuant to Art. 10(2)(a) a within a reasonable period of time submits a cease-and-desist declaration secured by an appropriate contractual penalty (§ 1336 ABGB).
5) Repealed
6) Repealed
Art. 10
Actions by Customers and Organizations
1) The actions under Art. 9 are also available to customers whose economic interests are threatened or harmed by unfair competition.
2) Furthermore, the following may bring an action under Art. 9(1) and (2):

a) Professional and trade associations that are authorized by their bylaws to protect the economic interests of their members;
b) Organizations dedicated to consumer protection on a national level and in accordance with their statutes;
c) the representative of public law.
3) If, in cases of misleading advertising under Article 3, the source of the infringement is located in Liechtenstein, the right to seek an injunction may also be asserted by any entity from another EEA Member State that qualifies under Article 3 of Directive 2009/22/EC, provided that the interests protected by that entity are affected in those Member States.

Art. 11

Actions against the employer

If the unfair competition has been committed by employees or other auxiliaries in the course of their professional or business activities, an action may also be brought against the employer pursuant to Art. 9(1) and (2).

C. Procedural Provisions Art. 12

Precautionary measures

1) Upon the request of a party entitled to bring an action, the court shall order provisional measures, in particular for the preservation of evidence, the maintenance of the status quo, and the provisional enforcement of disputed claims under Article 9(1).
2) The applicant must demonstrate that the opposing party is using means in economic competition that violate the provisions of this Act and that, as a result, the applicant faces a disadvantage that cannot be easily remedied and can only be averted by a provisional measure.
3) Before a precautionary measure is ordered, the opposing party must be heard. If there is imminent danger, a precautionary measure may be issued in advance.

Art. 13

Security

1) The applicant may be required to provide security.

2) If the opposing party provides adequate security in favor of the applicant, a provisional measure may be waived or an ordered measure may be revoked in whole or in part.

Art. 14

Reversal of the Burden of Proof

1) The court may require the company to prove the accuracy of factual claims relating to a business practice if this appears appropriate in the specific case, taking into account the legitimate interests of the company and other parties involved in the proceedings.

2) The court may deem factual assertions to be incorrect if evidence has not been presented or is deemed insufficient.

Art. 15

Time Limit for Filing the Main Action

1) If the court orders a provisional measure, it shall set a deadline of up to 30 days for the applicant to file the action. In the event of default, the measure shall lapse, which shall be noted in the order.

2) If the action is not filed in a timely manner, is withdrawn, or is dismissed, the court may order the applicant to compensate for the damage caused by the provisional measure. The action is subject to a one-year statute of limitations.

D. Special Provisions for the Protection of Trade Secrets Art. 16

Scope of Application

1) The provisions of this section contain special provisions of civil and procedural law for the protection of trade secrets.

2) The following provisions remain unaffected by the provisions of this section:

a) Provisions under which the holders of trade secrets are obligated, for reasons of public interest, to disclose information—including trade secrets—to the public, the authorities, or the courts so that they may perform their duties;

b) Provisions that require or permit the institutions and bodies of the European Economic Area or national authorities to disclose information provided by undertakings, which such institutions, bodies, or authorities possess in accordance with the obligations and rights laid down in EEA law or national law;

c) Provisions concerning social partners and their right to conclude collective bargaining agreements.

3) Unless otherwise expressly provided in this section, the remaining provisions of this Act shall apply mutatis mutandis.

Art. 16a

Unlawful Acquisition, Unlawful Use, and Unlawful Disclosure of Trade Secrets

1) The acquisition of a trade secret is unlawful if it occurs through:

a) unauthorized access to, unauthorized appropriation of, or unauthorized copying of documents, objects, materials, substances, or electronic files that are subject to the lawful control of the holder of the trade secret and that contain the trade secret or from which the trade secret can be derived;

b) any other conduct that, under the circumstances, is inconsistent with sound business practices.

2) The use or disclosure of a trade secret is unlawful if it is carried out by a person who:

a) has acquired the trade secret unlawfully; or

b) breaches a confidentiality agreement or a contractual or other obligation not to disclose the trade secret or to use it only in a limited manner.

3) The acquisition, use, or disclosure of a trade secret is also unlawful if, at the time of acquisition, use, or disclosure, a person knew or, under the circumstances, should have known that the trade secret had come to their knowledge directly or indirectly through another person who had unlawfully used or disclosed it within the meaning of paragraph 2.

4) The manufacture, offering, or placing on the market of infringing products, or the import, export, transit, or storage of infringing products for these purposes also constitutes an unlawful use of a trade secret if the person carrying out these activities knew or, under the circumstances, should have known that the trade secret was used or disclosed unlawfully within the meaning of paragraph 2.

Art. 16b

Lawful Acquisition, Lawful Use, and Lawful Disclosure of Trade Secrets, and Exceptions

1) With the consent of the holder of a trade secret, the acquisition, use, and disclosure of a trade secret are lawful.

2) The acquisition of a trade secret is lawful if the trade secret becomes known through:

a) independent discovery or creation;

b) Observing, examining, reverse-engineering, or testing a product or item that has been made publicly available or is lawfully in the possession of the recipient of the information, who is not subject to any legally valid obligation to restrict the acquisition of the trade secret;

c) Exercising the right of employees or employee representatives to information and consultation in accordance with existing regulations; or

d) any other course of action that is consistent with sound business practice under the circumstances.

3) The acquisition, use, or disclosure of a trade secret is lawful if it is:

a) is required or permitted by EEA legislation or domestic law; or

b) occurs in one of the following cases:

1. to exercise the fundamental right to freedom of expression, including respect for the freedom and pluralism of the media;

2. to expose an unlawful act in connection with professional misconduct or an illegal activity related to the trade secret, provided that the person acquiring, using, or disclosing the trade secret acted with the intention of protecting the general public interest;

3. through disclosure by employees to their representatives in the lawful performance of those representatives’ duties under EEA legislation or domestic law, provided that the disclosure was necessary for the performance of those duties;

4. to protect a legitimate interest recognized by EEA legislation or domestic law.

Art. 16c

Civil Claims for the Protection of Trade Secrets; Statute of Limitations

1) Anyone who unlawfully acquires, uses, or discloses trade secrets may be held liable for injunctive relief, removal, and, in cases of fault, damages pursuant to Section 9(3). In addition, the injured party may claim any profits obtained by the infringer from the unlawful acquisition, use, or disclosure of the trade secret. The owner of the trade secret is entitled to bring an action.

2) Irrespective of proof of the amount of damage, the owner of the trade secret may, as compensation for the financial loss culpably inflicted upon him, demand the remuneration to which he would have been entitled had he consented to the acquisition, use, or disclosure.

3) Upon application by the person against whom a claim for injunctive relief or removal under paragraph 1 is directed, the court may order the defendant, in lieu of injunctive relief or removal, to pay reasonable compensation for the continued unlawful use of the trade secret if:

a) the user or discloser only becomes aware, after the commencement of the use or disclosure, of facts on the basis of which he knew or should have known that the trade secret had become known to him directly or indirectly through another person who had unlawfully used or disclosed it;

b) the user or publisher suffers disproportionately great harm as a result of the omission or removal; and

c) such compensation constitutes reasonable substitute for the plaintiff's claim for injunctive relief.

4) Claims under this section are subject to a statute of limitations of three years from the date of knowledge of the infringement and the identity of the infringer, but no later than six years.

Art. 16d

Right to Injunction and Its Expiration

1) The claim for injunctive relief may be directed against an unlawful infringement of a trade secret that has already occurred or is imminent through its acquisition, use, or disclosure. It also includes a prohibition on the manufacture, offering, marketing, or use of infringing products and a prohibition on the import, export, transit, or storage of infringing products for these purposes.

2) The right to injunctive relief expires as soon as the information in question ceases to constitute a trade secret for reasons not attributable to the infringer.

Art. 16e

Right to Removal

1) Within the scope of the claim for destruction, the trade secret holder may demand that, at the infringer’s expense, the infringing products and documents, objects, materials, substances, or electronic files that contain or embody the trade secret be destroyed. The holder may also demand:

a) the recall of the infringing products from the market;

b) the elimination of the infringing characteristics of the infringing products; or

c) the withdrawal of the infringing products from the market, provided that this does not impair the protection of the trade secret in question.

2) If the items referred to in paragraph 1 contain parts whose continued existence and use do not infringe the trade secret, the court shall specify these parts in the judgment ordering destruction. Upon enforcement, these parts shall, to the extent possible, be exempted from destruction if the obligated party pays the associated costs in advance.

3) In assessing a claim under paragraph 1, it must be determined whether the requested measures are proportionate in light of the specific circumstances of the case. If the unlawful situation can be remedied by a means other than that specified in paragraph 1, which involves no or less destruction of value, the holder of the trade secret may only request measures of this kind.

4) If the holder of the trade secret requests, pursuant to paragraph 1, that the documents, objects, materials, substances, or electronic files, the court may, upon application by the holder of the trade secret and taking into account the principle of proportionality in light of the specific circumstances of the case, award the infringer reasonable compensation not exceeding the cost of production.

5) The claim for removal is directed against the infringer to the extent that the infringer has the right to dispose of the objects.

Art. 16f

Maintenance of the Confidentiality of Trade Secrets During Court Proceedings

1) The information that the owner claims constitutes a trade secret need not be disclosed in the proceedings, at this stage, beyond what is strictly necessary to credibly demonstrate that the conditions for a trade secret are met and that it has been infringed. In the first pleading asserting the existence of a trade secret, it is sufficient for the party to raise the existence of a trade secret and for the assertion to be substantiated at least to the extent that the existence of a trade secret and the claim asserted therefrom can be logically inferred.

2) Upon request or on its own initiative, the court must take measures to ensure that the opposing party and third parties do not receive any information regarding the trade secret that goes beyond their current knowledge of the matter. Any measures taken may also include requiring that the alleged trade secret be disclosed only to an expert appointed by the court. The appointed expert shall be instructed to submit to the court a summary that does not contain any confidential information regarding the trade secret. In addition, the expert must submit to the court for its assessment all documents, findings, and expert opinions concerning the trade secrets and must identify trade secrets as such. These parts of the file are excluded from the right to inspect the file. Notwithstanding paragraph 3, the court must keep these written records concerning a trade secret in a separate section of the file that is not accessible to the opposing party or to third parties.

3) Upon a well-founded request by a party, the court may order the disclosure of the alleged trade secret in the proceedings if knowledge thereof is necessary for the party's own legal action or defense in the interest of a fair trial or to enforce the legitimate interests of that party. In doing so, particular consideration must also be given to the potential harm that may be caused to a party and, where applicable, to any third parties by granting or denying such disclosure. The decision ordering disclosure may be challenged by the party required to disclose.

4) Any person who, solely by virtue of their participation in the proceedings or access to the documents, becomes aware of a trade secret or an

alleged trade secret, are obligated to keep the trade secret or alleged trade secret confidential. This obligation remains in effect even after the conclusion of the court proceedings. The court must instruct the persons concerned that the trade secret may neither be used nor disclosed. The court must record the provision of this instruction in the court record.

5) The obligation of confidentiality under paragraph 4 shall continue even after the conclusion of the court proceedings. However, this obligation shall end if a final and binding decision determines:

a) that no trade secret exists; or

b) that, over time, the information in question has become generally known or readily accessible to persons in circles that customarily deal with the type of information in question.

Art. 16g

Exclusion of the Public from the Hearing

Proceedings concerning a criminal charge or a civil claim under this section may be closed to the public, either ex officio or at the request of a party, if doing so would jeopardize a trade secret.

Art. 16h

Preparation and Publication of the Judgment

1) The court shall also prepare a version of the written judgment in which passages containing trade secrets are redacted. This non-confidential version shall be marked as such and used for persons other than the holder of the trade secret and the court, and shall serve as the basis for publication pursuant to Art. 9(2). Paragraphs 2 and 3 remain reserved.

2) At the request of the prevailing party, the court may order the full or partial publication of the final judgment, including the passages containing trade secrets (confidential version) or information thereon, at the expense of the infringer. The form and scope of the publication shall be determined in the judgment.

3) When deciding whether to publish a judgment and whether such publication is proportionate, the following factors must be taken into account in particular:

a) the value of the trade secret;

b) the conduct of the infringer in obtaining, using, or disclosing the trade secret;
c) the consequences of the unlawful use or unlawful disclosure of the trade secret;
d) the likelihood of further unlawful use or unlawful disclosure of the trade secret by the infringer; and
e) the potential impact on the private interests of natural persons. Art. 16i

Precautionary Measures to Protect Against Infringements of Trade Secrets

1) The right to enjoin the unlawful acquisition, use, or disclosure of a trade secret may be secured by means of a precautionary measure, in particular through the following means:

a) Order to cease or prohibition on the use or disclosure of the trade secret;
b) Prohibition on the manufacture, offering, marketing, or use of infringing products, or the export or storage of infringing products for these purposes;
c) Seizure or surrender of the infringing products, including imported products, to prevent their placing on the market or circulation in the market.

2) Unless otherwise provided in this Act, Articles 274 through 288 and 290 through 293 of the Enforcement Ordinance apply mutatis mutandis. The precautionary measure may also be ordered to secure evidence. Articles 16f through 16h apply mutatis mutandis.

3) The enforcement of a precautionary measure is also permissible if more than one month has elapsed since its authorization.

4) In the cases referred to in paragraph 1, the court may, instead of ordering a preliminary injunction, make the continuation of the alleged unlawful use of a trade secret contingent upon the posting of a security intended to ensure compensation for the trade secret holder. The disclosure of a trade secret in exchange for the posting of a security shall not be permitted.

Art. 16k

Requirements for applying for a provisional measure and security

1) The applicant under Art. 16i(1) must demonstrate a prima facie case that:

a) a trade secret exists;

b) he is the holder of this trade secret;

c) the trade secret has been unlawfully acquired, used, or disclosed, or that such an infringement is imminent; and

d) as a result, he faces a disadvantage that cannot be easily remedied within the meaning of Art. 12(2).

2) In deciding on the application and assessing proportionality, the specific circumstances of the case must be taken into account.

3) The provisional measure may not be granted against a security deposit if the claim is not sufficiently substantiated.

4) The provisional measure shall be revoked upon the respondent’s request if, for reasons not attributable to the respondent, the information in question no longer meets the criteria set forth in Art. 1a(1)(n).

5) If a precautionary measure under Art. 16i is revoked on the basis of Art. 284(4) of the Enforcement Code, or becomes void due to an act or omission by the petitioner, or if it is subsequently determined that the trade secret was not unlawfully acquired, used, or disclosed and that no such infringement was imminent, the court shall, upon the respondent’s requestrespondent or a directly aggrieved third party, order the applicant to pay the respondent or the aggrieved third party appropriate compensation for the damage caused by the precautionary measure.

III. Administrative Provisions

A. Price disclosure to consumers Art.

17

Obligation to disclose prices

1) For goods offered for sale to consumers, the actual price to be paid must be disclosed, unless the government provides for exceptions. Exceptions are permitted, in particular, for technical or safety reasons. The same obligation applies to services designated by the government.

2) The government regulates the disclosure of prices and tips by ordinance.

3) For measurable goods and services, the provisions on metrology apply.

Art. 18

Price Disclosure in Advertising

If prices or price reductions are displayed in advertising, their disclosure shall be governed by the provisions to be issued by the government.

Art. 19

Misleading price disclosure

It is prohibited to, in a misleading manner

a) to indicate price reductions

b) refer to price reductions, or

c) list additional prices alongside the price actually payable. Art. 20

Duty to provide information

1) The government may request information and documents to the extent necessary to clarify the facts of the matter.

2) The following are subject to the obligation to provide information:

a) Individuals and companies that offer goods for sale to consumers or manufacture, purchase, or trade in such goods;

b) Individuals and companies that offer, provide, arrange, or use services;

c) Business organizations;

d) Organizations dedicated to consumer protection nationwide and in accordance with their statutes.

3) The duty to provide information does not apply if testimony may be refused under the provisions of the Code of Civil Procedure.

B. Clearance sales and similar events Art. 21

Requirement for a permit

Repealed

IV. Penal provisions

Art. 22

Unfair Competition

1) Anyone who intentionally engages in unfair competition under Art. 2, 3, 3a, 4, 5, 8b, 8c, or 8d shall, at the request of the parties entitled to bring a civil action under Articles 9 and 10, be punished by the Regional Court for a misdemeanor with a fine of up to 100,000 Swiss francs, or, if the fine cannot be collected, with imprisonment for up to three months.

2) In cases of negligence, the maximum penalty specified in paragraph 1 shall be reduced by half.

Art. 22a

Violation of the Prohibition on Geoblocking

1) The Regional Court shall impose a fine of up to 100,000 Swiss francs, or, if the fine cannot be collected, a prison sentence of up to three months, on anyone who violates Regulation (EU) 2018/302 by intentionally:

a) contrary to Art. 3(1), blocks or restricts access to the online user interface;

b) contrary to Art. 3(2), redirects a customer to a version of the online user interface specified therein without the customer's express consent;

c) applies different general terms and conditions in violation of Art. 4(1);

d) contrary to Article 5(1), applies different terms and conditions to a payment transaction.

2) In cases of negligence, the maximum penalty specified in paragraph 1 is reduced by half.

Art. 23

Violation of the Duty to Disclose Prices to Consumers

1) Any person who intentionally

a) violates the obligation to disclose prices (Art. 17);

b) violates the provisions on price disclosure in advertising (Art. 18);

c) discloses prices in a misleading manner (Art. 19);

d) violates the obligation to provide information in connection with price disclosure (Art. 20);

e) violates the government's provisions on price disclosure (Art. 17),

shall be punished by the District Court for a misdemeanor with a fine of up to 20,000 Swiss francs, or, in the event of inability to pay, with imprisonment for up to two months.

2) In cases of negligence, the maximum penalty specified in paragraph 1 shall be reduced by half.

Art. 24

Breach of trade secrets

1) The District Court shall impose a prison sentence of up to one year or a fine of up to 360 daily rates on anyone who intentionally:

a) unlawfully acquires, uses, or discloses a trade secret under Art. 16a;

b) violates their duty to maintain the confidentiality of trade secrets in the course of court proceedings under Art. 16f.

2) In cases of negligence, the maximum penalty specified in paragraph 1 is reduced by half.

Art. 25

Violations in the Course of Business Operations

If offenses are committed in the course of business by a legal entity, a general partnership, a limited partnership, or a sole proprietorship, the penal provisions apply to the persons who acted or should have acted on its behalf; however, the legal entity, the partnership, or the sole proprietorship is jointly and severally liable for the fines and costs.

V. Final Provisions Art. 26

Implementing Regulations

The Government shall issue the ordinances necessary for the implementation of this Act.

Art. 27

Repeal of Previous Law

The following are repealed:

a) The Act of November 22, 1946, on Unfair Competition, LGBl. 1946 No. 26;

b) Art. 23 of the Act of November 18, 1964, on Installment and Prepayment Agreements, LGBl. 1965 No. 6.

Art. 28

Entry into Force

This Act shall enter into force on November 1,
1994. Signed, *Hans-Adam*

signed *Hans Brunhart*, Prince-Minister Annex

Business practices that are considered unfair under all circumstances (Art. 2, para. 3)

1. A supplier's false claim that it is a signatory to a code of conduct.
2. The use of quality marks, certification marks, or similar symbols without the required authorization.
3. The false claim that a code of conduct has been endorsed by a public or other body.
4. Claiming that a supplier, its business practices, goods, works, or services have been certified, endorsed, or approved by a public or private body, even though this is not the case, or making such a claim without meeting the conditions for certification, endorsement, or approval.
5. The offering of goods, works, or services at a specific price, if the provider fails to disclose that they have sufficient reason to believe they will not be able to provide or arrange for the provision of these or equivalent goods, works, or services at the stated price for a reasonable period of time and in reasonable quantities (bait advertising).
6. The offer of goods, works, or services at a specific price, and then

a) refusing to show the advertised item to the prospective customer, or

b) refusing to accept orders for it or to deliver it within a reasonable time, or

c) Displaying a defective item with the intent to sell a different product instead ("bait-and-switch" technique).

7. The false claim that goods, works, or services will be available only for a very limited time or only under specific conditions for a very limited time, in order to induce the consumer to make an immediate decision, leaving them neither the time nor the opportunity to make an informed decision.
8. The provision of the service in a language other than the one in which the contract negotiations were conducted, if the language originally used is not an official language of the EEA Member State in which the provider is established; this does not apply if the provider has informed the consumer that the

service to be provided will not be provided in the language originally used.

9. False claims or otherwise creating the false impression that a product can be sold legally.

10. Rights granted to consumers by law are presented as a special feature of the provider's offer.

11. Editorial content in media financed by the provider for the purpose of sales promotion, without this connection being clearly evident from the content or from images and sounds clearly recognizable to the consumer (advertising disguised as information).

11a. The display of search results based on a consumer's online search query without clearly disclosing any paid advertising or special payments intended to achieve a higher ranking of the respective products within the search results.

12. A false claim regarding the nature and extent of the danger to the consumer's personal safety or that of their family should they fail to purchase the goods, works, or services.

13. Advertising goods, works, or services that are similar to those of a specific supplier, if this is done with the intent to mislead the consumer regarding the commercial origin of the advertised goods, works, or services.

14. The introduction, operation, or promotion of a pyramid scheme for sales promotion, in which the consumer is presented with the possibility of earning compensation that is achieved primarily by recruiting new consumers into such a scheme and less through the sale or consumption of products.

15. The false claim that the provider will soon cease business operations or relocate its business premises.

16. The false claim that goods, works, or services can increase the chances of winning in games of chance.

17. The false claim that goods, works, or services can cure diseases, functional disorders, or deformities.

18. False information about market conditions or sources of supply intended to induce consumers to purchase goods, works, or services at prices less favorable than normal market conditions.
19. Offering contests and sweepstakes without awarding the described prizes or an appropriate equivalent.
20. Describing goods, works, or services as "free," "at no cost," "cost-free," or similar, even though the consumer must bear costs beyond those that are unavoidable in connection with accepting the offer and for the pickup or delivery of the goods.
21. The transmission of promotional material accompanied by an invoice or similar document containing a request for payment, if this gives the consumer the false impression that they have already ordered the advertised product.
22. The false assertion or the creation of the false impression that the supplier is not acting for the purposes of his business, trade, craft, or profession, or that he is a consumer.
23. Giving the false impression that customer service for goods, works, or services is available in an EEA Member State other than the one in which the goods, works, or services are sold.
23a. The resale of tickets for events to consumers where the trader has acquired those tickets using automated processes designed to circumvent restrictions on the number of tickets a person may purchase or other rules applicable to the sale of the tickets.
23b. Claiming that reviews of a product originate from consumers who have actually used or purchased the product, without taking reasonable and proportionate steps to verify whether the reviews actually originate from such consumers.
23c. Posting fake consumer reviews or recommendations, or instructing other legal or natural persons to post fake consumer reviews or recommendations, as well as misrepresenting consumer reviews or recommendations on social media for promotional purposes.
24. Giving the impression that the consumer cannot leave the premises without entering into a contract.

25. Failure to comply with a consumer's request, during in-person visits to the consumer's home, to leave the premises or not to return, unless the visit is legally justified for the purpose of enforcing a contractual obligation.
26. The solicitation of customers through persistent and unsolicited contact via telephone, fax, email, or other media suitable for distance selling, unless such conduct is legally justified for the enforcement of a contractual obligation. This applies without prejudice to Regulation (EU) 2016/679 and Directive 2002/58/EC, as well as Section 6 of the Act on the Criminal Protection of Personal Privacy.
27. Requiring the submission of documents when making a claim under an insurance policy that can reasonably be considered irrelevant to the validity of the claim, or systematically failing to respond to relevant correspondence in order to deter the consumer from exercising their contractual rights.
28. A direct appeal in an advertisement to children to purchase the advertised goods, works, or services themselves, or to persuade their parents or other adults to purchase them on their behalf.
29. An invitation to the consumer to make an immediate or future payment, or to return or store goods, works, or services that the provider has delivered without the consumer's request (unsolicited goods and services).
30. An explicit statement to the consumer that the provider's job or livelihood is at risk if the consumer does not purchase the goods, works, or services.
31. Creating the false impression that the consumer has already won a prize, will win a prize, or will win a prize or other benefit by performing a specific action, even though

a) in reality there is no prize or other benefit, or

b) the consumer's ability to obtain the prize or other benefit is made contingent upon the payment of a sum of money or the assumption of costs that exceed standard postal or telephone rates.

IX. Product Liability Act

of November 12, 1992

I hereby approve the following resolution adopted by the State Parliament:

Art. 1

Principle

1) The manufacturer is liable for damage if a defective product causes

a) a person is killed or injured;

b) property is damaged or destroyed that, by its nature, is ordinarily intended for private use or consumption and has been used primarily for private purposes by the injured party.

2) He is not liable for damage to the defective product. Art.

2

Manufacturer

For the purposes of this Act, a manufacturer is defined as the manufacturer of the finished product, a raw material, or a component, as well as any person who presents themselves as a manufacturer by affixing their name, trademark, or other identifying mark to the product.

Art. 3

Importer

Any person who imports a product into the European Economic Area for the purpose of sale, rental, hire purchase, or any other form of distribution as part of their business activities is also considered a manufacturer within the meaning of this Act. This is subject to any conflicting provisions in international treaties.

Art. 4

Supplier

1) If the manufacturer of the product cannot be identified, any supplier shall be deemed to be the manufacturer unless, within a reasonable period of time after being requested to do so, the supplier informs the injured party of the manufacturer or the person who supplied the product to the supplier.

2) This also applies to an imported product if the importer cannot be identified pursuant to Art. 3, even if the name of the manufacturer is indicated.

Art. 5

Product

1) The following are considered products within the meaning of this Act:

a) any movable property, even if it forms part of another movable property or an immovable property, and

b) electricity.

2) Repealed

Art. 6

Defect

1) A product is defective if it does not provide the safety that one is entitled to expect, taking all circumstances into account; in particular, the following must be taken into account:

a) the manner in which it is presented to the public,

b) the use that can reasonably be expected, and

c) the time at which it was placed on the market.

2) A product is not defective merely because an improved product was subsequently placed on the market.

Art. 7

Exceptions to Liability

1) The manufacturer is not liable if he proves that

a) he did not place the product on the market;

b) it can be assumed, given the circumstances, that the defect that caused the damage did not yet exist when he placed the product on the market;

c) he neither manufactured the product for sale or any other form of distribution for commercial purposes nor manufactured or distributed it in the course of his professional activities;

d) the defect is attributable to the fact that the product complies with mandatory, officially enacted regulations;

e) the defect could not have been detected based on the state of scientific and technical knowledge at the time the product was placed on the market.

2) Furthermore, the manufacturer of a raw material or a component is not liable if he proves that the defect was caused by the design of the product into which the

raw material or component product was incorporated, or by the instructions of the manufacturer of the product.

Art. 7a

Joint and Several Liability

If liability rests with several parties, they are jointly and severally liable. Their liability is not reduced by the fact that others are also liable for compensation for the same damage under other provisions.

Art. 7b

Reduction of Liability

1) The manufacturer's liability is not reduced if the damage was caused both by a defect in the product and by the act of a third party.

2) If the injured party or a person for whose conduct the injured party is responsible is at fault, § 1304 ABGB shall apply mutatis mutandis.

Art. 8

Deductible for Property Damage

1) The injured party must bear property damage up to 900 francs themselves.

2) If the deductible is changed under the law of the European Economic Area, the government shall adjust the amount accordingly.

Art. 9

Exclusion of Liability

Agreements that limit or exclude liability under this Act toward the injured party are void.

Art. 10

Statute of limitations

Claims under this Act are barred by the statute of limitations three years after the date on which the injured party became aware, or should have become aware, of the damage, the defect, and the identity of the manufacturer.

Art. 11

Forfeiture

1) Claims under this Act are barred 10 years after the date on which the manufacturer placed the product that caused the damage on the market.

2) Forfeiture does not occur if legal proceedings are pending against the manufacturer.

Art. 12

Relationship to Other Provisions

1) Unless otherwise provided in this Act, the General Civil Code shall apply to the claims for compensation provided for herein.

2) Provisions of the General Civil Code and other regulations under which damages are to be compensated to a greater extent or by persons other than those specified in this Act remain unaffected.

3) This Act does not apply to damages resulting from a nuclear incident to which international conventions ratified by the States of the European Economic Area apply.

Art. 13

Transitional Provision

This Act applies only to products placed on the market after its entry into force.

Art. 14

Entry into force

This Act shall enter into force on November 1, 1994.

X. General German Commercial Code

of March 16, 1861

Enacted by the Act of September 16, 1865, concerning the adoption of the General German Commercial Code in the Principality of Liechtenstein, published in the Liechtenstein Law Gazette 1865, No. 10.

Previous amendments have been incorporated into this promulgation and are indicated by footnotes.

Princely Government: signed *Dr. Mario Frick,* Head of the Princely Government

Appendix

General German Commercial Code

of March 16, 1861 **General**

Provisions Art. 1

In commercial matters, to the extent that this Code contains no provisions, commercial customs shall apply, and in the absence thereof, general civil law.

Art. 2 Repealed

Art. 3

Where this Code refers to the commercial court, the ordinary court shall take its place in the absence of a special commercial court.

Book 1

On the Commercial

Status Art. 4 to 40

Repealed

5. Title

On Authorized Signatories and Agents

Art. 41 to 46

Repealed

Art. 47

1) If a principal appoints someone—without granting them power of attorney—to manage either the entire business or a specific type of transaction, or

for individual transactions, in his commercial enterprise (authorized agent), the power of attorney extends to all transactions and legal acts that the operation of such a commercial enterprise or the execution of such transactions customarily entails; this also includes the conclusion of arbitration agreements.
2) However, the authorized agent is authorized to incur bill of exchange liabilities, to take out loans, and to conduct litigation only if such authority has been specifically granted to him.
3) Furthermore, for transactions covered by his authority, he does not require the special power of attorney prescribed by state law.
Art. 48
The authorized agent shall refrain from signing any clause implying procuration; he shall sign with a clause expressing the agency relationship.
Art. 49
The provisions of the two preceding articles also apply to authorized agents whom their principal employs as traveling salesmen for business in foreign locations. These provisions apply in particular to those authorized to collect the purchase price from sales they have concluded or to grant payment terms for such sales.
Art. 50
Any person employed in a store, open warehouse, or goods depot is deemed authorized to conduct sales and accept deliveries there that are customarily carried out in such a store, warehouse, or goods depot.
Art. 51
Therefore, a person who delivers the goods and an unpaid invoice is not thereby deemed authorized to receive payment.
Art. 52
1) A legal transaction concluded by a procurator or an agent acting under a power of attorney or a power of representation on behalf of the principal creates rights and obligations for the principal vis-à-vis the third party.
2) It is immaterial whether the transaction was expressly concluded on behalf of the principal or whether the circumstances indicate that, according to the intention of the contracting parties, it was to be concluded on behalf of the principal.

3) The transaction creates neither rights nor obligations between the authorized signatory or agent and the third party.

Art. 53

The procurator or agent may not transfer his or her power of procuration or authority to act to another person without the principal's consent.

Art. 54

1) The power of attorney or authority to act is revocable at any time, without prejudice to the rights arising from the existing employment relationship.

2) The death of the principal does not result in the termination of the power of attorney or authority to act.

Art. 55

1) Anyone who concludes a commercial transaction as a procurator or authorized agent without having been granted power of procuration or authority to act, as well as an authorized agent who exceeds his authority when concluding a transaction, is personally liable to the third party under commercial law; the third party may, at his discretion, sue him for damages or specific performance.

2) This liability does not apply if the third party, notwithstanding his knowledge of the lack of power of attorney or the exceeding of the latter, has entered into the transaction with him.

Art. 56

1) A procurator or an agent appointed to manage an entire commercial enterprise may not conduct commercial transactions for his own account or for the account of a third party without the principal's consent.

2) The principal's consent is deemed to have been given if, at the time of granting the power of attorney or authority to act, the principal was aware that the attorney-in-fact or authorized representative was conducting commercial transactions for his own account or for the account of others, and the principal did not stipulate that such activities be discontinued.

3) If the authorized signatory or agent violates this provision, the principal may claim compensation for the resulting damage. Furthermore, at the principal's request, the authorized signatory or agent must accept that the transactions conducted for his own account are deemed to have been concluded for the principal's account.

6. Title

Regarding Agents

Art. 57

The nature of the services and the claims of agents (servants, apprentices) to wages and maintenance shall, in the absence of an agreement, be determined by local custom or by the discretion of the court, if necessary after obtaining an expert opinion.

Art. 58

1) A commercial agent is not authorized to perform legal acts in the name and on behalf of the principal.

2) However, if he is commissioned by the principal to perform legal acts in the principal's business, the provisions regarding authorized agents shall apply.

Art. 59

1) An agent may not conduct commercial transactions for his own account or for the account of a third party without the principal's consent.

2) In this regard, the provisions applicable to authorized signatories and agents (Art. 56) apply.

Art. 60

An employee who is temporarily unable to perform his or her duties due to an accident through no fault of his or her own does not thereby forfeit his or her entitlement to wages and maintenance. However, he or she is entitled to this benefit only for a period of six weeks.

Art. 61

1) The employment relationship between the principal and the clerk may be terminated by either party at the end of any calendar quarter upon six weeks' prior notice. If a shorter or longer term or a shorter or longer notice period is stipulated in the contract, such provisions shall prevail.

2) With regard to commercial apprentices, the duration of the apprenticeship shall be determined in accordance with the apprenticeship contract and, in the absence of contractual provisions, in accordance with local ordinances or local custom.

Art. 62

1) Termination of the employment relationship before the specified time (Art. 61) may be demanded by either party for good cause.

2) The assessment of the importance of the reasons is left to the discretion of the judge.

Art. 63

Termination of the employment relationship may be ordered against the principal, in particular, if the principal fails to pay the salary or provide the necessary support, or if the principal is guilty of physical abuse or serious defamation against the commercial apprentice.

Art. 64

The employment relationship may be terminated with respect to the agent, in particular:

1. if the agent acts dishonestly in the course of his duties or abuses the trust placed in him;
2. if the agent conducts business transactions for his own account or for the account of a third party without the principal's consent;
3. if the agent refuses to perform his services or fails to do so for a period of time that is significant under the circumstances without a lawful impediment;
4. if the employee is prevented from performing his or her duties due to a prolonged illness or frailty, or due to a lengthy prison sentence or absence;
5. if the employee is guilty of physical abuse or serious defamation against the principal;
6. if the employee engages in an immoral lifestyle. Art. 65

With regard to persons who perform domestic services in the operation of a commercial enterprise, the provisions applicable to domestic service relationships shall apply.

7. Title

Regarding Commercial Brokers or Agents

Art. 66

1) Commercial brokers (sensales) are officially appointed intermediaries for commercial transactions.

2) Before taking office, they shall take an oath that they will faithfully fulfill the duties incumbent upon them.

Art. 67

1) Commercial brokers mediate, on behalf of clients, purchases and sales of goods, ships, bills of exchange, domestic and foreign government securities, stocks, and other commercial securities, as well as contracts for insurance, chartering, and the hiring of ships, and contracts for land and water transport and other matters relating to commerce.
2) The fact that a commercial broker has been entrusted with the mediation of a transaction does not mean that he is authorized to receive a payment or any other performance stipulated in the contract.

Art. 68

The appointment of commercial brokers is generally for all types of brokerage transactions or only for specific types thereof.

Art. 69

In particular, commercial brokers have the following duties:

1. They may not conduct commercial transactions for their own account, either directly or indirectly, nor may they act as commission agents, enter into binding commitments, or provide guarantees, all of which is without prejudice to the validity of the transactions;
2. they may not be in the relationship of a proxy, authorized agent, or assistant to any merchant;
3. They may not join with other commercial brokers to form a joint enterprise for brokerage activities or a part thereof; they are authorized to jointly broker individual transactions with the consent of the clients;
4. they must personally conduct brokerage activities and may not use an assistant to conclude transactions;
5. they are bound to maintain confidentiality regarding orders, negotiations, and transactions, unless the parties have agreed otherwise or the nature of the transaction requires otherwise;
6. they may not accept the consent of the parties or their authorized representatives to any transaction other than through an express and personal declaration; brokers are not permitted to accept orders from absent parties, nor to use an intermediary for the negotiation.

Art. 70

Commercial brokers engaged in ship brokerage may be permitted to provide auxiliary services to shipowners in the collection and advance payment of freight and expenses, acting as accountants or in any other manner customary in the locality.

Art. 71

1) In addition to his ledger, the broker must keep a journal in which all transactions concluded must be recorded daily. He must sign the entries each day.

2) Before use, the journal must be numbered consecutively page by page and submitted to the competent authority for certification of the number of pages.

Art. 72

1) The entries in the journal must include the names of the contracting parties, the time of conclusion, the description of the subject matter, and the terms of the transaction; in particular, for sales of goods, the type and quantity thereof, as well as the price and the time of delivery.

2) Entries must be made in German or, if the local business language is different, in that language; they must be entered in chronological order and without any blank spaces.

3) The provisions regarding the maintenance of commercial books (Art. 32) also apply to the broker's journal.

Art. 73

1) The commercial broker must, without delay after the conclusion of the transaction, deliver to each party a final statement signed by him, which contains the facts designated as the subject of the entry in the preceding article.

2) In the case of transactions that are not to be performed immediately, the final statement must be delivered to the parties for their signature, and each party must be sent the copy signed by the other.

3) If a party refuses to accept or sign the final statement, the commercial broker must notify the other party thereof without delay.

Art. 74

The commercial broker is obligated to provide the parties, upon request at any time, with certified extracts from the journal, which must contain everything entered by the broker regarding the transaction involving the parties.

Art. 75

If a commercial broker dies or leaves office, his journal must be deposited with the authorities.

Art. 76

1) The conclusion of a contract brokered by a commercial broker is independent of its entry in the journal or the delivery of the final notes.

2) These facts serve only as evidence of the concluded contract. Art. 77

1) A properly maintained journal, as well as the closing notes of a commercial broker, generally provide proof of the conclusion of the transaction and its content.

2) However, the judge shall decide, at his discretion guided by consideration of all circumstances, whether to attach less weight to the contents of the journal and the final notes, whether to require an oath from the broker or other evidence, and whether, in particular, a party's refusal to accept or sign the final note is relevant to the adjudication of the matter.

Art. 78

The journal of a commercial broker in which irregularities have occurred may be considered as evidence only to the extent that it appears appropriate in light of the nature and significance of the irregularities, as well as the circumstances of the case.

Art. 79

1) In the course of a legal dispute, the judge may, even without a motion by a party, order the production of the journal in order to examine it and compare it with the final statement, the extracts, and other evidence.

2) The provision of Article 39 also applies with respect to the submission of the logbook.

Article 80

Unless the parties have waived this requirement or local custom exempts him from it in view of the nature of the goods, the commercial broker must, for every item of goods sold on consignment through his mediation, retain the sample—after marking it for identification purposes—until the goods have been accepted without objection as to their quality or the transaction has been otherwise settled.

Art. 81

Any fault on the part of the commercial broker entitles the party thereby aggrieved to claim indemnification from him.

Art. 82

1) The commercial broker shall be entitled to claim the brokerage fee (commission) as soon as the transaction has been concluded and, if it was conditional, has become unconditional, and he has fulfilled his obligation to deliver the final statements, notwithstanding any other provisions in local ordinances or local custom.

2) If the transaction has not been concluded or has not become unconditional, no brokerage fee may be claimed for the negotiations.

3) The amount of the brokerage fee is governed by local ordinances; in the absence thereof, local custom shall prevail.

Art. 83

If the parties have not agreed on who is to pay the brokerage fee, it shall be paid in equal shares by each party in the absence of local ordinances or local custom.

Art. 84

1) It is left to the laws of the individual states to determine the necessary provisions regarding the employment of commercial brokers and the penalties for breaches of duty committed by them in the course of their profession.

2) State laws may supplement the provisions of this Title in accordance with local needs; in particular, commercial brokers may be granted the exclusive right to act as intermediaries in commercial transactions.

3) Furthermore, state laws or local ordinances may expand or restrict the scope of duties and powers assigned to commercial brokers in this Title (Art. 67, 70) or the extent of their obligations (Art. 69).

Art. 85

Non-Officially Appointed Brokers

1) The foregoing provisions regarding commercial brokers shall apply mutatis mutandis to non-officially appointed brokers who, in exchange for remuneration, are commissioned to identify an opportunity to conclude a contract or to broker the conclusion of a contract.
2) The provisions of Art. 69, paras. 1 through 4 and 6, sentence 2, as well as Art. 71, para. 2, and Art. 75 do not apply, notwithstanding the general provisions on accounting. Art. 70, Art. 71(1), Art. 72 through 74, and Art. 76 through 80 apply only to brokers engaged in commercial activities.
3) The journal required under Art. 71 may also be kept in digital form.
4) To the extent that the broker is guaranteed reimbursement for expenses in the contract, he may, notwithstanding Art. 82(2), claim such reimbursement even if the transaction does not come to fruition.
5) If the broker has acted on behalf of the other party in a manner contrary to the contract, or if, in a case involving a breach of good faith, the broker has also secured a promise of remuneration, the broker may claim neither remuneration nor reimbursement of expenses from the principal.

Art. 86

Special Provisions for Insurance Brokers

Insurance brokers must disclose to persons seeking insurance or reinsurance coverage any direct legal or economic ties they may have to an insurance company, or their interests in such companies, or vice versa, to the extent that such ties could impair the completely free choice of an insurance company.

Title 8 **Commercial Agents** Art. 87

Definition

1) A commercial agent (agent) is a self-employed businessperson who is permanently entrusted with brokering business for another entrepreneur (entrepreneur) or concluding business on the entrepreneur’s behalf. A person is considered self-employed if they are essentially free to organize their work and determine their working hours.
2) A person who, without being self-employed within the meaning of paragraph 1, is permanently entrusted with brokering business for an entrepreneur or concluding business on the entrepreneur’s behalf is considered an employee.

3) The entrepreneur may also be a commercial agent. Art.
88

Contract Document

Either party may demand that the terms of the contract, as well as any subsequent agreements relating to the contract, be recorded in a document signed by the other party. This right cannot be excluded.

Art. 89

Duties of the Commercial Agent

1) The commercial agent must endeavor to broker or conclude business transactions; in doing so, he must act in the best interests of the principal.

2) He must provide the principal with the necessary information, namely by notifying him immediately of every business opportunity and every business transaction.

3) He must perform his duties with the diligence of a prudent businessman and follow the reasonable instructions given by the principal.

4) Any agreements deviating from paragraphs 1 and 2 are invalid.

Art. 90

Obligations of the Principal

1) The principal must provide the commercial agent with the documents necessary for the performance of his duties, such as samples, drawings, price lists, advertising materials, and terms and conditions.

2) The principal must provide the commercial agent with the necessary information. He must immediately notify the commercial agent of the acceptance or rejection of a transaction brokered by the commercial agent or concluded without authority to represent, and of the non-execution of a transaction brokered or concluded by him. He must immediately inform the commercial agent if he is likely to be able to or willing to conclude transactions only to a significantly lesser extent than the commercial agent could have expected under normal circumstances.

3) Any agreements deviating from paragraphs 1 and 2 are invalid. Art.
91

Del credere commission

1) If a commercial agent undertakes to guarantee the performance of an obligation arising from a transaction, he may claim special compensation (del credere commission); this claim may not be excluded in advance. The obligation may be assumed only for a specific transaction or for transactions with specific third parties that the commercial agent brokers or concludes. The assumption of this obligation must be in writing.

2) The claim to the del credere commission arises upon the conclusion of the transaction.

3) Paragraph 1 does not apply if the principal or the third party has its place of business or, in the absence thereof, its domicile abroad. It also does not apply to transactions for the conclusion and performance of which the commercial agent has unlimited authority.

Art. 92

Transactions Subject to Commission

1) The commercial agent is entitled to commission for all transactions concluded during the contractual relationship that are attributable to his activities or concluded with third parties whom he has acquired as customers for transactions of the same kind. He is not entitled to commission if and to the extent that the commission under paragraph 3 is due to the former commercial agent.

2) If the commercial agent has been assigned a specific territory or a specific group of customers, he is entitled to commission even for transactions concluded without his involvement with persons within his territory or group of customers during the term of the contractual relationship. This does not apply if and to the extent that the commission under paragraph 3 is due to the former commercial agent.

3) For a transaction concluded only after the termination of the contractual relationship, the commercial agent is entitled to commission only if

1. he has brokered the transaction or initiated and prepared it in such a way that the conclusion is predominantly attributable to his activities, and the transaction was concluded within a reasonable period after the termination of the contractual relationship; or

2. the third party's offer to conclude a transaction, for which the commercial agent is entitled to commission pursuant to paragraph 1, sentence 1, or paragraph 2, sentence 1, was received by the commercial agent or the principal prior to the termination of the contractual relationship.

The commercial agent referred to in paragraph 1 is entitled to a pro rata share of the commission if, due to special circumstances, a division of the commission is equitable.

4) In addition to the entitlement to commission for concluded transactions, the commercial agent is entitled to a collection commission for the amounts collected by him in accordance with the contract.

Art. 93

Due Date of the Commission

1) The commercial agent is entitled to commission as soon as and to the extent that the principal has performed the transaction. A different agreement may be made; however, upon the principal's performance of the transaction, the commercial agent is entitled to a reasonable advance payment, which is due no later than the last day of the following month. Notwithstanding any agreement, however, the commercial agent is entitled to commission as soon as and to the extent that the third party has performed the transaction.

2) If it is established that the third party has not performed, the claim to commission lapses. Any amounts already received must be returned.

3) The commercial agent is also entitled to commission if it is established that the principal has not performed the transaction in whole or in part, or has not performed it as agreed. The entitlement lapses in the event of non-performance if and to the extent that this is due to circumstances for which the principal is not responsible.

4) The claim to commission becomes due on the last day of the month in which the claim is to be settled pursuant to Section 95(1).

5) Any agreements deviating from paragraph 2, sentence 1, and paragraphs 3 and 4 that are disadvantageous to the commercial agent are invalid.

Art. 94

Amount of Commission

1) If the amount of the commission is not specified, the customary rate shall be deemed to have been agreed upon.

2) The commission shall be calculated on the basis of the amount payable by the third party or the contractor. Discounts for cash payments shall not be deducted; the same applies to incidental costs, namely freight, packaging, customs duties, and taxes, unless

the incidental costs are specifically invoiced to the third party. Value-added tax that is shown separately on the invoice solely due to tax regulations is not considered to have been specifically invoiced.
3) In the case of contracts for the transfer of use or enjoyment of a specific duration, the commission shall be calculated on the basis of the remuneration for the duration of the contract. In the case of an indefinite duration, the commission shall be calculated on the basis of the remuneration up to the point at which the third party may first terminate the contract; the commercial agent shall be entitled to further commissions calculated accordingly if the contract continues.

Art. 95

Settlement of the Commission

1) The principal shall settle the commission to which the commercial agent is entitled on a monthly basis; the settlement period may be extended to a maximum of three months. The settlement shall be made without delay, at the latest by the end of the following month.
2) Upon settlement, the commercial agent may request an account statement detailing all transactions for which he is entitled to commission under Art. 92.
3) The commercial agent may also request information regarding all circumstances that are material to the commission claim, its due date, and its calculation.
4) If the account statement is refused or if there are reasonable doubts as to the accuracy or completeness of the settlement or the account statement, the commercial agent may demand that, at the employer's discretion, either he or an auditor or certified public accountant designated by him be granted access to the business records or other documents to the extent necessary to verify the accuracy or completeness of the settlement or the account statement.
5) These rights of the commercial agent may not be excluded or restricted.

Art. 96

Reimbursement of Expenses

The commercial agent may claim reimbursement of expenses incurred in the ordinary course of business only if this is customary in the trade.

Art. 97

Statute of limitations on claims

Claims arising from the contractual relationship are subject to a five-year statute of limitations, beginning at the end of the year in which they became due.

Art. 98

Right of Retention

1) The commercial agent may not waive statutory rights of retention in advance.

2) Upon termination of the contractual relationship, the commercial agent has a right of retention under general provisions with respect to documents made available to him (Art. 90(1)) only in respect of his due claims for commission and reimbursement of expenses.

Art. 99

Termination of the Contract

1) If the contractual relationship has been entered into for an indefinite period, it may be terminated during the first year of the contract term with one month's notice, during the second year with two months' notice, and from the third year onward with three months' notice. Termination is only permissible as of the end of a calendar month, unless otherwise agreed.

2) The notice periods under paragraph 1 may be extended by agreement; the notice period for the principal may not be shorter than that for the commercial agent. If a shorter notice period is agreed for the principal, the notice period agreed for the commercial agent shall apply.

3) A contractual relationship entered into for a fixed term that is continued by both parties after the expiration of the agreed term shall be deemed extended for an indefinite period. The total duration of the contractual relationship shall be decisive for determining the notice periods under paragraph 1.

Art. 100

Termination without Notice

1) The contractual relationship may be terminated by either party for good cause without observing a notice period.

2) If the termination is caused by conduct for which the other party is responsible, that party is obligated to compensate for the damages resulting from the termination of the relationship.

Art. 101

Right to Compensation

1) The commercial agent may demand reasonable compensation from the principal after the termination of the contractual relationship if:

1. the principal derives significant benefits from the business relationship with new customers acquired by the commercial agent, even after the termination of the contractual relationship;

2. the commercial agent, as a result of the termination of the contractual relationship, loses claims to commission that he would have had, had the relationship continued, from transactions already concluded or to be concluded in the future with the customers he has acquired; and

3. the payment of compensation is equitable in light of all circumstances.

It shall be deemed equivalent to the acquisition of a new customer if the commercial agent has expanded the business relationship with a new customer to such an extent that this is economically equivalent to the acquisition of a new customer.

2) The compensation shall not exceed an annual commission or other annual remuneration calculated based on the average of the last five years of the commercial agent's activity; if the contractual relationship is of shorter duration, the average during the period of activity shall be decisive.

3) The claim does not exist if:

1. the commercial agent has terminated the contractual relationship, unless the principal's conduct provided just cause for this or the commercial agent cannot reasonably be expected to continue his activities due to his age or illness; or

2. the principal has terminated the contractual relationship and there was good cause for the termination due to the commercial agent's culpable conduct; or

3. pursuant to an agreement between the principal and the commercial agent, a third party enters into the contractual relationship in place of the commercial agent; such an agreement may not be made prior to the termination of the contractual relationship.

4) The claim cannot be excluded in advance. It must be asserted within one year after the termination of the contractual relationship.

5) Paragraphs 1, 3, and 4 apply to insurance agents, provided that the business relationship with new customers acquired by the commercial agent is replaced by

...the insurance agent has brokered new insurance contracts, and the brokerage of an insurance contract is deemed to have occurred if the insurance agent has expanded an existing insurance contract to such an extent that this is economically equivalent to the brokerage of a new insurance contract. Notwithstanding paragraph 2, the insurance agent’s compensation shall not exceed three years’ worth of commissions or annual remuneration.

Art. 102

Trade and Business Secrets

The commercial agent may not exploit or disclose to others any trade and business secrets entrusted to him or which have become known to him as such through his activities for the principal, even after the termination of the contractual relationship.

Art. 103

Non-Competition Clause

1) Any agreement that restricts the commercial agent’s commercial activities after the termination of the contractual relationship (non-competition clause) must be in writing and must involve the delivery to the commercial agent of a document signed by the principal and containing the agreed provisions. The agreement may only be entered into for a maximum of two years from the termination of the contractual relationship; it may only apply to the territory or customer base assigned to the commercial agent and only to those items with respect to which the commercial agent is required to endeavor to broker or conclude transactions for the principal. The principal is obligated to pay the commercial agent reasonable compensation for the duration of the non-competition clause.

2) The principal may, in writing, waive the non-competition clause prior to the end of the contractual relationship, with the effect that the principal is released from the obligation to pay compensation six months after the declaration.

3) If one party terminates the contractual relationship for good cause due to the other party’s culpable conduct, that party may renounce the non-competition clause by written declaration within one month of the termination.

4) No other agreements that are disadvantageous to the commercial agent may be made.

Art. 104

Powers of the Commercial Agent

1) The authority granted to commercial agents to conclude transactions does not authorize them to amend concluded contracts, in particular to grant payment extensions.

2) Commercial agents are only authorized to accept payments if they have been granted such authority.

3) Even if a commercial agent has not been granted power of attorney to conclude transactions, he is deemed authorized to receive notices of defects in goods, declarations that goods are being made available, and similar declarations through which a third party asserts or reserves his rights arising from defective performance; he may assert the rights to which the entrepreneur is entitled to secure evidence. A third party need only accept a limitation of these rights against himself if he knew of it or should have known of it.

Art. 105

Lack of Authority to Act

1) If a commercial agent, who is entrusted solely with the mediation of transactions, has concluded a transaction on behalf of the principal, and the third party was unaware of the lack of authority to act on behalf of the principal, the transaction is deemed to have been approved by the principal unless the principal immediately rejects the transaction vis-à-vis the third party after having been notified by the commercial agent or the third party of the conclusion and the essential terms of the transaction.

2) The same applies if a commercial agent entrusted with the conclusion of transactions has concluded a transaction on behalf of the principal for which he is not authorized.

Art. 106

Insurance Agent

1) An insurance agent is a commercial agent entrusted with brokering or concluding insurance contracts.

2) Subject to paragraphs 3 and 4, the provisions governing the contractual relationship between the commercial agent and the principal shall apply to the contractual relationship between the insurance agent and the insurer.

3) Notwithstanding Art. 91(1), first sentence, an insurance agent is entitled to a commission only for transactions attributable to his or her activities. Art. 91(2) does not apply to insurance agents.

4) The insurance agent is entitled to a commission (Art. 92(1)) as soon as the policyholder has paid the premium from which the commission is calculated in accordance with the contractual relationship.

Art. 107

Minimum Working Conditions

1) For the contractual relationship of a commercial agent who is contractually prohibited from working for other employers or for whom this is not possible due to the nature and scope of the work required of him, the government may, by ordinance, set the lower limit of the employer's contractual benefits in order to ensure the necessary social and economic needs of such commercial agents or a specific group thereof. The benefits thus established may not be contractually excluded or restricted.

2) Paragraph 1 also applies to the contractual relationship of an insurance agent who, under one or more contracts, is entrusted with brokering or concluding business on behalf of several insurers belonging to an insurance group or to an organizational association among them, provided that the termination of the contractual relationship with one of these insurerswould, in case of doubt, also result in the termination of the contractual relationship with the other insurers. In this case, a regulation may also determine whether the specified benefits are owed by all insurers as joint and several debtors, on a pro rata basis, or only by one of the insurers, and how the settlement among them is to be carried out.

Art. 108

Part-time Commercial Agents

1) Articles 99 and 101 do not apply to a part-time commercial agent. If the contractual relationship has been entered into for an indefinite period, it may be terminated with one month's notice to the end of a calendar month; if a different notice period is agreed upon, it must be the same for both parties. The right to a reasonable advance payment under Art. 93(1), sentence 2, may be excluded.

2) Paragraph 1 may be invoked only by an employer who has expressly entrusted the commercial agent with the mediation or conclusion of business transactions as a part-time commercial agent.
3) Whether a commercial agent is acting solely as a part-time commercial agent is determined according to common understanding.
4) The provisions of paragraphs 1 through 3 apply mutatis mutandis to insurance agents. Art. 109
Foreign commercial agents; shipping agents
1) If, under the contract, the commercial agent is not required to perform his activities for the principal within the territory of the contracting states of the Agreement on the European Economic Area or Switzerland, a different arrangement may be agreed with respect to Articles 87 through 108.
2) The same applies if the commercial agent is entrusted with the mediation or conclusion of transactions relating to the chartering, handling, or equipping of ships or the booking of passages on ships.
3) In all other respects, the provisions of the Act on International Private Law apply.
Art. 110 to 270
Repealed
Book 4
Commercial Transactions
1. Title
Commercial Transactions in General
1. Section
Definition of Commercial Transactions
Art. 271
Commercial transactions include:
1. the purchase or other acquisition of goods or other movable property, government securities, shares, or other securities intended for commercial transactions, with the intent to resell them; it makes no difference whether the goods or other movable property are to be resold in their original form or after processing or transformation;
2. the acceptance of a delivery of items of the type described in item 1, which the recipient acquires for this purpose;

3. the assumption of insurance in return for a premium;
4. the undertaking of the carriage of goods or passengers by sea and the loan against a pledge.

Art. 272

1) The following transactions are also considered commercial transactions if they are carried out on a commercial basis:
1. the undertaking of the working or processing of movable property for others, if the contractor's business operations exceed the scope of craftsmanship;
2. banking or money-changing transactions;
3. the business of a commission agent (Art. 360), a freight forwarder, and a carrier, as well as the business of establishments intended for the transport of persons;
4. the brokerage or conclusion of commercial transactions on behalf of others; however, the official activities of commercial brokers are not included herein;
5. publishing businesses, as well as other businesses in the book or art trade; furthermore, the businesses of printing houses, provided their operations are not merely of a craft nature.

2) The aforementioned transactions are also considered commercial transactions if, although carried out individually, they are performed by a merchant in the course of his commercial enterprise, which is ordinarily directed toward other commercial activities.

Art. 273

1) All individual transactions of a merchant that are part of the operation of his commercial enterprise shall be regarded as commercial transactions.

2) This applies in particular to the commercial resale of goods, movable property, and securities acquired for this purpose, as well as to the acquisition of equipment, materials, and other movable property intended for direct use or consumption in the course of business operations.

3) Resales made by craftsmen are not to be regarded as commercial transactions, provided they are made solely in the course of their craft business.

Art. 274

1) In case of doubt, contracts concluded by a merchant shall be deemed to pertain to the operation of the commercial business.

2) Promissory notes signed by a merchant are deemed to have been signed in the course of the merchant's business, unless the contrary is apparent from the notes themselves. Art. 275

Repealed

Art. 276

The nature or validity of a commercial transaction is not precluded by the fact that a person is prohibited from engaging in trade or concluding commercial transactions by virtue of their office or status, or for reasons of trade regulation or other similar grounds.

Art. 277

In any legal transaction that constitutes a commercial transaction on the part of one of the contracting parties, the provisions of this Book IV shall apply equally to both contracting parties, unless it follows from these provisions themselves that their specific provisions apply only to the contracting party on whose part the transaction is a commercial transaction.

2. Section

General Provisions on Commercial Transactions

Art. 278

In assessing and interpreting commercial transactions, the judge must ascertain the intent of the parties and not be bound by the literal meaning of the wording.

Art. 279

With regard to the meaning and effect of acts and omissions, the customs and practices prevailing in commercial transactions shall be taken into account.

Art. 280

If two or more persons have jointly entered into an obligation toward another in a transaction that constitutes a commercial transaction on their part, they shall be regarded as joint and several debtors, unless the agreement with the creditor provides otherwise.

Art. 281

1) In commercial transactions, as well as in all cases where this Code imposes a joint and several obligation, a joint and several debtor may not raise the defense of division or the defense of prior claim.

2) The same applies to sureties if the debt arises from a commercial transaction on the part of the principal debtor, or if the suretyship itself is a commercial transaction.

Art. 282

Anyone who, in a transaction that constitutes a commercial transaction on their part, is obligated to exercise due care toward another must exercise the care of a prudent merchant.

Art. 283

A person entitled to claim damages may demand compensation for actual damages and lost profits.

Art. 284

1) The contractual penalty is not subject to any limitation as to amount; it may exceed twice the amount of the principal debt.

2) In case of doubt, the debtor is not entitled to discharge himself from performance by paying the contractual penalty.

3) The agreement on a contractual penalty does not, in case of doubt, preclude a claim for damages exceeding the amount of the penalty.

Art. 285

1) A deposit (arrha) is considered a penalty only if this has been agreed upon or is customary in the locality.

2) Unless otherwise agreed or customary in the locality, it must be returned or credited.

Art. 286

Commercial transactions may not be rescinded on the grounds of excessive breach, in particular a breach exceeding half of the contract.

Art. 287

Repealed Art.

288

Repealed Art.

289

Repealed Art.

290

1) A merchant who, in the course of conducting a commercial business, performs transactions or provides services for another merchant or a non-merchant may, for such services, even without

He may charge a commission as previously agreed, and in the case of storage, also storage fees at the rates customary in the locality.
2) He may charge interest on his loans, advances, expenses, and other expenditures from the date of their payment or incurrence.
3) This applies in particular to commission agents and freight forwarders. Art. 291
1) If a merchant maintains a current account (accounts receivable) with another merchant, the party to whom a surplus is due upon settlement of the account is entitled to charge interest on the entire amount thereof, even if interest is included therein, from the date of settlement.
2) The account is settled once a year, unless the parties agree otherwise.
Art. 292
Repealed Art.
293
In commercial transactions, the total amount of interest may exceed the principal.
Art. 294
The acceptance of an invoice does not preclude proof of an error or fraud in the invoice.
Art. 295
The probative value of a promissory note or a receipt is not subject to the expiration of a time limit.
Art. 296
The bearer of a receipt is deemed authorized to receive payment, unless circumstances known to the payer preclude the acceptance of such authorization.
Art. 297
A proposal, an order, or a power of attorney issued by a merchant in the course of trade is not revoked by his death, unless a contrary intention is apparent from his statement or from the circumstances.
Art. 298

1) In the case of a power of attorney for commercial transactions, the same provisions set forth in Art. 52 regarding authorized signatories and agents shall apply to the relationship between the principal, the agent, and the third party with whom the agent concludes the transaction on behalf of the principal.
2) The provision of Article 55 also applies to any person who enters into a commercial transaction as an agent without having been granted power of attorney to do so, or who exceeds the scope of his or her authority in entering into such a transaction.
Art. 299
In the event of the assignment of a claim arising from a commercial transaction, payment of the full amount may be demanded even if that amount exceeds the sum of the price agreed upon for the assignment.
Art. 300–305
Repealed Art.
306
1) Repealed
2) Repealed
3) The statutory lien of the commission agent, freight forwarder, and carrier is equivalent to a lien acquired by contract.
4) Repealed
Art. 307–316
Repealed
3. Section
Conclusion of Commercial Transactions
Art. 317
1) In commercial transactions, the validity of contracts is not contingent upon written form or other formalities.
2) Exceptions to this rule apply only to the extent that they are provided for in this Code.
Art. 318
A declaration must be made immediately in response to a proposal made in person to conclude a commercial transaction; otherwise, the proposer is no longer bound by the proposal.

Art. 319
1) In the case of an offer made to an absent party, the offeror remains bound until the time at which, assuming the reply was sent in due form and in a timely manner, he may expect to receive it. In calculating this time, the offeror may assume that his offer arrived in a timely manner.
2) If the acceptance, which was sent in a timely manner, is received only after this point in time, the contract is not concluded if the applicant has notified the other party of their withdrawal in the meantime or without delay after the acceptance was received.
Art. 320
1) If the revocation of an offer reaches the other party earlier than the offer, or at the same time as the offer, the offer shall be deemed not to have been made.
2) Likewise, the acceptance shall be deemed not to have been made if the revocation has been received by the offeror before the declaration of acceptance or at the same time as it.
Art. 321
If a contract has been concluded between parties who are not present, the time at which the declaration of acceptance was sent shall be deemed the time of conclusion of the contract.
Art. 322
An acceptance subject to conditions or restrictions shall be deemed a rejection of the offer combined with a new offer.
Art. 323
1) If a business relationship exists between the merchant to whom an order is given and the principal, or if the merchant has offered to carry out such orders for the principal, the merchant is obligated to respond without delay; otherwise, his silence shall be deemed acceptance of the order.
2) Even if he rejects the order, he is obligated to protect any goods or other items sent with the order from damage for the time being at the principal's expense, to the extent that he is covered for these costs and to the extent that this can be done without causing him harm.
3) The Commercial Court may, upon his application, order that the goods be stored in a public warehouse or with a third party until the owner makes other arrangements.

4. Section

Performance of Commercial Transactions

Art. 324

1) Performance of the commercial transaction must take place at the location specified in the contract or at the location that is to be regarded as the place of performance based on the nature of the transaction or the intention of the contracting parties.

2) If these conditions are not met, the obligor must perform at the place where he had his place of business at the time the contract was concluded or, in the absence thereof, his place of residence. However, if a specific item is to be delivered which, at the time the contract was concluded, was located at another place with the knowledge of the contracting parties, delivery shall take place at that place.

Art. 325

1) In the case of monetary payments, with the exception of the payment of negotiable instruments or bearer instruments, the debtor is obligated, unless otherwise provided by the contract or by the nature of the transaction or the intention of the contracting parties,, to remit the payment to the creditor at his own risk and expense to the place where the latter had his place of business at the time the claim arose or, in the absence thereof, his place of residence.

2) However, this provision does not alter the debtor's statutory place of performance (Art. 324) with respect to the venue or in any other respect.

Art. 326

If the time of performance of an obligation is not specified in the contract, performance may be demanded and rendered at any time, unless the circumstances or commercial practice indicate otherwise.

Art. 327

1) If the time of performance is specified as spring or autumn or similar time periods, commercial practice at the place of performance shall prevail.

2) If performance is set for the middle of a month, the 15th of that month shall be deemed the date of performance.

Art. 328

1) If performance of an obligation is to occur upon the expiration of a specified period following the conclusion of the contract, the time of performance shall be:
1. if the period is specified in days, on the last day of the period; in calculating the period, the day on which the contract is concluded is not included; if the period is specified as eight or 14 days, this means a full eight or 14 days;
2. if the period is specified in weeks, months, or a period spanning one or more months (year, half-year, quarter), to the day of the last week or the last month that corresponds in name or number to the day the contract was concluded; if this day is missing in the last month, performance falls on the last day of that month.
2) The term "half a month" is deemed to be equivalent to a period of 15 days. If the deadline for performance is set at one or more full months and a half a month, the 15 days are to be counted last.
3) In accordance with the foregoing principles, the time limit must be calculated even if its starting point is determined not by the date of conclusion of the contract but by some other point in time or event.
Art. 329
If the date of performance falls on a Sunday or a public holiday, the next business day shall be deemed the date of performance.
Art. 330
1) If performance is to take place within a certain period, it must occur before the expiration of that period.
2) If the last day of the period falls on a Sunday or a public holiday, performance must take place no later than the preceding business day.
Art. 331
Amendments to these time calculations (Art. 328 to 330), insofar as they concern the settlement dates of stock exchange transactions, are reserved for the stock exchange regulations.
Art. 332
Performance must be rendered and accepted on the performance date during normal business hours.
Art. 333

If the contractual deadline for the performance of an obligation has been extended, the new deadline shall, in case of doubt, commence on the first day following the expiration of the old deadline.

Art. 334

1) In all cases where a due date has been specified, it must be determined, based on the nature of the transaction and the intent of the parties, whether the due date was set solely for the benefit of one of the parties.

2) Even if the debtor is thereby authorized to pay before the due date, he is not entitled to deduct the discount without the creditor’s consent, unless an agreement or commercial custom authorizes him to do so. Art. 335

If the contract contains no specific provisions regarding the nature and quality of the goods, the obligor must provide goods of average type and quality. Art. 336

1) Measures, weights, coinage standards, types of coins, time calculations, and distances applicable at the place where the contract is to be performed shall, in case of doubt, be deemed to be in accordance with the contract.

2) If the currency specified in the contract is not in circulation at the place of payment or is used only as a billing currency, the amount may be paid in the local currency at its value on the due date, unless the use of the word "effective" or a similar term expressly stipulates payment in the currency specified in the contract.

5. Section: **Default in Payment** Art. 336a *Scope of Application*

This section applies to legal transactions between entrepreneurs as well as to legal transactions between an entrepreneur and a legal entity under public law.

Art. 336b

Interest on late payments

1) In the event of a delay in the payment of monetary claims, the statutory interest rate is eight percentage points above the reference interest rate. The reference interest rate applicable on the first calendar day of a half-year is decisive for the respective half-year

. However, if the debtor is not responsible for the delay, he shall only be required to pay the interest specified in § 1000(1) ABGB.

2) The government shall regulate the details by ordinance, in particular:

a) the reference interest rate applicable for determining the statutory interest rate;

b) the publication of the applicable statutory interest rate. Art.
336c

Duration of Acceptance or Inspection Procedures

The duration of a statutory or contractual acceptance or inspection procedure to determine whether performance has been provided in accordance with the contract may not exceed 30 calendar days from receipt of the goods or provision of the service. A longer period may only be agreed upon expressly and is permissible only to the extent that this is not grossly disadvantageous to the creditor.

Art. 336d

Compensation for Collection Costs

In the event of a delay in the payment of monetary claims, the creditor is entitled to demand a lump-sum amount of 60 francs from the debtor as compensation for any collection costs. For the reimbursement of collection costs exceeding this lump-sum amount, § 1333(3) ABGB applies.

Art. 336e

Grossly Disadvantageous Contractual Provisions or Business Practices

1) A contractual provision regarding the payment date, the payment period, the default interest rate, or compensation for collection costs is void if it is grossly disadvantageous to the creditor. Likewise, no legal effects may be derived from a business practice concerning these matters if it is grossly disadvantageous to the creditor.

2) In assessing whether a contractual provision or business practice is grossly disadvantageous, particular consideration must be given to the extent to which it deviates from the practice of fair dealing, whether there is an objective reason for this deviation, and what contractual performance is at issue. In the case of a contractual provision agreed to the detriment of the creditor regarding a default interest rate deviating from Art. 336b or a lump-sum compensation amount deviating from Art. 336d, sentence 1, it must also be considered whether there is an objective reason for this deviation.

3) Agreeing to a payment term of up to 60 days is by no means grossly disadvantageous.

4) The exclusion of default interest is, in any case, grossly disadvantageous.

5) The exclusion of compensation for collection costs under Art. 336d is considered grossly disadvantageous unless, exceptionally, it is objectively justified by the circumstances of the respective legal transaction.

2. Title**:**

Sale Art.

337

An offer to sell that is clearly directed at multiple persons, particularly through the distribution of price lists, inventory lists, samples, or specimens, or in which the goods, price, or quantity are not specifically designated, is not a binding offer to sell.

Art. 338

A commercial transaction whose subject matter consists in the delivery of a quantity of fungible goods for a specified price shall also be governed by the provisions on sale.

Art. 339

1) A sale on approval or on trial is concluded subject to the condition, at the buyer's discretion, that the buyer will inspect or test the goods and approve them. In case of doubt, this condition is a condition precedent.

2) The buyer is not bound by the purchase until he has approved it. The seller ceases to be bound if the buyer does not approve the goods by the end of the agreed or customary period.

3) In the absence of an agreed or customary period, the seller may, after the expiration of a reasonable period of time, request the buyer to make a decision; the seller ceases to be bound if the buyer does not respond to the request immediately.

4) If the goods sold on approval or for trial have already been delivered for the purpose of inspection or trial, the buyer's silence until the expiration of the period or upon request shall be deemed approval.

Art. 340

A purchase based on a sample or model is valid only if the seller undertakes to ensure that the goods conform to the sample or model.

Art. 341
A sale on trial is an unconditional sale with the addition of a condition. Art. 342
1) With regard to the place of performance of the obligations of the seller and the buyer, the provisions of Art. 324(1) apply.
2) Unless otherwise provided by these provisions, delivery of the goods takes place at the location where the seller had his place of business at the time of the conclusion of the contract or, in the absence thereof, his place of residence. However, if a specific item is sold that was located at another place at the time of the conclusion of the contract with the knowledge of the contracting parties, delivery takes place at that location.
3) The purchase price is to be paid upon delivery, unless otherwise required by the nature of the transaction or determined by contract or commercial practice. In all other respects, the provisions of Art. 325 also apply with respect to this payment.
Art. 343
1) The seller is obligated to store the goods with the care of a prudent businessman as long as the buyer is not in default of acceptance.
2) If the buyer is in default of accepting the goods, the seller may store the goods at the buyer's risk and expense in a public warehouse or with a third party. The seller is also authorized, after prior notice, to have the goods sold publicly; if the goods have a stock exchange price or a market price, he may, after prior notice, also arrange for the sale to be conducted privately through a commercial broker or, in the absence of such a broker, through an official authorized to conduct auctions, at the current price. If the goods are in danger of spoiling and there is imminent danger, prior notice is not required.
3) The seller must notify the buyer of the execution of the sale immediately, as far as practicable; if he fails to do so, he is liable for damages.
Art. 344
If the goods are to be shipped to the buyer from another location and the buyer has not specified the method of shipment, the seller is deemed to be authorized to make the necessary arrangements

, in particular to designate the person through whom the transport of the goods is to be arranged or carried out.

Art. 345

1) Upon delivery of the goods to the freight forwarder, carrier, or any other person designated to transport the goods, the buyer shall bear the risk to which the goods are subject. However, if the buyer has issued specific instructions regarding the method of shipment and the seller has deviated from them without compelling cause, the seller shall be liable for any resulting damage.

2) The seller bears the risk to which the goods are exposed during transport if, under the contract, the seller is required to deliver the goods at the place of destination, such that this place is deemed the place of performance for the seller. The fact that the seller has assumed payment of the costs or expenses of shipment does not in itself mean that the place to which the goods are transported is deemed to be the place of performance for the seller.

3) The provisions of this Article do not preclude the risk from having been borne by the buyer from an earlier point in time, provided that this would be the case under civil law.

Art. 346

1) The buyer is obligated to accept the goods provided they conform to the terms of the contract or, in the absence of a specific agreement, meet the statutory requirements (Art. 335).

2) Acceptance must take place immediately, unless otherwise stipulated, customary in the locality, or required by the circumstances.

Art. 347

1) If the goods are shipped from another location, the buyer must inspect the goods without delay after delivery, to the extent that this is practicable in the ordinary course of business, and, if the goods do not prove to be in conformity with the contract or with the law (Art. 335), must notify the seller immediately.

2) If the buyer fails to do so, the goods shall be deemed accepted, unless the defects were not recognizable upon immediate inspection in the ordinary course of business.

3) If such defects become apparent later, notice must be given without delay upon discovery; otherwise, the goods shall be deemed accepted even with respect to these defects.

4) The foregoing provision also applies to sales by inspection, on a trial basis, or after a trial, insofar as the defects in the goods sent were not apparent upon proper inspection or testing.

Art. 348

1) If the buyer objects to goods sent from another location, he is obligated to ensure their temporary storage.

2) If defects become apparent upon delivery or later, the buyer may have the condition of the goods assessed by experts. The seller is likewise entitled to demand such an assessment if the buyer has notified the seller that he is objecting to the goods due to defects.

3) The experts shall be appointed, upon application by the party concerned, by the Commercial Court or, in its absence, by the local judge.

4) The experts must submit their report in writing or have it recorded in the minutes.

5) If the goods are subject to spoilage and there is imminent danger, the buyer may have the goods sold in accordance with the provisions of Article 343. Article 349

1) The buyer may not assert a claim for a defect in the contractual or statutory quality of the goods if such defect was discovered only after the expiration of six months from the date of delivery to the buyer.

2) Claims against the seller for defects are barred by the statute of limitations six months after delivery to the buyer.

3) The defenses are extinguished if the immediate notification of the defect prescribed in Art. 347 has not been sent within six months of delivery to the buyer. If the notification has been made in this manner, the defenses remain in effect.

4) This provision does not affect any special laws or commercial practices that specify a shorter period for certain types of goods.

5) If the seller’s liability is contractually set for a shorter or longer period, that shall prevail.

Art. 350

The provisions of Articles 347 and 349 may not be invoked by the seller in the event of fraud.

Art. 351

Unless local custom or a special agreement provides otherwise, the seller bears the costs of delivery, in particular those of measuring and weighing; the buyer bears the costs of acceptance.

Art. 352

If the purchase price is to be calculated based on the weight of the goods, the weight of the packaging (tare weight) shall be deducted, unless otherwise specified by special agreement or by local commercial practice at the place of delivery. Whether and to what extent the tare weight is to be deducted according to a specific rate or ratio rather than by precise measurement, as well as whether and how much is to be calculated as net weight in favor of the buyer, or may be claimed as compensation for defective or unusable parts (refactie), shall be determined in accordance with the contract or commercial practice at the place of delivery. Art. 353

If the contract specifies the market price or the exchange price as the purchase price, this shall, in case of doubt, be understood to mean the current price determined at the time and place of performance or at the trading venue relevant for the latter, in accordance with thelocal institutions; in the absence of such a determination or if it is proven to be incorrect, the average price resulting from a comparison of the sales contracts concluded at the time and place of performance.

Art. 354

If the buyer is in default of payment of the purchase price and the goods have not yet been delivered, the seller may choose whether to demand performance of the contract and damages for delayed performance, or whether, in lieu of performance, to sell the goods at the buyer’s expense in accordance with the provisions of Art. 343 and claim damages, or whether to rescind the contract as if it had never been concluded.

Art. 355

If the seller is in default of delivery of the goods, the buyer has the choice of demanding performance together with damages for delayed performance, or of claiming damages for non-performance in lieu of performance, or of rescinding the contract as if it had never been concluded. Art. 356
If, pursuant to the provisions of the preceding articles, a party wishes to claim damages for non-performance instead of specific performance or to withdraw from the contract, it must notify the other party of this and, if the nature of the transaction permits, grant the other party a reasonable period of time, appropriate to the circumstances, to remedy the breach.
Art. 357
1) If it is stipulated that the goods are to be delivered at a precisely specified time or within a specified period, Art. 356 shall not apply. Both the buyer and the seller may exercise the rights to which they are entitled under Art. 354 or 355 at their discretion. However, the party wishing to insist on performance must notify the other party immediately upon the expiration of the time or period; if they fail to do so, they may not later insist on performance.
2) If the seller wishes to sell the goods on behalf of the defaulting buyer instead of demanding performance, he must, if the goods have a market or exchange price, carry out the sale immediately after the expiration of the time or the deadline. A later sale shall not be deemed to have been made on behalf of the buyer. A prior warning is not required; however, even in this case, the seller must notify the buyer of the sale without delay.
3) If the buyer claims damages for non-performance instead of specific performance, then, if the goods have a market or exchange price, the amount of damages to be paid by the seller shall be the difference between the purchase price and the market or exchange price at the time and place of the agreed delivery, without prejudice to the buyer's right to claim demonstrably higher damages.
Art. 358
In the cases provided for in Art. 357, each party is entitled to have the other party's default established at the latter's expense by means of a public document (protest).
Art. 359

If, in the cases provided for in Articles 354, 355, and 357, it follows from the circumstances—in particular from the nature of the contract, the intent of the parties, or the nature of the subject matter to be delivered—that performance of the contract is divisible on both sides, then the withdrawal of one contracting party from the contract may only take effect with respect to that part of the contract not yet performed by the other contracting party.

3. Title

Commission Transactions

Art. 360

1) A commission agent is a person who, on a commercial basis, concludes commercial transactions in his own name but for the account of a principal (commissioner).

2) The commission agent alone is entitled and obligated by the transactions he concludes with third parties. No rights or obligations arise between the principal and the third parties as a result.

3) If the principal expressly stipulates that the transaction is to be concluded in his name, this is not a commercial commission but an ordinary mandate for a commercial transaction.

Art. 361

The commission agent shall execute the transaction with the diligence of a prudent merchant in the principal's interest in accordance with the mandate; he shall provide the principal with the necessary information, in particular by notifying him immediately upon execution of the mandate; he is obligated to render an account to the principal regarding the transaction and to pay him whatever is due from the transaction.

Art. 362

If the commission agent does not act in accordance with the order accepted, he is liable to the principal for damages; the principal is not required to accept the transaction as having been carried out on his behalf.

Art. 363

If the commission agent has sold below the price set for him, he must reimburse the principal for the difference in price, unless he proves that a sale at the set price could not be executed and that the execution of the sale averted damage to the principal.

Art. 364

1) If the commission agent has exceeded the price set for the purchase, the principal may reject the purchase as not having been made on his behalf, unless the commission agent offers to cover the difference at the same time as notifying the principal of the purchase.
2) The principal who wishes to reject the purchase as not made on his behalf must declare this without delay in response to the purchase notice; otherwise, the exceeding of the order shall be deemed approved.
Art. 365
1) If the goods sent to the commission agent are in a condition that is visibly damaged or defective upon delivery, the commission agent must preserve the rights against the carrier or shipper, ensure proof of such condition, and notify the principal without delay.
2) In the event of failure to do so, he shall be liable for the resulting damage.
3) He may have the condition of the goods assessed by experts, and if the goods are in danger of spoiling and there is imminent danger, he may arrange for the sale of the goods in accordance with the provisions of Article 343.
Art. 366
1) If changes occur in the goods that give rise to fears of their depreciation, and if there is no time to obtain the principal's instructions, or if the principal fails to provide such instructions, the agent may arrange for the sale of the goods in accordance with the provisions of Article 343.
2) The commission agent has the same right in all other cases in which the principal, although obligated to do so under the circumstances, fails to dispose of the goods.
Art. 367
1) The commission agent is liable for loss or damage to the goods while he is their custodian, unless he proves that the loss or damage was caused by circumstances that could not have been averted by the care of a prudent merchant.
2) The commission agent is liable for failure to insure the goods only if he has received an instruction from the principal to do so.
Art. 368

1) The principal may assert claims arising from a transaction concluded by the commission agent against the debtor only after the assignment.
2) However, such claims, even if not assigned, shall be deemed claims of the principal in the relationship between the principal and the commission agent or the latter's creditors.
Art. 369
1) A commission agent who makes advances or extends credit to a third party without the principal's consent does so at his own risk.
2) However, to the extent that commercial practice at the place of business entails extending credit for the purchase price, the commission agent is also entitled to do so in the absence of a different provision by the principal.
3) If the commission agent has sold on credit without authorization, he must immediately pay the purchase price to the principal who did not approve this, as the debtor of the purchase price. If the commission agent proves that the price would have been lower had the sale been made for cash, he shall be required to reimburse only that price and, if it is lower than the price specified in the order, also the difference in accordance with Art. 363.
Art. 370
1) The commission agent is liable for the payment or other performance of his counterparty's obligation if he has assumed such liability or if this is customary in the place of his establishment.
2) The commission agent who guarantees for his counterparty is directly and personally liable to the principal for proper performance at the time of maturity to the extent that such performance can be legally demanded under the contractual relationship.
3) The commission agent who guarantees for his counterparty is entitled to remuneration (del credere commission) for this.
Art. 371
1) The principal is obligated to reimburse the commission agent for any cash outlays or expenses incurred that were necessary or useful for the execution of the transaction. This also includes compensation for the use of the commission agent's storage facilities and means of transport, as well as for the labor of his employees.

2) The commission agent is entitled to claim the commission once the transaction has been executed. No commission may be claimed for transactions that have not been executed; however, the commission agent is entitled to a delivery commission, provided that such a commission is customary in the locality.

Art. 372

1) If the commission agent concludes a transaction on terms more favorable than those set by the principal, the benefit shall accrue solely to the latter.

2) This applies in particular if the price at which the commission agent sells exceeds the lowest price set by the principal, or if the price at which he purchases does not reach the highest price set by the principal.

Art. 373

A commission agent who has undertaken to purchase a bill of exchange is, upon endorsing the bill, obligated to endorse it in the usual manner and without reservation.

Art. 374

1) The commission agent retains a lien on the goods in commission, provided that he still has them in his custody or, in particular through bills of lading, loading notes, or warehouse receipts, a lien on the goods for the costs incurred in connection with the goods, for the commission, for advances and loans made in respect of the goods, for bills of exchange drawn in respect thereof or other liabilities incurred, as well as for all claims arising from current accounts in commission transactions.

2) The commission agent may satisfy the aforementioned claims from the receivables arising from the commission transaction and still outstanding in priority over the principal and the principal’s creditors.

Art. 375

If the principal is in default in fulfilling the obligations against the commission agent specified in the preceding article, the latter is entitled, subject to the provisions of Art. 310, to be paid from the commission goods; he also has this right vis-à-vis the principal’s other creditors and the principal’s estate in insolvency.

Art. 376

1) In the case of a commission for the purchase or sale of goods, bills of exchange, and securities that have a stock exchange or market price, the commission agent is authorized, unless the principal has specified otherwise, to deliver the goods he is to purchase as the seller himself, or to retain the goods he is commissioned to sell as the buyer for his own account.
2) In this case, the commission agent's obligation to account for the conclusion of the purchase or sale is limited to proving that the price charged corresponds to the stock exchange price or market price at the time the order was executed. He is entitled to the customary commission and may charge the expenses that normally occur in commission transactions.
3) If the commission agent does not, at the same time as notifying the principal of the execution of the order, designate another person as the buyer or seller, the principal is entitled to hold the commission agent personally liable as the buyer or seller.

Art. 377
If the principal revokes the order and the revocation reaches the commission agent before the notice of the order's execution has been dispatched, the commission agent may no longer exercise the authority to act as buyer or seller himself.
Art. 378
The provisions of this Title also apply when a merchant whose ordinary business does not consist of commission transactions concludes a single commercial transaction in his own name on behalf of a principal.
4. Title
On Forwarding Transactions
Art. 379
A freight forwarder is a person who, on a commercial basis and in his own name, undertakes to arrange for the shipment of goods by carriers or ship operators for the account of others.
Art. 380

1) The freight forwarder is liable for any damage arising from a failure to exercise the care expected of a prudent merchant in the receipt and storage of the goods, in the selection of carriers, ship operators, or intermediate freight forwarders, and generally in the performance of the shipment of goods undertaken by him.
2) The freight forwarder must prove that he exercised such care.
Art. 381
1) The freight forwarder shall be entitled to claim the commission and reimbursement of any expenses and costs incurred or, in general, any expenditures necessary or useful for the purpose of the shipment (Art. 371).
2) He is not authorized to charge a freight rate higher than that agreed upon with the carrier or shipowner.
Art. 382
1) The carrier has a lien on the goods for the freight, commission, expenses, costs, and outlays, as well as for any advances made to the shipper on account of the goods, provided that the carrier still has the goods in its custody or is in a position to dispose of them.
2) He may also assert this right against the other creditors and the estate of the owner.
3) If the freight forwarder engages a sub-freight forwarder, the latter shall simultaneously exercise the rights to which the principal is entitled, in particular the principal's lien.
4) To the extent that the principal freight forwarder is satisfied by the subsequent freight forwarder through cash on delivery, the principal freight forwarder's claim and lien shall pass by operation of law to the subsequent freight forwarder. The same applies with respect to the carrier's claim and lien if and to the extent that the carrier is satisfied by the intermediate freight forwarder.
Art. 383
A freight forwarder who arranges for shipment by a carrier or ship operator, but using means of transport hired by the forwarder for his own account, may charge the standard freight rate together with the commission and other expenses.
Art. 384
If a freight forwarder has agreed with the consignor or consignee on specific rates for transportation costs, he shall, in the absence of a contrary agreement, be liable for the sub-freight forwarders and

carriers. In this case, he is entitled to a commission only if it has been agreed that such a commission may be charged in addition to the fixed rates for transportation costs.

Art. 385

1) Unless otherwise specified, the freight forwarder is authorized to carry out the transport of the goods himself.

2) If he exercises this authority, he shall simultaneously have the rights and obligations of a carrier and may charge the customary freight, the commission, and the expenses otherwise regularly incurred in forwarding transactions.

Art. 386

1) Claims against the freight forwarder for total loss or for reduction, damage, or delayed delivery of the goods are barred by the statute of limitations after one year.

2) With respect to claims for total loss, the period begins at the end of the day on which delivery should have taken place; with respect to claims for loss, damage, or delayed delivery, the period begins at the end of the day on which delivery took place.

3) Similarly, claims for loss, reduction, damage, or delayed delivery of the goods are barred unless notice of such facts has been sent to the freight forwarder within the one-year period.

4) The provisions of this article do not apply in cases of fraud or embezzlement by the carrier.

Art. 387

In all other respects, the rights and obligations of the freight forwarder, insofar as this Title does not contain provisions thereon, shall be determined in accordance with the principles of the preceding Title; in particular, the provisions set forth in Articles 365 through 367 for the commission agent shall also apply to the freight forwarder.

Art. 388

If a merchant whose ordinary business does not consist of freight forwarding undertakes, in his own name, to arrange for the shipment of goods by a carrier or shipowner for the account of a third party, the provisions of this Title shall apply to such a transaction.

Art. 389

The provisions of this Title do not apply to persons who merely act as intermediaries in the negotiation of contracts of carriage between the shipper and the carrier or shipowner (freight brokers, freight forwarders, ship agents).

5. Title

On Freight Transactions

1. Section

On the Contract of Carriage in General

Art. 390

A carrier is a person who, on a commercial basis, transports goods by land or on rivers and inland waterways.

Art. 391

1) The bill of lading serves as evidence of the contract between the carrier and the shipper.

2) The carrier may require the issuance of a bill of lading. Art. 392

The bill of lading shall contain:

1. a description of the goods, including their nature, quantity, and distinguishing marks;
2. the name and place of residence of the carrier;
3. the name of the shipper;
4. the name of the person to whom the goods are to be delivered;
5. the place of delivery;
6. the terms of carriage;
7. the place and date of issuance;
8. any special agreements the parties may have made regarding other matters, namely the time within which the transport is to be carried out and compensation for delayed delivery. Art. 393

In the case of goods that are subject to customs or tax treatment prior to delivery to the consignee, the shipper is obligated to provide the carrier with the accompanying documents required for this purpose. He shall be liable to the carrier, unless the carrier himself is at fault, for all penalties and damages incurred by the carrier due to the inaccuracy or insufficiency of the accompanying documents.

Art. 394

1) If the contract of carriage contains no stipulation regarding the time within which the carrier is to perform the transport, the period within which the carrier must commence the journey shall be determined by local custom; if no such local custom exists, the journey must be commenced within a period reasonable under the circumstances of the case.
2) If the commencement or continuation of the journey is temporarily prevented by natural events or other unforeseen circumstances, the shipper is not required to wait for the obstacle to be removed; but may instead rescind the contract; however, provided the carrier is not at fault, the shipper must compensate the carrier for the costs of preparing the journey, the costs of unloading the goods, and any claims relating to the portion of the journey already completed. The amount of compensation shall be determined by local custom or, in the absence thereof, by judicial discretion.
Art. 395
1) The carrier is liable for damage caused by loss or damage to the goods from the time of receipt until delivery, unless the carrier proves that the loss or damage was caused by force majeure or by the natural characteristics of the goods, namely by internal spoilage, shrinkage, normal leakage, and the like, or by defects in the packaging not apparent from the outside.
2) The carrier is liable for valuables, money, and securities only if the nature or value of the goods has been disclosed to him.
Art. 396
1) If, pursuant to the preceding article, the carrier is required to pay compensation for loss or damage to the goods, the calculation of the damage shall be based solely on the fair market value of the goods.
2) In the event of loss, the market value to be compensated shall be that which goods of the same kind and nature had at the place of delivery at the time when the goods were to be delivered; from this shall be deducted any savings in customs duties and expenses resulting from the loss.
3) In the event of damage, the difference between the sale value of the goods in their damaged condition and the fair market value that the goods would have had at the place and time of delivery

, after deduction of customs duties and expenses, to the extent that they are saved as a result of the damage.
4) If the goods have no market value, the calculation of the damage shall be based on the fair market value of the goods.
5) If the carrier is proven to have acted maliciously, he shall be liable for the full amount of the damage.
Art. 397
The carrier is liable for damage resulting from failure to meet the agreed or customary delivery time, unless he proves that he could not have prevented the delay by exercising the care of a prudent carrier.
Art. 398
If a deduction from the freight, loss of the freight, or some other contractual penalty is stipulated in the event of delayed delivery, compensation may also be claimed in case of doubt for the damage exceeding this amount that was caused by the delayed delivery.
Art. 399
If the carrier proves that he could not have prevented the delay by exercising the care of a prudent carrier, the agreed-upon total or partial retention of the freight or the contractual penalty for delayed delivery may not be claimed, unless the contract indicates a contrary intention.
Art. 400
The carrier is liable for its employees and for other persons whom it employs in the performance of the transport it has undertaken.
Art. 401
1) If the carrier entrusts the goods to another carrier for the entire or partial performance of the transport he has undertaken, he shall be liable for that carrier and any subsequent carriers until delivery.
2) Any carrier who succeeds another carrier shall, by accepting the goods under the original bill of lading, become a party to the contract of carriage as set forth in the bill of lading, assume an independent obligation to perform the carriage in accordance with the terms of the bill of lading, and shall also be liable for the obligations of the preceding carriers with respect to the portion of the carriage already performed by them.

Art. 402

1) The carrier must comply with subsequent instructions from the consignor regarding the return of the goods or their delivery to a consignee other than the one designated in the bill of lading as long as the carrier has not handed over the bill of lading to the latter upon the goods' arrival at the place of delivery.

2) If this has already been done, he must follow only the instructions of the designated recipient; otherwise, he is liable to the recipient for the goods.

Art. 403

The carrier is obligated to deliver the goods at the place of delivery to the consignee designated in the bill of lading.

Art. 404

The consignee named in the bill of lading is entitled, prior to the arrival of the goods at the place of delivery, to take all measures necessary to secure the goods and to give the carrier the instructions necessary for this purpose; he may demand delivery of the goods prior to their arrival at the place of delivery only if the consignor has authorized the carrier to do so.

Art. 405

Upon the carrier's arrival at the place of delivery, the consignee named in the bill of lading is entitled to assert the rights arising from the contract of carriage against the carrier in his own name, subject to the fulfillment of the obligations set forth in the bill of lading, whether he acts in his own interest or on behalf of another; in particular, he is entitled to sue the carrier for the surrender of the bill of lading and the delivery of the goods, unless the consignor has given the carrier, prior to the filing of the suit, a contrary instruction that is still admissible under Article 402.

Art. 406

By accepting the goods and the bill of lading, the consignee is obligated to make payment to the carrier in accordance with the bill of lading.

Art. 407

1) If the designated consignee of the goods cannot be located or refuses to accept them, or if a dispute arises regarding the acceptance or condition of the goods, the party concerned may have the latter determined by experts.

2) The experts shall be appointed, at the request of the party concerned, by the commercial court or, in its absence, by the local judge.
3) The experts must submit their report in writing or have it recorded in the minutes.
4) At the request of a party, the court may order that the goods be deposited in a public warehouse or with a third party, and that they be sold at public auction, in whole or in part, to pay the freight charges and the carrier's other claims.
5) The opposing party, if present at the location, shall be heard regarding the request for the appointment of experts or for a court order concerning the storage and sale of the goods.
Art. 408
1) Acceptance of the goods and payment of the freight extinguish all claims against the carrier.
2) The carrier may be held liable even after acceptance and payment of the freight only for loss or damage that was not externally apparent at the time of delivery, provided that the loss or damage was reported without delay upon discovery and it is proven that the loss or damage occurred during the period from receipt to delivery.
3) The provisions regarding the statute of limitations for claims and defenses against the freight forwarder for loss, damage, or delayed delivery of the goods (Art. 386) also apply to the carrier.
Art. 409
1) The carrier has a lien on the goods for all claims arising from the contract of carriage, in particular for freight and demurrage charges, as well as for customs duties and other expenses. This lien shall exist as long as the goods are retained or deposited; it shall also continue after delivery, provided that the carrier asserts it in court within three days of delivery and the goods are still in the possession of the consignee or a third party holding them on behalf of the consignee.
2) He may arrange for the sale of the goods or a portion thereof to satisfy his claim (Art. 407).
3) He also has this right vis-à-vis the other creditors and the owner's estate in insolvency.

Art. 410

1) If the goods pass through the hands of several carriers, the last carrier, upon delivery, unless the bill of lading provides otherwise, shall also collect the claims of the preceding carriers arising from the bill of lading and exercise their rights, in particular the right of lien.

2) The preceding carrier, having been satisfied by the subsequent carrier, transfers his claim and his right of lien to the latter by operation of law.

3) In the same manner, the freight forwarder's claim and lien are transferred to the subsequent freight forwarder and the carrier.

4) The lien of the preceding carriers shall subsist for as long as the lien of the last carrier.

Art. 411

If two or more liens established in accordance with Articles 374, 382, and 409 exist on the same goods, then, among those liens arising from the shipment or transport of the goods, the lien that arose later takes precedence over the one that arose earlier; all such liens shall take precedence over the commission agent's lien and over the freight forwarder's lien for advances; among the latter liens, the one created earlier shall take precedence over the one created later.

Art. 412

If the carrier delivers the goods without payment and does not assert the lien in court within three days of delivery, he, as well as the preceding carriers and the freight forwarders, forfeits the right of recourse against his predecessors. The claim against the consignee remains in force.

Art. 413

1) The shipper and the carrier may agree that the latter shall issue a bill of lading to the former.

2) The bill of lading is a document by which the carrier undertakes to deliver the goods.

Art. 414

1) The bill of lading shall contain:

1. a description of the goods loaded, including their nature, quantity, and distinguishing marks;

2. the name and place of residence of the carrier;

3. the name of the shipper;
4. the name of the person to whom or to whose order the goods are to be delivered. The consignor is to be understood as such if the bill of lading is drawn solely to order;
5. the place of delivery;
6. the terms regarding freight;
7. the place and date of issuance.
2) The bill of lading must be signed by the carrier.
3) The shipper must, upon the carrier's request, provide the carrier with a copy of the bill of lading bearing the shipper's signature.
Art. 415
1) The bill of lading governs the legal relationship between the carrier and the consignee of the goods; provisions of the contract of carriage not included in the bill of lading have no legal effect against the consignee unless express reference is made to them.
2) The provisions of the contract of carriage shall remain decisive for the legal relationship between the carrier and the shipper.
Art. 416
If the carrier has issued a bill of lading, he may comply with subsequent instructions from the shipper regarding the return or delivery of the goods to a person other than the consignee entitled under the bill of lading only if the bill of lading is returned to him. If he acts contrary to this provision, he is liable to the lawful holder of the bill of lading for the goods.
Art. 417
The person entitled to receive the goods is the person to whom the goods are to be delivered according to the bill of lading, or to whom the bill of lading, if it is made out to order, has been transferred by endorsement.
Art. 418
The carrier is obligated to deliver the goods only upon return of the bill of lading, on which the delivery of the goods must be certified.
Art. 419
In all other respects, the provisions regarding the rights and obligations of the carrier shall also apply in cases where a bill of lading has been issued.
Art. 420

If a merchant whose ordinary business does not include the performance of carriage contracts undertakes, in a specific case, to carry out the transport of goods by land or on rivers and inland waterways, the provisions of this Title shall also apply to such a transaction.

Art. 421

1) The provisions of this section also apply to freight operations of railways and other public transport agencies.

2) However, they apply to postal services only to the extent that no other provisions are established for them by special laws or regulations.

3) The provisions of the following section shall also apply to railways.

2. Section

On the Carriage of Goods by Railways in Particular

Art. 422

1) A railway open to the public for the transport of goods may not refuse a request to enter into a freight contract for its railway line, provided that:

1. the goods, either in themselves or by virtue of their packaging, are suitable for transport in accordance with the regulations and, in the absence of such regulations or where they provide no guidance, in accordance with the facilities and operating procedures of the railway;

2. the consignor submits to the generally applicable regulations of the railway administration with regard to freight, the delivery of the goods, and other transport conditions delegated to the railways;

3. the railway's regular means of transport are sufficient to carry out the transport.

2) The railways are not obligated to accept goods for transport until such time as their carriage can be effected.

3) With regard to the time of transport, no consignor may be given preference over another without a reason related to the railway's facilities, the conditions of transport, or the public interest.

4) Violations of the provisions of this article give rise to a claim for compensation for the resulting damage.

Art. 423

1) The railways referred to in Article 422 are not authorized to apply the provisions contained in Articles 395, 396, 397, 400, 401, and 408 regarding the carrier's liability for damages—whether with respect to the occurrence, extent, or duration of the liability, or with respect to the burden of proof—to their advantage through contracts (by means of regulations or by special agreement), except to the extent permitted by the following articles.
2) Contractual provisions that conflict with this provision shall have no legal effect.
Art. 424
1) It may be stipulated:
1. with respect to goods which, by agreement with the consignor, are transported in open wagons:
that no liability shall be assumed for damage arising from the risks inherent in this mode of transport;
2. with respect to goods which, regardless of their nature, require packaging to protect against loss or damage during transport, but which, according to the consignor's declaration on the bill of lading, are consigned unpackaged or with defective packaging:
that no liability shall be assumed for damage resulting from risks associated with defective packaging or the poor condition of the packaging;
3. With respect to goods whose loading and unloading is carried out by the shipper in accordance with an agreement with the consignor:
that no liability shall be assumed for damage arising from risks associated with loading and unloading or with defective loading;
4. With regard to goods which, by virtue of their peculiar natural nature, are exposed to the special risk of total or partial loss or damage, namely breakage, rust, internal spoilage, extraordinary leakage, etc.:
that no liability shall be accepted for damage arising from this risk;
5. With respect to live animals:
that no liability shall be accepted for damage arising from the special risk associated with the transport of such animals;

6. With respect to accompanied goods:
that no liability shall be assumed for damage arising from the risk which the escort is intended to avert.

2) If any of the provisions permitted in this Article are stipulated, the following shall also be deemed stipulated: that, unless proven otherwise, it shall be presumed that any damage that has occurred, if it could have resulted from the risk not assumed, actually resulted from that risk.

3) An exemption from liability stipulated under this article may not be invoked if it is proven that the damage was caused by the fault of the railway administration or its employees.

Art. 425

1) With regard to luggage, the following may be stipulated:

1. that liability for loss or damage to luggage not checked for transport shall be limited to cases where fault on the part of the railway administration or its employees is proven. The same may be stipulated with respect to items located in passenger carriages;

2. that liability for the loss of luggage that has been checked in for transport shall only arise if the luggage is claimed within a specified period after the scheduled delivery time.

2) The period shall not be less than three days.

Art. 426

1) With respect to goods which, by their very nature, regularly suffer a loss of weight or volume during transport, it may be stipulated that no liability shall be incurred for loss of weight or volume up to a predetermined standard rate. If several items have been transported together, the standard rate must be calculated separately for each individual item if the weight or volume of the individual items is recorded in the bill of lading or can otherwise be proven.

2) The provision referred to herein may not be invoked if it is proven that, under the circumstances of the case, the loss did not result from the inherent nature of the goods, or that the specified standard rate does not correspond to that nature or to the other circumstances of the case.

Art. 427

1) It may be stipulated:

1. that the value to be used as the basis for calculating damages under Art. 396 shall not exceed the amount stated as the value of the goods in the bill of lading, the cargo receipt, or the baggage receipt, and, in the absence of such a statement, a standard rate determined in advance;

2. that the amount of compensation payable under Article 397 for late delivery shall be the amount specified in the bill of lading, the loading note, or the baggage receipt, and, in the absence of such a declaration, a predetermined standard rate, which may also consist of the loss of the freight or a part thereof.

2) In the event of wilful misconduct on the part of the railway administration or its employees, the limitation of liability to the standard rate or the declared value of the goods may not be invoked.

Art. 428

1) It may be stipulated that, upon receipt of the goods and payment of the freight, any claim for loss of or damage to the goods, even if such loss or damage was not apparent at the time of delivery and was discovered only later (Art. 408, para. 2), shall lapse if the claim has not been reported to the railway administration within a specified period following delivery.

2) The period shall not be less than four weeks.

Art. 429

If a railway accepts the goods under a consignment note stipulating that the transport is to be carried out by several successive railways, it may be stipulated that not all railways that have accepted the goods under the bill of lading shall be liable as carriers for the entire transport pursuant to Article 401, but rather that only the first railway and the railway that last accepted the goods under the bill of lading shall be subject to such liability for the entire transport, subject to the railways' right of recourse against one another; conversely, one of the other, intermediate railways may be held liable as a carrier only if it is proven that the damage occurred on its railway.

Art. 430

If a railway accepts the goods for transport with a bill of lading in which the place of delivery is designated as a location not situated on its line or on any of the lines connecting to it, it may be stipulated that the liability of the railway or railways as carriers shall not extend to the entire transport to the place of delivery, but only to the place where the transport by railway is to end; if this is stipulated, only the obligations of the freight forwarder shall apply with respect to onward transport.

Art. 431

If the shipper specifies in the bill of lading that the goods are to be delivered to or left at a location served by the railroad, then—regardless of whether a different destination is indicated in the bill of lading—the transport is deemed to have been accepted only up to that location served by the railroad, and the railroad is liable only up to delivery at that location.